

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CRIMINAL) No. 4 OF 2020**

MUNNA

... PETITIONER

Versus

STATE OF UTTAR PRADESH & ANR.

... RESPONDENTS

O R D E R

The Court is convened through Video Conferencing.

This Writ Petition has been filed seeking the premature release of the Petitioner, on the ground that he has already suffered around 30 years of imprisonment.

The facts underlying this petition merit some elaboration. The Petitioner was a named accused in an incident that took place in a village in Uttar Pradesh in 1989 between two factions, which resulted in the death of 11 individuals as a result of the use of firearms and sharp weapons. The present Petitioner, along with 20 other co-accused persons, was alleged to have been involved in the offence, regarding which FIR No. 40 of 1989 was registered under Sections

148, 302, 307 and 332 read with Section 149, IPC and Section 25, Arms Act. The Trial Court convicted the Petitioner under Sections 302, 307 and 332 read with Section 149, IPC and Section 148, IPC which was affirmed by the High Court *vide* judgment dated 20.05.1994 which was also upheld by this Court *vide* order dated 04.05.1995.

The Petitioner is currently undergoing the sentence imposed on him of imprisonment for life, and has been in jail since the date of his arrest on 02.02.1989 (except for a brief period of around 2 years when he was released on goodwill by the government of Uttar Pradesh).

Heard learned counsel for the parties and carefully perused the record.

It is submitted by the learned counsel for the petitioner that Writ Petition (Crl.) No. 58 of 2020, with Writ Petition (Crl.) No. 45 of 2020, which were filed by some of the co-convicts seeking similar relief, have been allowed by another Bench of this Court *vide* order dated 05.08.2020.

Learned counsel for the respondent-State also admitted that this Court has passed an order on 05.08.2020 allowing similar relief to some of the co-convicts.

This Court directed for the release of the co-convicted persons in Writ Petition (Crl.) No. 58 of 2020 with Writ Petition (Crl.) No. 45 of

2020, *vide* order dated 05.08.2020 on the following reasoning:

“...A reading of the order dated 22.01.2018 shows that the Joint Secretary, Government of U.P. has failed to apply his mind to the conditions of Section 2 of the U.P. Act. Merely repeating the fact that the crime is heinous and that release of such a person would send a negative message against the justice system in the society are factors *de hors* Section 2. Conduct in prison has not been referred to at all and the Senior Superintendent of Police and the District Magistrate confirming that the prisoner is not “incapacitated” from committing the crime is not tantamount to stating that he is likely to abstain from crime and lead a peaceable life if released from prison. Also having regard to the long incarceration of 29 years (approx.) without remission, we do not wish to drive the petitioner to a further proceeding challenging the order dated 22.01.2018 when we find that the order has been passed mechanically and without application of mind to Section 2 of the U.P. Act.

In these circumstances, we set aside the aforesaid order and set the petitioners free. It will be open for the State Government to impose such conditions as are mentioned in Section 2 of the U.P. Act on the footing that the petitioners now stand released forthwith....”

In the present case, the State has brought on record a Government order dated 17.11.2016 rejecting the Petitioner’s Form A for premature release under Section 2 of the Uttar Pradesh Prisoners Release on Probation Act, 1938 [**U.P. Act**]. Even in this matter, it appears that the authority has not taken into consideration the conditions that are required to be looked into for the purpose of

releasing a prisoner under Section 2 of the U.P. Act. Rather, there is only a mention that the crime that the Petitioner was involved in is heinous, and there is no appreciation of the record to suggest whether he is likely to abstain from crime and lead a peaceable life. In fact, the prison records suggest that his jail conduct is good. Additionally, it appears that the Petitioner is currently around 79 years old and has undergone around 29 years 10 months without remission, and around 36 years imprisonment including remission.

In view of the above, we allow the instant writ petition on the same terms as in Writ Petition (Crl.) No. 58 of 2020 with Writ Petition (Crl.) No. 45 of 2020.

As a sequel to the above, pending interlocutory applications also stand disposed of.

.....**J.**
(N.V. RAMANA)

.....**J.**
(S. ABDUL NAZEER)

.....**J.**
(SURYA KANT)

NEW DELHI;
AUGUST 21, 2020.

ITEM NO.28 Court 2 (Video Conferencing) SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Criminal) No(s).4/2020

MUNNA Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR. Respondent(s)

IA No.22611/2020 - EXEMPTION FROM FILING O.T.

IA No.2673/2020 - EXEMPTION FROM FILING O.T.

IA No.2672/2020 - GRANT OF BAIL

Date : 21-08-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE SURYA KANT

For Petitioner(s) Mr. Z.U. Khan, Adv.
Mr. Yunus Malik, Adv.
Mr. Anish Maheshwari, Adv.
Mr. Aman Malik, Adv.
Mr.Samir Malik, AOR

For Respondent(s) Mr. Rajan Kumar Chourasia, Adv.
Mr. Sarvesh Singh Baghel, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Court is convened through Video Conferencing.

We allow the instant writ petition on the same terms as
in W.P.(Cr1.)No.58/2020 with W.P.(Cr1.)No.45/2020.

As a sequel to the above, pending interlocutory
applications also stand disposed of.

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR

(Signed order is placed on the file)

