

3rd January,
2024
(AK)
17

W.P.A 26746 of 2023

Biresh Poddar and another
Vs.
State of West Bengal and others

Mr. Kanishk Sinha
Ms. Lipika Das (Sinha)
...for the petitioners.

Mr. Anirban Ray
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...for the State.

1. The present writ petition has been filed on behalf of the petitioner no.1 by the said petitioner and his wife.
2. The petitioner no.1 was convicted of a heinous crime, being the murder of his then wife and five children by strangulation inside a tenanted room.
3. The convict also stabbed one Digbijay Sharma, another tenant of the said premises, by means of a sharp cutting weapon. The petitioner no. 1 has already been in custody for twenty two years five months and sixteen days as on the date of consideration by the State Sentence Review Board (SSRB).
4. Learned counsel for the petitioner points out that in the remarks column of the minutes regarding the petitioner's request for early remission, it was recorded that the Superintendent of the Presidency Correctional

Home as well as the Chief Probation cum After Care Officer had categorically recommended his release.

5. However, merely due to opposition by the police in their report, such recommendation was ruled out by the SSRB.

6. Learned counsel appearing for the respondent authorities submits that the police report suggests that local people, who were witnesses at the relevant juncture when the petitioner was convicted, are apprehensive of the petitioner no.1's activities after he is released prematurely, if at all.

7. Furthermore, the petitioner's nature of crime was heinous. The petitioner has remarried in the meantime and as such it cannot be said that age has mellowed down the fury behind the offence of the petitioner.

8. It is found from the records and the annexures to the present writ petition that on a previous occasion, the petitioner no.1's similar prayer had been refused by the respondent authorities.

9. Vide order dated July 28, 2023 passed in WPA 14257 of 2023, the respondent authorities were directed to place the matter afresh before the SSRB constituted properly in accordance with law and the relevant guidelines for a reconsideration of the petitioner no.1's application for remission upon taking into account all relevant yardsticks in that regard as stipulated in law and

settled by several judgments of the Supreme Court and this court.

10. The jurisprudence holding the field mandates that the mere nature of the crime for which a prisoner was convicted in the first place is not the sole criterion to decide as to whether he should be prematurely released.

11. Other tests, particularly the conduct of the petitioner no.1 during incarceration and the propensity of the petitioner still remaining to commit a similar crime are also to be looked into.

12. In the present case, the impugned decision of the SSRB itself clearly indicates that reports were invited from all concerned.

13. The Superintendent of the Presidency Correctional Home where the petitioner no.1 is incarcerated, in his report, expressed that during the period of incarceration the petitioner no.1 was assigned different labours and he had executed his allotted works with sincerity and honesty.

14. It was further commented that the petitioner no.1 is laborious and hard working and can be relied upon. Nothing adverse is reported against the petitioner no.1 during his entire period of incarceration in the correctional home and his behavior with other inmates according to the Superintendent is cordial and helpful.

15. The petitioner no.1, according to the Superintendent's report, is obedient towards the

correctional home administration, disciplined and always carries out the orders as per directions.

16. Further, the petitioner no.1 was allowed 523 days parole without police escort to visit his family in different spells, particularly during the pandemic period, and returned to the correctional home in time without having any adverse report against him. It was recommended by the Superintendent that the petitioner no.1 is physically and mentally fit and premature release was recommended.

17. Again, the Chief Probation cum After Care Officer also recommended his premature release due to the satisfactory parole report and expressed the prospect of the petitioner no.1's rehabilitation.

18. The petitioner has remarried and his wife is running a beauty parlour. The petitioner no.1, it was expressed by the Chief Probation cum After Care Officer, may engage himself in agricultural work in his native village in Bihar as well.

19. Thus, the chances of rehabilitation and reintegration of the petitioner no.1 in mainstream society cannot be ruled out.

20. Rather, there are extremely high chances that the petitioner no.1 is fully capable and can be integrated in society afresh even after the long twenty two plus years of incarceration.

21. The heinous nature of the crime committed by the petitioner no.1 has been sufficiently addressed by penalizing the petitioner no.1 by way of almost twenty three years of incarceration.

22. Since the petitioner no.1 is now otherwise fit to be reintegrated in society, keeping in view that punishment in modern Penology is not retributive but reformatory, there is no reason why the SSRB acted merely on the basis of the knee-jerk reaction of the police authorities, which is a classical case of typical patriarchy, to refuse premature release of the petitioner merely because he committed a grave crime twenty-three years back.

23. As per the SSRB minutes, the only ground of objection raised by the Kolkata Police authorities was the nature of crime committed by the petitioner no.1.

24. That apart, the police also cited people in the locality having raised strong objection to the proposal of premature release.

25. It is unknown as to who are the local people who the police contacted, which is not even reflected in the minutes of the SSRB.

26. Rather, the very fact that the petitioner no.1 had been on parole for 523 days on isolated occasions shows that the petitioner no.1's stay out of prison and in his own locality would not affect the society at large adversely.

27. The mere apprehension of certain people cannot be a sufficient reason for refusing premature release to the petitioner.

28. As such, the impugned decision of the SSRB is palpably and patently perverse, the conclusion being starkly contrary to the findings and the reports of several relevant authorities including the Superintendent of Police and the Chief Probation Officer.

29. Hence, WPA 26746 of 2023 is allowed on contest, thereby setting aside the impugned decision of the SSRB annexed at pages 144 to 146 of the writ petition and directing immediate release of the petitioner no.1 by way of premature release.

30. It is made clear that since the petitioner no.1 is already on parole which is due to end tomorrow, that is, January 4, 2024, the petitioner no.1 shall not be taken back in custody.

31. However, the petitioner no.1 shall meet the Correctional Home authorities for carrying out the necessary final formalities with regard to premature release of the petitioner no.1 pursuant to the directions passed in this order.

31. All concerned shall act on the server copy of this order coupled with the written communication of the gist of the same by the learned Advocate for the petitioner, without insisting upon prior production of a certified copy of the same.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)