In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 2337 of 2024

Md. Khalid
Vs.
The State of West Bengal and others

For the petitioner	:	Mrs. Somali Mukhopadhyay
For the State	:	Mr. T.M. Siddiqui, Ld. AGP, Ms. Amrita Panja Moulick
Hearing concluded on	:	04.04.2024
Judgment on	:	09.04.2024

Sabyasachi Bhattacharyya, J:-

1. The conflict between the human rights of the individual and the interest of the public at large has rarely been tested more than in the cases of premature release of convicts, particularly those convicted of heinous crimes, in the present case, creating communal tension by engaging in terrorist activities. Conflicting philosophies of penology have been pitted against each other, epitomized in some of the decisions of the Supreme Court.

2. The present challenge is against a refusal of the prayer of premature release made by the petitioner, a convict in the infamous 'Bowbazar Bomb Blast Case', which rocked Calcutta (now Kolkata) when it happened. The petitioner has already spent more than 31 years behind the bars. Previously, several writ petitions have been filed by the writ petitioner upon non-consideration/refusal of such request by

the respondent-authorities, culminating in the present writ petition. By the impugned decision, the State Sentence Review Board (SSRB), West Bengal has decided to turn down the said request primarily on the premise that the convict was a very close associate of the notorious 'Satta Don', namely Rashid Khan, who was the mastermind of the bomb blast. The thrust of the refusal is clearly the magnitude of the offence.

3. The petitioner argues that, having spend more than three decades behind the bars, the petitioner ought to be granted premature release on a proper application of the relevant yardsticks as reflected particularly in the views of the Supreme Court (Two-Judge Bench) expressed in *Joseph Vs. State of Kerala and others*, reported at *2023 SCC OnLine SC 1211*. The said judgment lays particular emphasis on the reformative aspect of punishment as opposed to the retributive approach.

4. It is argued that the good conduct of the petitioner during incarceration, chances of rehabilitation and the acceptability of the petitioner to his family are to be looked into instead of laying over-emphasis on the nature of the crime, committed several years back. Apart from *Joseph's Case*, learned counsel for the petitioner cities *Prithwis Chawdhury v. Union of India, Ministry of Home Secretary and others*, reported at *(2017) 12 SCC 718* where, although no ratio was laid down as such, a convict who was over 19 years in a correctional home was granted release under Section 61(2) of the West Bengal Correctional Services Act, 1992.

5. The petitioner also places reliance on a judgment of this Court dated August 28, 2023 in *WPA 9073 of 2023 [Md. Khalid Vs. Chief Secretary, State of West Bengal & Ors.]* passed in a previous round of litigation in connection with the present petitioner, which highlighted the conduct of the petitioner and the usual paranoia which visits police reports regarding early remission. Learned counsel argues that none of the said factors were considered by the respondent-authorities.

6. On the other hand, the respondents rely on *Ram Chander v. State of Chhattisgarh and another*, also a Two-Judge Bench decision of the Supreme Court reported at *(2022) 12 SCC 52.* It is argued that in the said judgment, the primacy of the decision of the State and the SSRB has been established. Such discretion, having been exercised within the purview of law, cannot be faulted. Hence, the respondent-authorities stand by their decision to refuse premature release to the petitioner.

7. A consideration of the grounds of refusal as reflected in the impugned decision itself is necessary for the present adjudication.

8. The SSRB observed that strong objection has been raised by the Kolkata Police Authorities explaining severity of the crime and its effect in the locality as well as past antecedents of the convict. It was further informed that the convict was a very close associate of the notorious 'Satta Don' Rashid Khan of those days. The convict, it is stated, had engaged himself in all sorts of criminal activities as per instruction of Rashid Khan in order to "establish himself in the terror" created in the locality. Based on such premise, the SSRB held that it

is likely that the petitioner will engage himself in criminal activities if released. Local police also raised strong objection on the proposal of premature release, as, in their perception, there will be serious law and order problem if the said convict is released prematurely.

9. The Police also cite as a reason for their objection that the witnesses of the case apprehend retaliation upon their life in the event of premature release of the petitioner. The above comprise the entire gamut of the rationale of the SSRB behind the refusal of premature release to the petitioner.

10. Let us now consider the other factors which have not been considered by the SSRB but recorded in the impugned decision itself.

11. The Superintendent, Medinipur Central Correctional Home, where the petitioner was incarcerated during the vast majority of his custody, in his report, expressed that behaviour of the convict inside the correctional home is found good. The petitioner performs his allotted tasks satisfactorily and no adverse report has been received against him during his stay at Medinipur Central Correctional Home. The parole period is also satisfactory and hence he is recommended by the Superintendent to be prematurely released.

12. Next comes the report of the Chief Probation-cum-After-care Officer, who also recommended premature release since nothing adverse was reported while the petitioner availed parole. The family members of the petitioner, it is stated, have also have no objection regarding premature release of the life-convict and are ready to accept him if so

released. The said report goes on further to insist that the petitioner's brother may assist him in rehabilitation.

13. Overlooking those factors, the SSRB says that though premature release of the convict has been recommended by the Superintendent, Medinipur Central Correctional Home and Chief Probation-cum-After Care Officer, West Bengal, there is still apprehension about the potentiality of the life convict-in-question and considering his antecedents and associations and "after all the nature of crime", all members of the Board agree not to recommend premature release.

14. In the backdrop of the above decision, let us now consider the opinion of the Supreme Court in *Joseph (supra)*. Paragraph nos. 32 to 39 of the said judgment are reproduced hereinbelow to get a complete picture of such view:

> *"**32.** To issue a policy directive, or guidelines, over and above the Act and Rules framed (where the latter forms part and parcel of the former), and undermine what they encapsulate, cannot be countenanced. Blanket exclusion of certain offences, from the scope of grant of remission, especially by way of an executive policy, is not only arbitrary, but turns the ideals of reformation that run through our criminal justice system, on its head. Numerous judgments of this court, have elaborated on the penological goal of reformation and rehabilitation, being the cornerstone of our criminal justice system, rather than retribution. The impact of applying such an executive instruction/guideline to guide the executive's discretion would be that routinely, any progress made by a long-term convict would be rendered naught, leaving them feeling hopeless, and condemned to an indefinite period of incarceration. While the sentencing courts may, in light of this court's majority judgment in Sriharan (supra), now impose term sentences (in excess of 14 or 20 years) for crimes that are specially heinous, but not reaching the level of 'rarest of rare' (warranting the death penalty), the state government cannot - especially by way of executive instruction, take on such a role, for crimes as it deems fit.*
>
> ***33.** It is a well-recognized proposition of administrative law that discretion, conferred widely by plenary statute or statutory rules, cannot be lightly fettered. This principle has been articulated by this court many a time. In U.P. State Road Transport Corporation v. Mohd. Ismail, this court observed:*

"It may be stated that the statutory discretion cannot be fettered by self-created rules or policy. Although it is open to an authority to which discretion has been entrusted to lay down the norms or rules to regulate exercise of discretion it cannot, however, deny itself the discretion which the statute requires it to exercise in individual cases."

34. *Likewise, in Chairman, All India Railway Rec. Board v. K. Shyam Kumar this court explained the issue, in the following manner:*

"Illegality as a ground of judicial review means that the decision maker must understand correctly the law that regulates his decision making powers and must give effect to it. Grounds such as acting ultra vires, errors of law and/or fact, onerous conditions, improper purpose, relevant and irrelevant factors, acting in bad faith, fettering discretion, unauthorized delegation, failure to act etc., fall under the heading "illegality". Procedural impropriety may be due to the failure to comply with the mandatory procedures such as breach of natural justice, such as audi alteram partem, absence of bias, the duty to act fairly, legitimate expectations, failure to give reasons etc."

35. *The latitude the Constitution gives to the executive, under Articles 72 and 162, in regard to matters such as remission, commutation, etc, therefore, cannot be caged or boxed in the form of guidelines, which are inflexible.*

36. *This court's observations in State of Haryana v. Mahender Singh are also relevant here:*

"38. A right to be considered for remission keeping in view the constitutional safeguards under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder.

39. It is now well-settled that any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative act and the statutory rules."

37. *Classifying - to use a better word, typecasting convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real danger of overlooking the reformative potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed, as a starting point, may be justified. However, the prison laws in India - read with Articles 72 and 161 - encapsulate a strong underlying reformative purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, based entirely on the nature of crime committed in the distant past, would be to crush the life force out of such individual, altogether. Thus, for instance, a 19 or 20 year old individual convicted for a crime, which finds place in the list which bars premature release, altogether, would mean that such person would never see freedom, and would die within the prison walls. There is a peculiarity of continuing to imprison one who committed a crime years earlier who might well have changed totally since that time. This is the condition of many people serving very long sentences. They may have killed someone (or done something much less serious, such as commit a narcotic drug related offences or be serving a life sentence for other non-violent crimes) as young individuals and remain incarcerated 20 or more years later. Regardless of*

the morality of continued punishment, one may question its rationality. The question is, what is achieved by continuing to punish a person who recognises the wrongness of what they have done, who no longer identifies with it, and who bears little resemblance to the person they were years earlier? It is tempting to say that they are no longer the same person. Yet, the insistence of guidelines, obdurately, to not look beyond the red lines drawn by it and continue in denial to consider the real impact of prison good behavior, and other relevant factors (to ensure that such individual has been rid of the likelihood of causing harm to society) results in violation of Article 14 of the Constitution. Excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies society's resolve to be harsh and unforgiving. The idea of rewarding, a prisoner for good conduct is entirely negated.

38. *In the petitioner's case, the 1958 Rules are clear - a life sentence, is deemed to be 20 years of incarceration. After this, the prisoner is entitled to premature release. The guidelines issued by the NHRC pointed out to us by the counsel for the petitioner, are also relevant to consider - that of mandating release, after serving 25 years as sentence (even in heinous crimes). At this juncture, redirecting the petitioner who has already undergone over 26 years of incarceration (and over 35 years of punishment with remission), before us to undergo, yet again, consideration before the Advisory Board, and thereafter, the state government for premature release - would be a cruel outcome, like being granted only a salve to fight a raging fire, in the name of procedure. The grand vision of the rule of law and the idea of fairness is then swept away, at the altar of procedure - which this court has repeatedly held to be a "handmaiden of justice".*

39. *Rule 376 of the 2014 Rules prescribes that prisoners shall be granted remission for keeping peace and good behaviour in jail. As per the records produced by the State, the petitioner has earned over 8 years of remission, thus demonstrating his good conduct in jail. The discussions in the minutes of the meetings of the Jail Advisory Board are also positive and find that he is hardworking, disciplined, and a reformed inmate. Therefore, in the interest of justice, this court is of the opinion, that it would be appropriate to direct the release of the petitioner, with immediate effect. It is ordered accordingly."*

15. On the other hand, in *Ram Chander (supra)* the Supreme Court observed that the discretion regarding early remission of a convict lies with the Executive. In Paragraph 12 of the report, the Supreme Court, however, observes that while a discretion vests with the Government to suspend or remit the sentence, the executive power cannot be exercised arbitrarily. Several judgments were considered in the context and while analyzing the scope of judicial review of the power of

remission, the Supreme Court observed in Paragraph 14 that the Court has the power to review the decision of the Government regarding the acceptance or rejection of an application for remission under Section 432 of the Criminal Procedure Code to determine whether the decision is arbitrary in nature and the court is empowered to direct the Government to reconsider its decision.

16. The next consideration of the Supreme Court in the said judgment is the value of the opinion of the Presiding Judge. The Supreme Court took into consideration that there was difference of opinion between the High Courts on whether the opinion of the Presiding Judge is binding on the Government. The Supreme Court considered, *inter alia*, its own decision in *Union of India v. V. Sriharan alias Murugan and others,* reported at *(2016) 7 SCC 1,* where it was observed that the opinion of the Presiding Judge shines a light on the nature of the crime that has been committed, the record of the convict, that background and other relevant factors. The opinion of the Presiding Judge would enable the Government to take the right decision as to whether or not the sentence should be remitted. Hence, the opinion of the Presiding Judge is only a relevant factor, which does not have any determinative effect on the application for remission. Yet, it was held that the purpose of the procedural safeguard under Section 432(2) of the Code of Criminal Procedure would stand defeated if the opinion of the Presiding Judge becomes just another factor that may be taken into consideration by the Government while deciding the application

for remission. It is possible then that the procedure under Section 432(2) would become a mere formality.

17. However, a word of caution was added by the Supreme Court by observing that this is not to say that the appropriate Government should mechanically follow the opinion the Presiding Judge and if the opinion does not comply with the requirements Section 432(2), or if the Judge does not consider the relevant factors for grant of remission that have been laid down in *Laxman Naskar v. Union of India and others,* reported at *(2000) 2 SCC 595*, the Government may request the Presiding Judge to consider the matter afresh. The factors laid down therein included whether the offence affects the society at large, the probability of the crime being repeated, the potential of the convict to commit crimes in future, if any fruitful purpose is being served by keeping the convict in prison and the socio-economic condition of the convict's family.

18. However, upon the above consideration, in *Ram Chander (supra)* the Supreme Court ultimately held that the petitioner's application for remission should be reconsidered in the light of *Laxman Naskar (supra).*

19. The subsequent judgment in *Joseph (supra)*, rendered by a Bench of co-equal strength, expands the horizons of the consideration much further. It was *inter alia* held that blanket exclusion of certain offenses from the scope of grant of remission, especially by way an executive policy, is not only arbitrary but turns the ideals of reformation that run through our criminal justice system on its head, the penological

goal of reformation and rehabilitation being the corner-stone of our criminal justice system rather than retribution. The impact of applying such an executive instruction to guide the executive's discretion would be that routinely any progress made by a long-term convict would be rendered naught, leaving them feeling hopeless and condemned to an indefinite period of incarceration. Guidelines which do not have a statutory flavour are merely advisory in nature and cannot have the force of a statute, it was held.

20. The Supreme Court, in paragraph 37 of *Joseph (supra)*, deprecated the typecasting of convicts through inflexible guidelines based on their crime committed in the distant past and observed that the same may result in the real danger of overlooking the reformative potential of every individual convict. Grouping types of convicts based on offences committed by them *as a starting point* may be justified; however, the Prison Laws of India, read with Articles 72 and 161 of the Constitution of India, encapsulate a strong underlying reformative purpose. The practical impact of a guideline which bars consideration of a premature release request by a convict who has served over 20 or 25 years *based entirely on the nature of crime committed in the distant past,* would be to crush the life force out of such individual altogether. The Supreme Court, in strong words, observed that the question is, what is achieved by continuing to punish a person who recognizes the wrongness of what they have done, no longer identifies with it and who bears little resemblance to the person they were years earlier? It is tempting to say that they are no longer the same persons. In such

context, while considering the Rules prevalent in the State of Kerala, the Supreme Court, in *Joseph's Case*, directed the release of the prisoner with immediate effect instead of remanding the matter back to the authorities.

21. Taking a cue from the said judgment, it is seen that the impugned decision in the present case, refusing premature release to the petitioner, was entirely based on the paranoid approach of the Police Report which cited the crime committed by the petitioner and the magnitude of it, oblivious to the fact that such crime happened in the hoary past, more than three decades back. As the Supreme Court observed, it is tempting to say that the convict is now a different person altogether, having spent more than 31 years in prison, having lost touch with the outer world and his criminal associations and having been reformed, which is evident form the report of the Superintendent of the concerned correctional home and the Chief Probation-Cum-After Care Officer of the Government itself.

22. The report of the Superintendent of the correctional home where the petitioner was incarcerated during the relevant period reflects the impeccable conduct of the petitioner during custody. It says that the behaviour of the petitioner inside the correctional home was found good, he performs his allotted tasks satisfactorily and there is no adverse report against him throughout his stay at the correctional home. The parole period was also satisfactory, for which premature release was recommended by the Superintendent, who is the best person to so recommend and pass a judgment on the current status

on the petitioner as a person, as a large part of the petitioner's life has been spent in the association of the successive Superintendents.

23. The Chief Probation-cum-After Care Officer, whose take on the matter is also extremely relevant as he is the authority to assess the current attitude and character of the petitioner, says in unambiguous terms that nothing adverse was reported while the petitioner availed parole. Importantly, the family members of the petitioner not only have no objection regarding his premature release but are ready to accept him. As per the report, the petitioner's brother may also assist him in rehabilitation into mainstream society as per the assessment of the Chief Probation-cum-After Care Officer of the State.

24. Thus, what is evident from such reports is that the petitioner has been reformed beyond recognition over the last three decades in incarceration. It would be an unwarranted stigma on the petitioner if the shadow of his past is permitted to loom large over his present. It cannot be over-emphasized that the primary object in modern penology is reformation and correction and the objective of punishment is to reform the convict and bring him back to society, assisting him in reintegration and not to wreak vengeance on him due to his past conduct.

25. The champions of vengeance would find support in the knee-jerk reaction of the police who almost inevitably, in a vast majority of premature release cases, cite the severity of the crime and past antecedents of the prisoner. The association of the petitioner with a criminal mastermind (who himself is in custody for as long) thirty-one

years back cannot be a reasonable basis whatsoever for automatically assuming that the petitioner would merrily jump back into criminal activities the moment he is released. During parole, the petitioner did not do so.

26. It is next to impossible for a person to continue to pretend to be a good man for over thirty years within the extremely restrictive confines of a prison, under constant supervision, scrutiny and monitoring of the jail authorities.

27. Hence, there cannot be any doubt that the reports of the Superintendent of the Correctional Home and the Chief Probation-cum-After Care Officer clinch beyond reasonable doubt that the petitioner is now a reformed person. His family is ready to accept him, thereby providing a social safety net for the petitioner to go back to. Since his brother is ready and able to assist him in rehabilitation and reintegration into mainstream society, by providing means of livelihood and otherwise, there is no reason why the petitioner's incarceration should be unnecessarily prolonged, leaving him no option to see the proverbial light at the end of the tunnel.

28. It is not credible that the person who has spent over three decades in custody and deliberately seeks premature release would repeat his offence again which, quite obviously, would send him back into a dark abyss to a point of no-return. Rather, such a person, in view of his conduct throughout the relevant period in jail and in parole, would be extra cautious and careful to ensure that his behaviour and conduct after release is beyond reproach and is all the more likely not to leave

any scope of complaint from any quarter to avoid going back to the dismal environments of prison life.

29. The very premise of the apprehension that the petitioner has not lost his potentiality is vitiated, since antecedents and associations of three decades back lose relevance in the teeth of utter disconnect of the petitioner with such antecedents and associations during the long incarceration and his good conduct throughout the period of custody. Thus, it defies logic as to why such past antecedents should cast a cloud on the present release of the petitioner. It is easy to decipher from the records that the petitioner has been bitten more than twice and, thus, must be shy of the vicissitudes of the moods of authorities. Such suspicion about authority in the mind of the petitioner can only be dispelled if instead of relegating this consideration back to the same authorities, the petitioner is released here and now on the basis of the materials reflected in the impugned decision itself.

30. Not only will such act contribute another reformed citizen to the mainstream society, the same will set a good precedent for other convicts in prison to attempt emulation and shall act as a deterrent for them to be less than perfect in their conduct in prison.

31. Taking into consideration the above factors, in view of the materials on record being sufficient, there is no reason why the matter should be remanded back to the SSRB. This Court is quite satisfied in view of the above discussions and on the materials on record that the petitioner has made out a strong case for premature release.

32. Accordingly, WPA No. 2337 of 2024 is allowed on contest, thereby directing the respondents to immediately release the petitioner from prison. Such release shall be effected at the earliest, positively within a fortnight from date, upon completing all necessary formalities in that regard.

33. There will be no order as to costs.

34. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

35. The office shall communicate this order to the Superintendent, Medinipur Central Correctional Home immediately, who will ensure that the order is duly communicated to the petitioner himself.

36. The respondent-authorities shall take due steps pursuant to this order on the basis of the server copy of this order, instead of insisting upon prior production of certified copy for compliance.

(Sabyasachi Bhattacharyya, J.)

Later

After the above judgment is passed, a prayer for stay of operation of the judgment is made on behalf of the respondents.

Since certain relevant issues of law are involved, the operation of the judgment is stayed for four (04) weeks from date.

(Sabyasachi Bhattacharyya, J.)