

Court No. - 1

WWW.LIVELAW.IN

Case :- CAPITAL SENTENCE No. - 1 of 2000

Appellant :- State of U.P.

Respondent :- Krishna Murari @ Murli

Counsel for Appellant :- From Addl.Session Judge,G.A.,Shitla Prasad Tripathi,Shiv Ganesh Singh,Umesh Pratap Singh

**Counsel for Respondent :- G.A.,Anuj Pandey,I.D.Shukla,S.K.Merotra
A N D -**

Case :- CRIMINAL APPEAL No. - 14 of 2000

Appellant :- Krishan Murari

Respondent :- State of U.P.

Counsel for Appellant :- Smt.S.Bala,Shailesh Tiwari

Counsel for Respondent :- G.A.,A.R.Siddiqui

A N D -

Case :- CRIMINAL APPEAL No. - 25 of 2000

Appellant :- Raghav Ram

Respondent :- State of U.P.

Counsel for Appellant :- From Jail,Shitla Prasad Tripathi,Umesh Pratap Singh

Counsel for Respondent :- G.A.

A N D -

Case :- CRIMINAL APPEAL No. - 26 of 2000

Appellant :- Krishana Murari

Respondent :- State of U.P.

Counsel for Appellant :- From Jail,Smt. Sarojini Bala

Counsel for Respondent :- G.A.

A N D -

Case :- CRIMINAL APPEAL No. - 27 of 2000

Appellant :- Kashi Ram

Respondent :- State of U.P.

Counsel for Appellant :- From Jail,Shitla Prasad Tripathi,Smt. Sarojini Bala,Umesh Pratap Singh

Counsel for Respondent :- G.A.

A N D -

Case :- CRIMINAL APPEAL No. - 28 of 2000

Appellant :- Ram Milan

Respondent :- State of U.P.

Counsel for Appellant :- From Jail,Shitla Prasad Tripathi,Umesh Pratap Singh

Counsel for Respondent :- G.A.

A N D-

Case :- CRIMINAL REVISION No. - 14 of 2000

Revisionist :- Rama Kant Verma

Opposite Party :- Ram Kripal Verma & Others

Counsel for Revisionist :- A.R. Siddiqui

Counsel for Opposite Party :- Govt. Advocate, Dinesh Chandra, Om Prakash

Hon'ble Ramesh Sinha, J. WWW.LIVELAW.IN

Hon'ble Vivek Varma, J.

Heard Sri Umesh Chandra Varma and Sri Chandra Shekhar Pandey, learned AGA for the State, Sri Shitla Prasad Tripathi and Sri Umesh Pratap Singh, learned counsel for the convict-appellants.

On 08.12.2021, when Capital Sentence No. 1 of 2000 and other connected criminal appeals were listed before this Court for final hearing, it was informed by learned counsel for the convict-appellants that the convict-appellants in the above-captioned appeals have been released on parole in pursuance of the order of the Hon'ble Apex Court dated 23.03.2020 passed in **Suo Motu Writ Petition (C) No. 1 of 2020, in re: Contagion of Covid 19 Virus in Prisons**. On such statement having been made, learned AGA had sought adjournment for the day in order to enable him to enquire about the said fact. On the prayer of the learned AGA, this Court posted the matter for today, hence the same are listed today in the additional cause list.

It is apt to mention here that the Apex Court in **Suo Motu Writ Petition (C) No. 1 of 2020, in re: Contagion of Covid 19 Virus in Prisons** has following directives to the State Government/Union Territory on 23.03.2020 :-

“We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as , (ii) Director General of Prison (s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as

aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

The Undertrial Review Committee contemplated by this Court *In re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the concerned authority as per the said judgment.

The High Powered Committee shall take into account the directions contained in para no. 11 in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

Some State/Union Territories who have not filed responses may file the same within three weeks from today.

List the mater after three weeks.”

Today, Sri Umesh Chandra Varma, learned AGA has informed the Court that the four appellants, namely, *Krishna Murari, Raghav Ram, Kashi Ram and Ram Milan* have been released on parole thrice in compliance of the aforesaid order dated 23.03.2020 passed by the Hon'ble Apex Court, firstly, on 26.05.2021 pursuant to the Government Order dated 25.05.2021, secondly on 19.08.2021 pursuant to Government Order dated 12.08.2021, and thirdly on 07.12.2021 pursuant to Government Order dated 2.12.2021, each time for a period of sixty days.

It transpires from the record that complainant-Rama Kant Varma preferred Criminal Appeal nos. 934 to 939 of 2011 with Criminal Appeal Nos.1202-1206 of 2011, before the Apex Court against the judgment and order dated 21.12.2000 passed by a Co-ordinate Bench of this Court, whereby the above-captioned Capital Sentence No. 1 of 2000 was rejected and other connected Criminal Appeal Nos. 14 of 2000, 25 of 2000, 26 of 2000, 27 of 2000 and 28 of 2000 were allowed and Criminal Revision No. 14 of 2000 was dismissed and further directed to acquit the accused/appellants from the charges of offences punishable under Sections 302, 149, 148 IPC and set-aside the judgment and order of conviction and sentence under appeal. The Hon'ble Apex Court, vide judgment and order dated 02.12.2008, while allowing the appeals preferred by the complainant-Rama Kant Varma, set aside the findings of the acquittal

recorded by the High Court vide order dated 21.12.2000 and remitted the matter to the High Court to hear the same afresh and dispose of the same in accordance with law.

It appears that after the aforesaid order of the Apex Court dated 02.12.2008 remitting the matter to this Court for deciding it afresh, a Non-bailable Warrant was issued by this Court on 08.03.2010, in pursuance of which all four appellants were taken into custody and since then they were in jail but the State Government has passed orders thrice, as referred to above, releasing them on parole in compliance of the aforesaid order of the Apex Court dated 23.03.2020.

In the aforesaid backdrop of the matter, today, on query being raised from the learned Additional Government Advocate as to under what circumstances, appellants were released on parole thrice, as referred to above, even though the order of the Apex Court dated 23.03.2020 passed in Suo Motu Writ Petition (C) No. 1 of 2020 is only applicable for offences involving punishment for a period upto or less than 7 years with or without fine, whereas in the present case, the appellants were awarded capital punishment by the Trial Court vide judgment and order dated 21.12.1999, he could not give satisfactory answer and he fairly conceded that the said order of release on parole could not have been passed in the facts of the present case, as narrated above.

Further when the Court questioned the Counsel for the convict/appellants about the release of the appellants on parole thrice, they could not also justify it and stated that the State has released them.

It is a matter of great concern and serious one as the release of the convict/appellants on parole by the State taking the aid of the order of the Apex Court dated 23.03.2020 passed in Suo Moto Writ Petition (C) No. 1 of 2020, which cannot be made applicable to the convict/appellants, who have been awarded capital punishment under Section 302 I.P.C. by the trial Court as the aforesaid judgment was confined to offences punishable upto or less than 7 years with or without fine. We record our displeasure the manner in which the State has repeatedly acted in releasing the convict /appellants on parole thrice

and no authority of the State was vigilant enough to check this gross failure by misusing the order of the Apex Court dated 23.03.2020.

In view of aforesaid, learned Counsel for the convict/appellants are directed to inform the convict/ appellants to surrender themselves before the Chief Judicial Magistrate, Faizabad forthwith, failing which, the Chief Judicial Magistrate, Faizabad is directed to take convict/appellants in custody in pursuance of the judgment and order dated 21.12.1999 passed in Sessions Trial No. 85 of 1985 : *State Vs. Krishna Murari and others.*

The Chief Judicial Magistrate, Faizabad is also directed to send a compliance report to this Court on or before the next date of listing.

The Chief Secretary, State of U.P. shall hold an inquiry in the matter as to under what circumstances the convict/appellants were released on parole thrice including the release order dated 2.12.2021 though they have been awarded capital punishment under Section 302 I.P.C. by the trial Court on 21.12.1999 and their appeals are being pending for final hearing before this Court and also to submit a report as to how many such convicted persons for death and life imprisonment by the trial Court and other convicts, who were in jail for the offences involving punishment for more than seven years, have been released in the State of U.P. in pursuance of the order of the Apex Court dated 23.03.2020, within a week from today. The Chief Secretary, State of U.P. shall also file his personal affidavit in this regard.

Let the matter be again listed alongwith all the connected appeals and revision on **20.12.2021 for final hearing.**

The Senior Registrar of this Court is directed to send a copy of this order to the Chief Secretary, State of U.P. for necessary information and compliance, within 24 hours.

(Vivek Varma,J.) (Ramesh Sinha,J.)

Order Date :- 13.12.2021

Lbm/-