

D/L. 29.
February 26, 2024.
MNS.

WPA No. 1023 of 2024

Afzal Khan @ Fazo and another
Vs.
State of West Bengal and others

Mr. Gunjan Sinha @ Kanishk Sinha,
Mrs. Lipika Sinha,
Mr. Shishir Gain,
Mrs. Suman Sahani

... for the petitioners.

Mr. Biswabrata Basu Mallick,
Ms. Sucheta Pal

...for the State.

1. Affidavit-of-service filed by the petitioners and the report filed by the State in Court today be kept on record.
2. The petitioner no. 1 has been in incarceration for more than 23 years upon being convicted of an organized crime of kidnapping a minor.
3. The petitioner no. 1 and his wife, the petitioner no. 2, challenge the decision taken by the State Sentence Review Board (SSRB) refusing the petitioner no. 1's request for premature release.
4. It is pointed out that the reports of the Superintendent of the Presidency Correctional Home, where the petitioner no. 1 was in

custody, as well as the Chief Probation-cum-After Care Officer, are in favour of the petitioner no. 1. Even after being allowed on parole without police escort for 497 days, there was no adverse report against the petitioner no. 1.

5. Despite all these being reflected in the impugned decision itself, along with the fact that the petitioner no. 1 intends to reside with his family members at his native village in Bhagalpur and to engage in agriculture, on the basis of the report of the police authorities, the SSRB refused the request of the petitioner no. 1 for premature release.
6. It is argued that all the relevant yardsticks were indicated in favour of the petitioner no. 1 by the Chief Probation-cum-After Care Officer but were overlooked by the SSRB.
7. Accordingly, the impugned decision of the SSRB should be set aside.
8. Learned counsel for the State submits that upon a balance of all the relevant yardsticks, the SSRB, in the detailed decision taken by it, have factored in the consideration that the petitioner no. 1 is 44 years of age and if he could have committed such an organized crime 23 years back, it is all the more possible that he may commit such crime with more

professional approach now. It has also been opined that the convict is a hardcore criminal and earned money by way of committing crime and maintained his livelihood.

9. Apart from that, the victim's family objection to the premature release of the petitioner no. 1 has also been cited.

10. Upon hearing learned counsel, it transpires that there are two competing circumstances involved in the consideration of the SSRB.

11. On the one hand, it is seen that the Superintendent of the Presidency Correctional Home, where the petitioner was incarcerated, explained that throughout the period of incarceration, the petitioner no. 1 was assigned different labours and he had performed his tasks with sincerity and honesty. Moreover, as per the report of the Superintendent, he is laborious and hard-working and can be relied upon. No adverse report was found against the petitioner no. 1 throughout the period of incarceration.

12. His behaviour with other inmates is cordial and helpful and it was recorded by the Superintendent of the Presidency Correctional Home that the petitioner no. 1 is obedient towards the correctional home administration,

disciplined and always carries out the orders as per directions of the authorities.

13. Coupled with that, the petitioner no. 1, in his 497 days of parole without police escort when he visited his family in Bhagalpur, there is nothing adverse reported against the petitioner no. 1, which clearly indicates that the petitioner no. 1 has lost his inclination and propensity to commit the nature of crime which he committed, which was the reason of his conviction in the first place.

14. It is also found from the report of the Superintendent of the Presidency Correctional Home that the convict/petitioner no. 1 is physically and mentally fit and intends to reside with his family members at his native village and to engage himself in agriculture. Thus, it is seen that the petitioner is still capable and of an age where he can be reintegrated and rehabilitated in mainstream society.

15. That apart, the Chief Probation-cum-After Care Officer also indicated in his report that there was nothing adverse against the convict during the parole, which he availed on several occasions. Further input reveals that the convict may be rehabilitated in his family profession of agriculture.

16. The Chief Probation-cum-After Care Officer is the appropriate authority, whose reflections on the subject are most relevant, since the prevalent purpose of penology in our jurisprudence is rehabilitation and reformation and not retribution.

17. As opposed to the above, it is apprehended by the police authorities that since the petitioner no. 1 was guilty of an organised crime in his 20's, he has not lost his potential of committing the same crime now, when he is about 44 years. It is apprehended by the police, though utterly without basis, that the petitioner no. 1 may commit such crime again "with more professional approach".

18. I do not find within the four corners of the impugned decision any objective reason or basis for coming to such conclusion.

19. Although the police authorities apprehend that the petitioner no. 1 may revive his old associations on release, nothing is reflected in the report of the police authorities or the impugned decision as to the whereabouts of such old associates and how the petitioner would go about in reviving such contacts with the ploy of committing such crime again.

20. The police authorities have also stated that the petitioner no. 1 is a "hardcore criminal"

and earned money by way of committing crime and maintained his livelihood. The said factual scenario, however, is a flashback of more than two decades back. What the petitioner no. 1 did in his 20's at the time of his conviction cannot be sufficient basis for assuming what he will do after his release, more so, since an alternative source of income by agriculture has been clearly portrayed in the report of the Chief Probation-cum-After Care Officer and the Superintendent of the Presidency Correctional Home.

21. The paranoid approach of the police authorities is not based on any objective material whatsoever.

22. The label of "hardcore criminal" was attached to the petitioner no. 1 as long ago as 23 years back, which resulted in his conviction for so long.

23. Our society, which cannot absolve its liabilities altogether in any crime of such nature, cannot cast a double stigma on the petitioner no. 1 by punishing him again in refusing premature release and refusing him an opportunity to reintegrate in main-stream society. Such refusal, if comes about, will also be a social

crime against the petitioner no. 1 and cannot be approved by a court of law.

24. This Court must be candid as to there being an initial dilemma, since it is well-settled that if several views are possible and the authorities in their administrative capacity adopt one of such views, the court does not generally interfere with the same.

25. However, here is a case where there are involved interests on a much larger footing of social needs, and guarantees ensured by the Constitution of India of the individual's life and liberty worth the name, which are competing against the myopic version of the authorities in attributing an apprehension of guilt to the petitioner no. 1 for deeds done two decades back, of which only echoes may remain in the psyche of the petitioner no. 1.

26. Keeping in view the above considerations, the favourable report given by the Superintendent of the Presidency Correctional Home and the Chief Probation-cum-After Care Officer as well as the available alternative to the petitioner no. 1 in engaging in a life of agriculture with his family in Bhagalpur are predominant and override the baseless and subjective apprehension of the police authorities that the petitioner no. 1 may commit a similar crime

after 23 years of incarceration, more so after having himself sought premature release and having proved himself in his conduct in and out of incarceration, despite being fully aware of the consequences of crime.

27. In such view of the matter, since all the materials are available in the records and reflected in the impugned decision of the SSRB, instead of relegating the matter further to the said authority, the petitioner no. 1 ought to be set free by way of premature release from here.

28. Accordingly, WPA No. 1023 of 2024 is disposed of by directing the respondent authorities to take immediate steps for releasing the petitioner no. 1 by granting his request for premature release.

29. The impugned decision of the SSRB refusing to release of the petitioner no. 1 is hereby set aside and the petitioner is directed to be released by following due procedure within a week from date.

30. The parties shall act on a server copy of this order without insisting upon prior production of certified copy thereof.

31. There will be no order as to costs.

32. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)