

SUPREME COURT OF INDIA

Zahid Hussein

Vs.

State of West Bengal

Writ Petition (crl.) 274-277 of 2000

(S. Rajendra Babu and S.N. Phukan JJ.)

15.03.2001

JUDGMENT

S.N.Phukan, J.

1. Four life convicts have filed the present Petitions under Article 32 of the Constitution challenging the orders of the State Government rejecting their prayer for premature release.

2. Four petitioners were convicted under Section 302/34 IPC and sentenced to suffer rigorous imprisonment for life. They are in Central Correctional Home, Alipore, Kolkata and have served actual imprisonment of more than 18 years and the total period of imprisonment including remission being more than 24 years. They had approached this court earlier as their prayer for premature release was rejected by the State Government. This court set aside the orders of the Government and directed reconsideration. As their prayers have again been rejected; the petitioners are again before us.

3. Mr. Malik, learned senior counsel for the petitioners has urged that in view of sub-rules (4) and (29) of Rule 591 of the West Bengal Rules for the Superintendence and Management of Jails (for short the Rules) relating to premature release of the life convict and Explanation to Section 61 of the *West Bengal Correctional Services Act, 1992* (herein after referred to as the Act) all the petitioners are entitled to be released as of right as their total period of imprisonment is more than 20 years. Mr. Mukul Rohtagi, learned Additional Solicitor General has contended that there is no right of premature release in view of the law laid down by this court, as sentence for imprisonment for life means imprisonment for the entire life of the prisoner, unless the appropriate Government decides to exercise its discretion to remit either whole or part of the sentence of a life convict. According to learned Additional Solicitor General in view of facts and circumstances of cases of the petitioners and the police report, the State Government rightly rejected the prayers of the petitioners.

4. This court after examining the provisions of Article 161 of the Constitution, Cr.P.C. and I.P.C. has consistently held that a sentence of imprisonment for life does not automatically expire at the end of 20 years of imprisonment including remission, as a

sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate government chooses to exercise its discretion to remit either the whole or part of the sentence. [See *Gopal Vinayak Godse versus The State of Maharashtra and others*¹; *State of Madhya Pradesh versus Ratan Singh and Others*²; *Sohan Lal versus Asha Ram and Others*³ and; *Bhagirath versus Delhi Administration*⁴]

5. We extract below sub-rules (4) and (29) of Rule 591 of the Rules:

“(4) In considering the cases of prisoners submitted to it under sub-rules (1) and (2), the State Government shall take into consideration (i) the circumstances in each case, (ii) the character of the convicts crime, (iii) his conduct in prison, and (iv) the probability of his reverting to criminal habits or instigating others to commit crime. If the State Government is satisfied that the prisoner can be released without any danger to the society or to the public it may take steps for issue of orders for his release under Section 401 of the Code of Criminal Procedures, 1898.

(29) Every case in which a convict, who has not received the benefit of any of the foregoing rules, is about to complete a period of 20 years of continued detention including remission earned, if any, shall be submitted three months before such completion by the Superintendent of the Jail in which the convict is for the time being detained, through the Inspector General, for orders of the State Government. If the convicts jail records during the last three years of his detentions are found to be satisfactory the State Government may remit the remainder of his sentence.”

6. These sub-rules do not provide for automatic release of a life convict after he has completed 20 years of the detention including remission. Under these sub-rules only right which a life convict can be said to have acquired is a right to have his case put up by the prison authorities in time to the State Government for consideration for premature release and in doing so the government would follow the guidelines mentioned in sub-rule (4).

7. The explanation to Section 61 of the Act is as follows:

“Explanation For the purpose of calculation of the total period of imprisonment under this section, the period of imprisonment for life shall be taken to be equivalent to the period of imprisonment for 20 years.”

8. This Explanation came for consideration by this court in *Laxman Naskar (Life Convict) vs. State of W.B. and Anr*⁵ and this Court held that the said Explanation is only for the purpose of calculation of the total period of imprisonment of a life convict under Section 61, which shall be taken to be equivalent to the period of imprisonment for 20 years and a life convict would not be entitled to automatic release under this provision of law. We, therefore, find no substance in the submission made by Mr. Malik, the learned senior counsel.

9. Learned Additional Solicitor General has rightly pointed out that in view of the law laid down by this court a@@ positive order of release has to be passed by the Government after due consideration. Now we have to consider whether the impugned orders are sustainable.

10. From the counter filed on behalf of the Government, we JJ find that the State Government constituted a Review Board to consider the cases of premature release of the petitioners. The said Review Board consists of the following:

- “(1) Home Secretary Chairman
- (2) Judicial Secretary Convenor
- (3) I.G. of prison, West Bengal Member
- (4) Secretary Home (Jails) Member Department
- (5) Director General & I.G. of Police, Member West Bengal
- (6) Commissioner of Police, Calcutta Member
- (7) Chief Probation Officer Member

Following guidelines were framed by the Government for the premature release of life convicts, namely:

- (i) Whether the offence is an individual act of crime without affecting the society at large;
- (ii) Whether there is any chance of future recurrence of committing crime;
- (iii) Whether there is any fruitful purpose of confining of these convicts any more;
- (iv) Whether the convicts have lost potentiality in committing crime;
- (v) Socio economic condition of the convicts families.”

11. The Review Board refused to grant premature release of the petitioners on the following grounds: (1) Police report is adverse; (2) the convicts are not over aged person and as such have not lost the potentiality in committing crime; (3) since other co-convicts were trying to come out from jail, there was a possibility of re-grouping for anti-social activities; (4) the offence was not an individual act of crime but was affecting society as a large; (5) convicts were anti-social and; (6) the witnesses who had deposed at the trial as well as local people were apprehensive of retaliation in the event of premature release.

12. In case of one of the petitioners, namely, Md. Talib, Review Board also noted one of the co-convicts was granted premature release who was murdered in an encounter after the release.

13. We may state here that jail authority recommended premature release of the Writ Petitioners. In our opinion, the conduct of the petitioners while in jail is an important factor to be considered as to whether they have lost their potentiality in committing crime due to long period of detention. The views of the witnesses, who were examined during trial and the people of the locality cannot determine whether petitioners would be a danger to the locality, if released prematurely. This has to be considered keeping in view the conduct of the Petitioners during the period they were undergoing sentence. Age alone cannot be a factor while considering whether the petitioners have still potentiality of committing crime or not as it will depend on changes in mental attitude during incarceration.

14. While coming to the conclusion for possibility of re- grouping for anti-social activities, the Review Board did not take into account that the life convicts are in jail for more than 18 years. The Board also did not consider whether there would be any fruitful purpose of confining the convicts any more and also the socio-economic condition of their families. Regarding petitioner Md. Talib, the Review Board also noted that one co- convict was released prematurely and was murdered in the encounter with other criminals after his release. The learned Additional Solicitor General informed us that the said co-accused was released in the year 1991 and was murdered in the year 1998 and therefore in our opinion this fact has no nexus for consideration of premature release of the petitioner, Md. Talib.

15. We are, therefore, of the view that the reasons given by the Review Board for rejecting the prayers for premature release of the petitioners are irrelevant and the devoid of any substance. Accordingly, we quash the impugned orders of the government and remit the matter again for deciding it afresh within the period of 3 months from today.

16. In the result the Writ Petitions are allowed. After issuance of the Rule, the same is made absolute.

¹1961 (3) SCR 440

²1976 (3) SCC 470

³1981 (1) SCC 106

⁴1985 (2) SCC 580

⁵2000 (7) SCC 626