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**Court : Madhya Pradesh**

**Decided On : Jan-23-2002**

**Reported in : 2002CriLJ3718**

**Judge : Dipak Misra, J.**

**Acts : Probation Board under Prisoners' Release on Probation Rules, 1964; Indian Penal Code (IPC) - Sections 148, 149, 302, 307 and 323; Code of Criminal Procedure (CrPC) - Sections 432, 433 and 433A**

**Appeal No. : W.P. No. 5382 of 2001**

**Appellant : Sushil Kumar and anr.**

**Respondent : State of Madhya Pradesh and anr.**

**Advocate for Def. : R.S. Jha, Dy. Adv. General**

**Advocate for Pet/Ap. : S.K Dwivedi, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

**ORDER**

**Dipak Misra, J.**

1. The petitioners, namely, Sushil Kumar, s/o Shri Chand Mal and Sunil Kumar, s/o Shri Pal have approached this Court for issue of a writ of certiorari for quashment of the order dated 10-4-2001 passed by the Probation Board under Prisoners' Release on Probation Rules, 1964 (hereinafter referred to as 'the Rules') refusing to release them on licence and the confirmation thereof by the State Government by order dated 25-4-2001.

2. I may at the outset state that the present writ petition has been filed by giving details with regard to the concept of liberty, human rights, divinity that dwells in human heart, rights of freedom and such other rights that are put on a pedestal. There is prolific reference to the saving of Wallace Strews, Mahatma Gandhi, the father of the nation and some eminent Judges to build the foundation that the orders of rejection and confirmation thereof are sensitively susceptible and cannot stand scrutiny and deserve to be axed by this Court in exercise of its extraordinary jurisdiction. To put it differently, the orders are criticised as if there is a procrastean approach by the authorities.

3. Be it noted that the petitioners were convicted of the offences punishable under Section 302/149, 148, 307 and 323 of the Indian Penal Code (in short 'the IPC) in S.T. No. 519/94. It is urged that they are in custody since 15-5-1994 and they are entitled to be released on probation as per the provision of the rules and as such they had applied for release. The competent authorities as well as the private member of the Board recommended for release of the petitioner. It has been highlighted that on a number of occasion the petitioners were granted parole and they did not abuse their liberty. In spite of the aforesaid factual scenario the Probation Board did not accept the prayer of the petitioners and mechanically the same was given the stamp of approval by the State Government.

4. At this juncture I think it apposite to refer to the pleadings in the writ petition for the simple reason, if I allow myself to say so they are in dissonance with the concept of proper and dignified manner of with the concept of proper and dignified manner of pleading.

5. Paragraph No. 5.6 of the petition reads as under :

5.6- It is painfully submitted that whosoever in the Board Meeting was prematurely released ought to have had reports as prisoners of good, meritorious and favourable reports did not find favour with them. What else could be the reason and those sublime reasons cannot be disclosed to the world. There is something wrong and fishy somewhere and one can smell that what happens or transpires in the second doors where probation Board meeting are held as prisoners with 5 murders are granted premature release and genuine cases are thrown in the wastepaper baskets.

6. In my considered view the aforesaid assertion is absolutely inappropriate and care has not been taken while using the words. It is to be borne in mind language used in a Court of law has to be temperate and the basic concept of propriety cannot be jettisoned. However, I am not proceeding to say further on that score.

7. It has been put forth that the petitioners are noble souls and there is quotation which finds place in paragraph Nos. 5, 10 of the writ petition and the same has been attributed to Mahatma Gandhi. It reads as under :

As an old and experienced prisoner however I believe that, Government have to begin to reform. Humanitarians can but supplement Government efforts. As it is, the humanitarians, if he tempted anything will first have to undo the mischiefs done in the prisons, where the environment hardens the criminal tendency they learn to commit crimes without being detected I hold that, humanitarians effort cannot cope with the evil wrought in the jails.

8. Reference has been made to the report of the Committee on jail reforms. It reads as under :

Those serving life sentences are cut off, for all practical purposes, for several years from the outside world, others spend the best years of their life in jail.

Again,

Life convicts like most other categories of prisoners, are, a neglected, life convicts, thus, become an irrelevant appendage of the prison population.

There is reference to the quotation in paragraph No. 5.10(b) though the name of the author has not been mentioned. I proceed to reproduce the same :

Those who inhabit the corridors of the law and justice could come down their very towers to take a long, close look at those of their fellow beings who are made to suffer without cause.

9. It has been further pleaded that warmth of the sun, the moonlight or the mellow rain will not be available for them if the Boards and Advisory Committees decide their cases for premature release in such casual and perfunctory manner without applying their mind even to the favourable and good reports and recommendations from all the authorities to which the Board Members are supposed to look into and rely on and that is what has happened in the cases of these two unfortunate petitioners whose cases have been rejected without any regard to the recommendation reports in their favour. Allegation has been made that malicious discrimination of the highest order is apparent which is shocking to the innermost recesses of the heart of any reasonable person.

10. Reference has been made to the decisions rendered in the case of *S.S. Jaisinghani v. U.O.I.* AIR 1967 SC 1427 and *Budhan Choudhary v. State of Bihar* AIR 1955 SC 191 : 1955 Cri LJ 371 and certain writing of many authors. It is urged in the petition that the conduct is of paramount significance while deciding the issue of premature release of the petitioners who are supposed to come out of the ugly iron walls of the jails, the crime infested hell and to see the brightness of the open world where reformation would make them real human beings different from beasts and from half dead and half mad persons but the accounting by the Board does not show so.

11. A reference has been made to the case of *Sunil Fulchand Shah v. U.O.I.* AIR 2000 SC 1023 : 2000 Cri LJ 1444. Certain reference have been given how the Board had released some prisoners. Emphasis has been laid on holistic terms and on compassion.

12. Ordinarily I would not have referred to the pleadings in detail in this regard but an attempt has been made to highlight the Board has passed the order in a

whimsical, fanciful and capricious manner throwing the norms to the winds and further every prisoner who has become eligible to be released on probation under the relevant rules has to be released because he has to get himself reformed. If that would have been the purpose of the rule only time limit would have been fixed but it is not so. Certain conditions precedent have been attached and, therefore, a person has to meet such criteria and Board has to decide as per the rules. I am not to be understood to have stated that human elements are not to be considered, because by no stretch of imagination it can be conceived that a person would be treated as unperson. It is a great human feeling to have freedom. It is an unalloyed right also. But law does impose conditions because restriction in regard to liberty are imposed for the sake of liberty. Not for nothing it has been said, it does not help a man if he gets the entire world but loses the sanctity of his soul. Human rights have their purposive meaning and no human being cannot afford to ignore anything which is connected with humanity.

13. As has been indicated hereinbefore, a quotation has been attributed to the father of the nation who had, irrefragably and immense experience in the jail during freedom struggle. It is worthnoting here that while in jail when a scorpion stung an attendant who was looking after the father of the nation, he, without any kind of inhibition, sucked the poison at the cost of his life and saved the life of the said person. Not for nothing Albert Einstien while speaking about the father of the nation spoke that generations to come would have difficulty in believing that such a human being in flesh and blood, walked on this earth. But the qusetion that falls for consideration, the principal issue, whether every prisoner as a matter of right can claim that he must be set at liberty from the walls of prison so that he can pave the path of reformation, or the law should give him the privilege keeping in view the antecedents.

14. Now to the factual setting-Mr. Dwivedi, learned counsel for the petitioner has submitted that the factual scenario if appreciated in proper perspective would entitle the benefit of release on probation to the petitioner. He has placed reliance on the decision rendered in the case of LPA No. 358/2000 (State of M.P. through the Principal Secretary, Jail Department v. Sushil Kumar and Anr.). In the said case a Division Bench of this Court was dealing with the role of the private

member and by no stretch the Division Bench has expressed the opinion that recommendation given by the private member would be binding on the other members. Hence, the aforesaid decision is of no assistance to the learned counsel for the petitioner.

15. In this context I may profitably refer to the decision rendered in the case of *Ganga Charan v. State of M.P.* 1994 Jab LJ 795 : 1995 Cri LJ 383 (FB), wherein after discussing the rules, in paragraph 11 the learned Chief Justice speaking for the Court, expressed as under :

11. We, therefore, held that the word 'antecedents' relates to the period prior, to the commission of the crime, the circumstances under which the crime was committed and the period subsequent to the commission of the crime.

16. Thus, the compartments are to be considered in proper perspective. A person may be innocent before the crime was committed but if the crime committed exhibits brutality the said circumstances is to be weighed in a proper manner.

17. Before I proceed, at this juncture, I may profitably refer to the decision rendered in the case of *Zahind Hussain v. State of W.B.* (2001) 3 SCC 750 : 2001 Cri LJ 1692 wherein their Lordships in paragraph Nos. 14 to 16 held as under :

We may State here that the jail authority recommended premature release of the writ petitioners. In our opinion, the conduct of the petitioner while in jail is an important factor to be considered 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 the 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 till have potentiality of committing crime or not as it will depend on changes in mental attitude during incarceration.

15. While coming to the conclusion for possibility of regrouping for antisocial activities, the Review Board did not take into account, at 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 the 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.

18. It is apposite to state here that in the aforesaid case the Apex Court was dealing with the provisions of Sections 432, 433 and 433A of the Code of Criminal Procedure and not an premature release. The said decision has been rendered on a different footing. Mr. Dwivedi has also brought to the notice of this Court to the decision rendered in the case of Noora alias Sujat Mohd. v. State of M.P. and Anr. LPA No. 161/ 2001. In the said case in paragraph No. 4, the Division Bench has held as under :

Therefore, we are of the opinion that the case of appellant has not been justly considered for release on parole. Consequently, direction for his temporary release on parcel is issued. The appellant is directed to be released on temporary parole till the Administration/Jail Authority considers the matter for his permanent release on parole subject to such terms and conditions as may be deemed fit. This order has been passed in view of the peculiar facts of the case. It will not be treated as a precedent for other cases, which shall be considered and decided on their own merits.

On a perusal of the aforesaid it becomes plain as noon day, the Division Bench observed the order passed therein would not be precedent in other case. Hence, this decision does not render any assistance to the petitioner.

19. Now to the question whether the order passed by the Board is justified or not. On a scrutiny of the order passed by the Board, Annexure P/1, it is manifest that the Board has taken note of the antecedents and denied the privilege to the petitioners. The Board has observed that that the petitioners had conspired and

used lethal weapons and committed the murder in a most brutal manner. I may hasten to add, Mr. Dwivedi had disputed the aforesaid observation. Hence, I had directed for filing of the judgment of conviction passed by the learned trial Judge and the same has been produced before this Court.

20. Mr. R. S. Jha, learned Dy. Advocate General for the State has taken me through the judgment. On a scrutiny of the same it appears that one of the petitioner's No. 1 had caught hold of the hands of the deceased and the petitioner No. 2 pierced a 'ballom' in the stomach region of the deceased. In view of this, I am of the considered opinion, the petitioners had committed the murder in a brutal manner. The submission of Mr. Dwivedi that the petitioners had no intention is noted to be rejected as this Court cannot advert to the aforesaid aspect at this stage in a case of this nature, as I am not sitting in appeal over the said judgment. I have referred to the judgment only to find out in what manner the crime was committed and the role played by the petitioners. If I say so, the petitioners were the real protagonists to create the tremendous cataclysm on the family member of the deceased by extinguishing his life apart and the specious pleadings in the petition do not deserve to be considered for grant of premature release on probation under the Rules. Hence, I find the order passed by the Board and affirmation thereof by the State is impeccable.

21. The writ petition being devoid of merit, stands dismissed without any order as to costs.