

Supreme Court of India

Justice Dr Dhananjaya Y Chandrachud, Justice Surya Kant, Justice Vikram Nath

Sharafat Ali v. State of Uttar Pradesh and Another

Writ Petition (Criminal) No. 439 of 2021

10.02.2022

(i) Criminal Procedure Code , 1973 (II of 1974) , S. 432, 433 - Premature release - Application for premature release has to be considered on the basis of the policy as it stood on the date when the petitioner was convicted of the offence. *State of Haryana v. Jagdish*, (2010) 4 SCC 216, *State of Haryana v. Raj Kumar @ Bitu*, (2021) 9 SCC 292, relied.

(ii) Criminal Procedure Code , 1973 (II of 1974) , S. 432, 433 - Premature release - Application for premature release - Order passed by the State government is bereft of an application of mind to relevant circumstances - Order contains general observations to the effect that the release may result in resentment on the side of the victim, but this is a general consideration which would govern virtually all criminal offences where a person stands convicted of a serious offence, as in the present case under Section 302 read with Section 34 of the IPC - The order does not contain any reference to any prior criminal history, is completely silent on the conduct and behavior of the petitioner in jail and after he was convicted and the relevant considerations bearing upon whether the release of the petitioner would pose a danger to society have not been adverted to - There has to be a considered application of mind to the facts of each case - Order set aside - To be decided afresh..

Cases referred to:

1. *State of Haryana v. Jagdish*, (2010) 4 SCC 216
2. *State of Haryana v. Raj Kumar @ Bitu*, (2021) 9 SCC 292

Petitioner Counsel: K. L. Janjani , Respondent Counsel: Rohit K. Singh

JUDGMENT

Dr Dhananjaya Y Chandrachud, J.

1. The jurisdiction of this Court has been invoked under Article 32 of the Constitution for the enforcement of the right under Article 21 of the Constitution, following an order dated 30 July 2021 rejecting the application of the petitioner for premature release.

2. The petitioner has been convicted for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code 1860 "IPC" on 17 January 2005 and sentenced to life imprisonment. The judgment of the trial Judge was affirmed in appeal by the High Court of

Judicature at Allahabad on 3 June 2016. The Special Leave Petition under Article 136 of the Constitution was dismissed by this Court on 20 April 2018.

3. The petitioner had undergone 17 years, 9 months and 26 days of imprisonment and submitted an application for premature release. The application for premature release was rejected on 30 July 2021. The order communicating the rejection of the application which has been passed by the State government records that the District Magistrate and the Superintendent of Police Amethi had in their report stated that if the petitioner is released prematurely, the possibility that this may cause resentment among the side of the victim cannot be ruled out nor can the possibility of an offence being committed again by the petitioner be excluded. The order also states that the petitioner has an “extremist nature” and the presence of bitterness among the parties cannot be denied.

4. Notice was issued in the petition on 8 November 2021, in pursuance of which a counter affidavit has been filed on behalf of the State of Uttar Pradesh.

5. We have heard Mr K L Janjani, counsel for the petitioner and Mr Ardhendu Mauli Kumar Prasad, Additional Advocate General for the State of Uttar Pradesh.

6. The first principle which must be noted, while adjudicating upon the petition is that the application for premature release has to be considered on the basis of the policy as it stood on the date when the petitioner was convicted of the offence. This principle finds reiteration in several judgments of this Court such as *State of Haryana v. Jagdish*, (2010) 4 SCC 216. The most recent of them is the decision in *State of Haryana and Others v. Raj Kumar @ Bitu*, (2021) 9 SCC 292.

7. The order which has been passed by the State government in the present case is bereft of an application of mind to relevant circumstances bearing on whether the petitioner should be released prematurely. The order contains general observations to the effect that the release may result in resentment on the side of the victim, but this is a general consideration which would govern virtually all criminal offences where a person stands convicted of a serious offence, as in the present case under Section 302 read with Section 34 of the IPC. The order does not contain any reference whatsoever to whether the petitioner possesses any prior criminal history, save and except for the present case. Similarly, the order is completely silent on the conduct and behavior of the petitioner in jail and after he was convicted of the offence. The relevant considerations bearing upon whether the release of the petitioner would pose a danger to society have not been adverted to. There has to be a considered application of mind to the facts of each case.

8. In the circumstances, the order which has been passed rejecting the application of the petitioner for premature release suffers from a complete and patent non-application of mind.

9. For the above reasons, we allow the petition by setting aside the impugned order dated 30 July 2021 passed by the Government of Uttar Pradesh. We direct that the application of the petitioner for premature release shall be reconsidered on the basis of the policy as it stood on 17 January 2005, when the petitioner was convicted of an offence under Section

302 read with Section 34 of the IPC. The application shall be considered afresh without the petitioner being required to file any fresh application for premature release. An order shall be passed after taking into account all relevant facts and circumstances including those which have been adverted to above. This exercise shall be completed within a period of two months from the date of this order.

10. The petition is accordingly disposed of.

11. Pending applications, if any, stand disposed of.