

5th January,
2024
(AK)
20

W.P.A 22366 of 2023

Mahuya Chakraborty
Vs.
The State of West Bengal and others

Mr. Kaushik Gupta
Mr. Anirban Tarafder
Mr. Daniel Sarkar
Mr. Sahel Tusu

...for the petitioner.

Mr. Sirsanya Bandopadhyay
Mr. Arka Kr. Nag

...for the State.

1. Two primary grounds have been taken by the petitioner in challenging the decision of the State Sentence Review Board, West Bengal (SSRB) in rejecting the application of the present petitioner, the wife of a convict who was handed a life sentence. Those are that the SSRB was not properly constituted and that the grounds cited for such rejection by the SSRB are not in consonance with the consistent view taken by the Supreme Court and this Court as well as the other High Courts.

2. Learned counsel places reliance on the judgment of the Supreme Court rendered in *Rajo alias Rajwa alias Rajendra Mandal vs. The State of Bihar* where the Supreme Court categorically observed that the aim, ultimate goal of imprisonment, even in the most serious crime, is reformatory after the offender undergoes a

sufficiently long spell of punishment through imprisonment.

3. Apart from other considerations on the nature of the crime, whether it affected society at large, the chance of its recurrence, etc. it was held that the appropriate Government should, while considering the potential of the convict to commit crimes in the future, whether there remains any fruitful purpose of continued incarceration, and the socio-economic conditions, review the convict's age, state of health, familial relationships and possibility of reintegration, extent of earned remission, and the post-conviction conduct including, but not limited to, whether the convict has attained any educational qualification whilst in custody, volunteer services offered, job/work done, jail conduct, whether they were engaged in any socially aimed or productive activity, and the overall development as a human being.

4. The Board, it was held, should not entirely rely either on the presiding judge or the report prepared by the police.

5. The same view was reiterated in certain judgments of this court as well, in the matters of *Gopal Sarkar vs. State of West Bengal* reported at *AIR Online 2022 CAL 2520* as well as two unreported judgments in *Narayan Mahato alias Naran Mahato vs. State of West Bengal* and *Biresh Poddar and another vs. State of West Bengal and others* etc.

6. Learned counsel for the State submits that although a gist of the reasons for refusal has been annexed to the writ petition, learned counsel is handicapped, since detailed reasons, if furnished, are not with counsel.

7. However, it transpires upon hearing counsel that the grounds of rejection annexed to the writ petition appear to be comprehensive, having been given by way of reply to an application filed by the petitioner under the Right to Information Act 2005 on the issue of why the application for premature release of the petitioner's husband was rejected.

8. The petitioner's husband is already in custody for more than two decades.

9. It is well-settled that the aim of punishment in modern criminal jurisprudence is reformatory and not retributive.

10. That apart, as indicated above, the Supreme Court has, time and again, laid down several aspects of the matter which are to be considered apart from the nature of crime and propensity of the petitioner to commit the crime again if set free.

11. It transpires that none of the said considerations finds place in the grounds of rejection in the present case.

12. For example, nothing in the grounds of rejection indicate that any report was taken from the Probation cum After Care Officer and/or the Superintendent of the

concerned correctional home where the petitioner has been incarcerated, in order to show the conduct of the petitioner during his period of incarceration throughout the entire period and the petitioner's current behaviour.

13. That apart, we do not find from the records anything to indicate whether the petitioner participated in any socially productive work in the meantime and/or has undergone any further education or qualification while in custody.

14. Even the police report as cited in the grounds of rejection is cryptic, since the heinous nature of the crime committed by the petitioner long back appears to be the primary consideration.

15. Possibility of retaliation upon the witnesses as cited in the said report is palpably based on conjecture and does not find support from any concrete material.

16. That apart, it has been stated that the socio-economic condition of the family is not good. The victim's son and relatives apparently oppose the premature release of the petitioner.

17. However, even if such opposition is there, there needs to be solid reasons to support such opposition. Moreover, the application for premature release has been filed by none other than the wife of the convict, belying the story of opposition from his family.

18. The right of the petitioner under Article 21 to live a life of dignity cannot be deprived merely because the petitioner was convicted.

19. The life behind bars has already been undergone by the petitioner for a considerable period. There cannot be any double punishment on the petitioner by refusing the petitioner an opportunity to reintegrate in mainstream society even if the petitioner is otherwise eligible.

20. That apart, since the SSRB was not properly constituted, it is all the more necessary that the request of the petitioner for premature release is reconsidered by a properly constituted Board.

21. Accordingly, WPA 22366 of 2023 is disposed of by directing the respondent authorities to ensure that a properly constituted SSRB reconsiders the petitioner's request for premature release of her husband, who is a life convict, by taking into consideration the yardsticks as indicated above.

22. It is expected that such reconsideration shall be carried out at the earliest, positively within one month from this date.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)