

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 861 of 2024
IA NO: CAN 1 of 2024
CAN 2 of 2025
The State of West Bengal & Ors.
Vs.
Md. Khalid

For the Appellants-State	: Mr. Suman Sengupta, Sr. Govt. Adv. Ms. Amrita Panja Moulick, Adv.
For the respondent	: Ms. Noelle Banerjee, Adv. Mr. Dipanjan Dey, Adv.
Hearing Concluded on	: August 13, 2025
Judgement on	: September 22, 2025

DEBANGSU BASAK, J.:-

- 1.** Appellants have assailed the judgment and order dated April 9, 2024 passed in WPA 2337 of 2024.
- 2.** By the impugned judgment and order, learned Single Judge has allowed the writ petition seeking premature release of the writ petitioner who suffered a sentence of life imprisonment. Learned Single Judge has directed the

authorities to release the writ petitioner from prison immediately.

3. Learned advocate appearing for the appellants has contended that, the writ petitioner was found guilty to have committed a heinous crime. In a bomb blast, in the heart of the city of Kolkata, in which, the appellant was involved, 70 lives have been lost. The appellant has been convicted under the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987.

4. Learned advocate appearing for the appellant has contended that, the writ petitioner is in custody for about 32 years. Writ petitioner has been granted parole from time to time since 2012. The writ petitioner has suffered the judgment and order of conviction in 2001.

5. Learned advocate appearing for the writ petitioner has drawn the attention of the Court to the order of rejection of the prayer of premature release made on behalf of the writ petitioner. He has submitted that, such order of rejection records the reasons for the non-grant of the same.

6. Relying upon **2024 Volume 5 Supreme Court Cases 481 (Bilkis Yakub Rasool vs. Union of India and Others)**

learned advocate appearing for the appellants has contended that, a convict undergoing life imprisonment is expected to remain in custody till the end of life subject to prayer granted by the appropriate Government under Section 432 of the Criminal Procedure Code which in turn is subject to the checks incorporated therein and the substantive checks in Section 433A of the Cr.P.C.

7. Learned advocate appearing for the appellant has relied upon **2000 Volume 2 Supreme Court Cases 595 (Laxman Naskar vs. UOI)** to contend that, life imprisonment is nothing less than lifelong imprisonment. He has contended that by earning remission a life convict does not acquire a right to be released prematurely. The convict has a right to be considered in accordance with any rule or scheme framed for the purpose of an early release. In the facts of the present case, he has contended that, the request of the writ petitioner for premature release was considered the same was turned down for a reasoned order.

8. Learned advocate appearing for the appellants has relied upon **2023 SCC Online SC 1211 (Joseph vs. State of Kerala and Others)** and contended that, the latitude granted

to the executive under Articles 72 and 162 of the Constitution cannot be caged by inflexible guidelines.

9. Learned advocate appearing for the appellants has contended that, in the event, the writ petitioner is allowed to be set free on premature release, the same will be inimical to the society. The writ petitioner has been found guilty of commission of heinous crime where 70 lives were lost. Premature release of the writ petitioner will send a wrong signal to the society at large.

10. Learned advocate appearing for the writ petitioner has submitted that, the writ petitioner was arrested in 1993. The writ petitioner was convicted in 2001. Writ petitioner has completed 14 years of incarceration in 2007.

11. Learned advocate appearing for the writ petitioner has referred to the memorandum bearing No. 7502-J dated September 13, 1999 of the State and the Procedure/Guidelines on release of prisoners dated September 26, 2003 issued by the national Human Rights Commission. She has also drawn the attention of the Court to Section 531 of the Jail Code governing the prisoners in the State of West Bengal. She has submitted that, there is no adverse report as

against the writ petitioner. The writ petitioner has also contributed to the Chief Minister's Relief Fund. There is a wholesome transformation in the writ petitioner subsequent to the writ petitioner having been taken into custody.

12. Learned advocate for the writ petitioner has highlighted the medical history of the writ petitioner. She has contended that the writ petitioner is a diabetic and requires some amount of medical care. In support of such contentions, she has drawn the attention of the Court to various medical documents annexed to the applications. She has pointed out that the writ petitioner is 60 years old.

13. Learned advocate appearing for the writ petitioner has drawn the attention of the Court to the proposal for premature release as also to the application for premature release. She has contended that, another writ petition being WPA 23255 of 2019 was disposed of by an order dated November 29, 2022 requiring the authorities to decide on the application for premature release.

14. Learned advocate appearing for writ petitioner has contended that, the prayer for premature release was initially considered on February 17, 2023 when, such prayer was

turned down. Thereafter another order was passed on August 28, 2023. Thereafter, the writ petitioner had filed a contempt petition which was disposed of by an order dated October 18, 2023. Prior to the contempt petition being disposed of, the authorities had passed an order dated October 9, 2023 rejecting the prayer for premature release.

15. Learned advocate appearing for the writ petitioner has contended that the order of rejection dated October 9, 2023 was made the subject matter of the challenge in the writ petition which gave rise to the impugned judgment and order.

16. Learned advocate appearing for the writ petitioner has relied upon **2021 Volume 14 Supreme Court Cases 580 (Shor vs. State of Uttar Pradesh and Another)** on the issue of premature release. She has contended that, State Government while considering prayer for premature release is required to consider antecedent, conduct in the prison and that the person if released is likely to abstain from crime and lead a peaceful life or not.

17. Relying upon **2022 Volume 17 Supreme Court Cases 718 (R. P. Ravichandran vs. State of Tamil Nadu and Others)** learned advocate appearing for the writ petitioner has

contended that, even in a crime of the nature as that of involving the assassination of the former Prime Minister of India remittance was granted.

18. A bomb explosion had occurred on March 16, 1993 at the Bowbazar area of the city of Kolkata in which 70 persons died and many others were injured. The writ petitioner as an accused had been convicted in respect of such crime by the designated Court, under the Terrorist and Disruptive Activities (Prevention) Act, 1987, TADA, Kolkata in 2001. Writ petitioner has been arrested in 1993. The writ petitioner has been in custody since then.

19. The writ petitioner was convicted in a criminal case, inter alia, under Section 120B of the Indian Penal Code, 1860, Section 5 of the Explosive Substance Act, Section 3(2)(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 read with Section 34 of the Indian Penal Code, 1860 and Section 3(3) of the Act of 1987. The writ petitioner has suffered an order of life imprisonment passed by the TADA Court on August 31, 2001.

20. Writ petitioner has approached the Writ Court from time to time with regard to his premature release. From time

to time, various orders have been passed by the Writ Court. The last of such orders is dated August 28, 2023 which has been passed in WPA 9073 of 2023.

21. Pursuant to and in terms of such order, the State Sentence Review Board has in its 70th Meeting held on October 9, 2023 reviewed the situation so far as the writ petitioner is concerned. This decision of the Review Board has been impugned in the writ petition.

22. It is in these factual matrix that we have to consider the contentions of the respective parties.

23. ***Laxman Naskar (supra)*** has expressed the view that, a life sentence is nothing less than lifelong imprisonment and that, by earning remission a life convict does not acquire a right to be released prematurely. However, a convict has a right to be considered fairly, in accordance with any rule or scheme for early release.

24. It is trite law that, the Writ Court is not called upon to exercise jurisdiction as an appellate authority in respect of a decision taken by the State or its functionaries. It is not called upon to reappreciate the evidence and substitute the finding of the decision making authority with its own finding unless,

it is conclusively established that, the decision impugned is perverse or contrary to law. In the facts of the present case, we are not in a position to return a finding that the decision of the State Sentence Review Board is contrary to law or is perverse.

25. *Bilkis Yakub Rasool (supra)* has noted that, competency to pass remission orders goes to root of the matter and that, remission orders passed by incompetent Government would be non est and a nullity. In the facts of that case, the order of remission was not passed by the competent Government.

26. *Satish Alias Sabbe (supra)* has considered ***Shor (supra)***. It has considered the provisions of the U P Prisoners Released on Probation Act, 1938 and various government orders passed from time to time. It has held that, in the facts and circumstances of that case, the three factors for evaluation of premature release, namely antecedents, conduct during incarceration and likelihood to abstain from crime have been given a go by. It has also observed that, length of the sentence or the gravity of the original crime cannot be the sole basis for refusing premature release. Any assessment

regarding predilection to commit crime upon release must be based on antecedents as well as conduct of the prisoner while in jail, and not merely on his age or apprehensions of the victims and witnesses.

27. *R. P. Ravichandran (supra)* has held that, if one of the convicts has been given the benefit of remission/communication of the sentence, then, the same consideration should apply for the other convicted in respect of the same offence.

28. Jail Code has provided for the factors to be taken into consideration for premature release of a prisoner who has undergone a period of detention in excess of 14 years. It has prescribed that the State government shall take into consideration the circumstances in each case, the character of the crime of the convict, his conduct in prison and the probability of his reverting to criminal habits for instigating others to commit crime. It has also specified that, if the State government is satisfied that the prisoner can be released without any danger to the society or to the public then it may take steps for his release.

29. The memorandum dated September 13, 1999 of the State government has laid down the guidelines to be followed for considering the case of premature release of life convicts. It has prescribed various aspects be taken into consideration. Whether the convict has lost his potentiality of committing crime or there is any chance of recurrence and committing crime and whether there will be adverse impact on the society at large if the convict is released prematurely are some of the aspects which have been prescribed to be taken into consideration by the memorandum dated September 13, 1999.

30. The National Human Rights Commission by the writing dated September 26, 2003 has prescribed procedures/guidelines on premature release of prisoners. It has prescribed that, in all cases relating to premature release, the circumstances in which the crime was committed and other relevant factors have to be taken into consideration. Whether the convict has lost his potential for committing crime considering his overall conduct in jail, the possibility of reclaiming the convict as a useful member of the society and socio-economic condition of the family of the convict are some

of the factors which have been prescribed to be taken into consideration for premature release.

31. **Joseph (*supra*)** has observed that, the latitude the Constitution gives to the executive, under Articles 72 and 162, in regard to matters such as remission, cannot be caged or boxed in the form of guidelines, which are inflexible. In the facts and circumstances of that case, the Court had directed the release of the prisoner with immediate effect.

32. A convict cannot claim remission as a matter of right. However, a convict can claim consideration of his prayer for remission in accordance with the law governing the subject. Decision taken by the authorities refusing to grant a remission is no doubt justiciable at the instance of the convict.

33. In assessing the justiciability of the decision refusing to grant remission, a Court has to assess whether, the authorities have acted within the four corners of the law on the subject. The decision has to contain reasons. If the decision is plausible then, the Court is not called upon to substitute such decision as an appellate authority by re-

evaluating the materials placed before the decision-making authority.

34. In course of hearing of the appeal, parties have drawn the attention of the Court to the Jail Code, and two memoranda governing the issue of grant of remission to a convict sentenced with life imprisonment. The Jail Code and the two memoranda have recognised that, grant of plea for remission is discretionary. They have noted that, the circumstances in which the crime was committed as well as other relevant factors such as whether the convict has lost its potential for committing the crime, the overall conduct of the convict in jail, the possibility of reclaiming the convict as a useful member of the society and social economic condition of the family of the convict should be taken into consideration.

35. In its meeting held on October 9, 2023, the State Sentence Review Board has considered the reports of the Superintendent, Medinipore Central Correctional Home as also Chief Probation cum After Care Officer. Both of them have recommended premature release. Kolkata Police Authorities however, have raised very serious objection to the premature release. Kolkata Police Authorities have

emphasized on the security of the crime, its effect in the locality, as also the past antecedent of the writ petitioner. Kolkata Police Authorities have pointed out that, the writ petitioner was a very close associate of a notorious criminal namely Rashid Khan, the co-accused who has also been sentenced to life imprisonment. Kolkata Police Authorities have also pointed out that, the writ petitioner engaged himself in all sorts of criminal activities as per instruction of Rashid Khan in order to establish himself as terror in the locality. Kolkata Police Authorities have expressed the apprehension that, the writ petitioner will engage himself in criminal activities resulting in serious law and order problem. Local Police Authorities have expressed apprehension that, witnesses of the case fear retaliation upon their life in the event of premature release.

36. These objections of Kolkata Police Authorities have to be adjudged in the context of the crime committed and the present milieu. Objections raised by the Kolkata Police Authorities cannot be labeled as misplaced or without any basis.

37. As has been noted above, length of sentence or the gravity of the original crime cannot be the sole basis of refusing premature release. Assessment regarding propensity to commit crime upon release must be based on antecedent as well as conduct of the prisoner while in jail and not merely on his age or apprehensions of the victims and witnesses.

38. Close association of the writ petitioner with the infamous co-accused Rashid Khan has been established at the trial. Severity of the crime has also been established at the trial of the criminal case. Writ petitioner has been granted parole from time to time. Writ petitioner has not made any grievance with the quantity of the parole extended to him.

39. ***Satish Alias Sabbe (supra)*** has been rendered in the context of a single murder and a consideration of the provisions of the UP Prisoners Police and Probation Act, 1938. Factual position in the present case are different than obtaining in ***Satish Alias Sabbe (supra)***. In the present case, the writ petitioner has been convicted inter alia, under the Act of 1987 and involves death of 70 persons.

40. The State Sentence Review Board in its decision dated October 9, 2023 has taken into consideration the views of the

various stakeholders. It has been noted that, although premature release of the writ petitioner has been recommended by the Superintendent, Medinipur Central Correctional Home where the writ petitioner was lodged and the Chief Probation and After Care Officer, West Bengal none the less, there is an apprehension about the potentiality of the writ petitioner. It has given weightage to the apprehension expressed by the State Government. The Review Board has, after considering the antecedents and association of the writ petitioner and taking into consideration the nature of the crime, unanimously decided not to recommend premature release of the writ petitioner.

41. The decision of the Review Board contains reasons. The view taken by the Review Board is plausible and cannot be said to be unreasonable, arbitrary or in colourable exercise of powers. View expressed is a plausible view. A writ Court is not called upon to act as an appeal forum, reappraise the evidence and substitute the decision. In this case the decision making process cannot be faulted.

42. The Jail Code and the two memoranda noted above have vested discretionary powers on the authorities

considering a plea for remission. As has been noted in ***Joseph (supra)*** discretionary powers of the authorities considering a plea for remission should not be caged or boxed in mandatory guidelines.

43. This judgment and order, however, will not prevent the authorities from considering and deciding upon the plea for remission henceforth.

44. In view of the discussions above, we set aside the impugned judgement and order.

45. MAT 861 of 2024 along with all connected applications are dismissed without any order as to cost.

[DEBANGSU BASAK, J.]

46. I agree.

[MD. SHABBAR RASHIDI, J.]