

CALCUTTA HIGH COURT**Bench: Justice Sabyasachi Bhattacharyya****Date of Decision: 05 January 2024**

W.P.A 22366 of 2023

Mahuya Chakraborty**Vs.****The State of West Bengal and others****Legislation and Rules:**

Indian Penal Code

Supreme Court Judgments cited

Right to Information Act 2005

Subject:

Challenge against the decision of the State Sentence Review Board, West Bengal (SSRB) in rejecting the application for premature release of the petitioner's husband, a convict serving a life sentence. Issues raised include the proper constitution of the SSRB and the alignment of the rejection grounds with the views of the Supreme Court and High Courts.

Headnotes:

Challenge Against SSRB Decision - Rejection of Application for Premature Release - Petitioner, wife of a life convict, contests the SSRB's decision, questioning its constitution and the grounds of rejection not aligning with higher courts' views. [Para 1]

Supreme Court Precedent - Emphasis on Reformative Punishment - Reference to the case of Rajo alias Rajendra Mandal vs. The State of Bihar, highlighting the Supreme Court's view on reformative goals of imprisonment. [Para 2]

Factors for Premature Release - Considerations Beyond Crime Nature - The court highlights necessary factors like the convict's potential for future crimes, socio-economic conditions, familial relationships, reintegration possibility, remission earned, educational qualifications acquired in custody, and overall human development. [Para 3]

SSRB Decision-Making Process - Non-reliance on Judge or Police Reports - The SSRB should not solely depend on the presiding judge or police reports for decision-making. [Para 4]

High Court Precedents - Consistent Views on Premature Release - Reference to Gopal Sarkar vs. State of West Bengal and other judgments supporting the Supreme Court's stance on reformative justice. [Para 5]

Inadequate Consideration of Convict's Conduct and Potential - Lack of evidence regarding the convict's behavior in custody and involvement in productive activities or further education. [Paras 12-13]

Unfounded Opposition and Economic Conditions - Opposition to release not supported by solid reasons; poor socio-economic condition of the convict's family. [Para 16]

Right to Dignity under Article 21 - The petitioner's right to live with dignity should not be compromised due to past conviction. [Para 18]

Call for Proper SSRB Constitution - Need for reconsideration of the premature release request by a properly constituted SSRB. [Para 20]

Court's Decision - Direction to SSRB to reconsider the premature release request, adhering to indicated yardsticks, within one month. [Para 21]

Referred Cases: Not specifically mentioned, except for *Rajo alias Rajendra Mandal vs. The State of*

Bihar and Gopal Sarkar vs. State of West Bengal, along with other relevant judgments.

Representing Advocates:

Petitioner: Mr. Kaushik Gupta, Mr. Anirban Tarafder, Mr. Daniel Sarkar, Mr. Sahel Tusu

State: Mr. Sirsanya Bandopadhyay, Mr. Arka Kr. Nag

Judgement

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 postconviction 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.

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