IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION No. 255 OF 2019

Mr. Dilip S. Shetye,
51 years old,
Convict Prisoner No.538/02,
Presently serving sentence at
Central Jail Colvale, Goa. **….. Petitioner**

Versus

1) State Sentence Review Board,
Chief Secretary,
Govt. of Goa,
Porvorim, Bardez, Goa.

2) The Inspector General of Prisons,
Government of Goa,
18th June Road, Old Education Building,
Panaji, Goa.

3) Public Prosecutor,
High Court building,
AG's Office,
High Court, Panaji-Goa. **….. Respondents**

Petitioner present in person.

Mr. Pravin N. Faldessai, Additional Public Prosecutor for Respondent nos.1, 2 and 3.

Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.

Reserved on: **04th November, 2020**
Pronounced on: **06th November, 2020**

JUDGMENT:(Per M. S. Sonak, J)

Heard Mr. Dilip Shetye in person and Mr. Pravin Faldessai, the learned Additional Public Prosecutor for the respondents.

2. The petitioner, who is a convict, challenges the decision of the State Sentence Review Board taken in its meeting held on 18.09.2020 and seeks his release from incarceration, since, by now, he has completed almost 20 years in prison.

3. The record indicates that by judgment dated 27.02.2002 the Sessions Judge, North Goa at Panaji convicted the prisoner for offence under Section 302 of IPC and sentenced him to life imprisonment and payment of fine of ₹5000/- and in default to suffer rigorous imprisonment for 6 months. The appeal against this judgment and order was dismissed by this Court vide Judgment and Order dated 25.02.2003.

4. As a consequence, the petitioner as on 31.07.2020 has completed 19 years 7 months and 22 days of actual imprisonment. The petitioner has to his credit remission of 5 years 4 months and 5 days. If this is taken into account, then the imprisonment suffered by the petitioner comes to almost 25 years. In any case, there is no dispute that as of now the petitioner has suffered actual

imprisonment of about 20 years.

5. The petitioner's case was placed before the State Sentence Review Board (Board) on not less than 7 occasions. On some occasions, the decisions of the Board were challenged by the petitioner and the same were struck down by this Court with directions to the Board to reconsider the matter.

6. On this occasion also, the Board, which met on 18.09.2020 has rejected the petitioner's case for premature release, inter alia, on the following grounds:

a) That the petitioner committed a serious offence of murdering his own wife who was, at that time, in her 8th month of pregnancy;

b) The Superintendent of Police (North Goa) has not recommended the case of the petitioner for premature release by observing that the possibility of the petitioner causing damage to the life and property of witnesses or family members of the victim cannot be ruled out.

c) The Probation Officer has objected to the premature release on the ground that the mother and elder brother of the victim have objection to such release.

7. The record indicates that even on the past occasions, the Board, declined to recommend the premature release of the petitioner substantially on the very grounds as are listed out above. On one occasion, the Board refused to recommend the release because the medical reports about the mental health of the petitioner were stated to be not very clear. But, almost on all occasions, the main grounds relied upon by the Board were basically the seriousness of the offence and the objections from the victim's family members. On several occasions, it was also stated that the petitioner, if released, might interfere with the witnesses or the family members of the victim.

8. Mr. Shetye submitted that the aforesaid reasons do not justify any further incarceration. He submits that he was released on parole and furlough on not less than 23 occasions and there was never any complaint about the breach of any terms and conditions of parole and furlough. He states that the victim's family resides at a place which is almost 25kms away from his home and there is no question of any interference with the victim's family.

9. Mr. Shetye states that he is willing to give undertaking to this Court that he will not in any manner interfere with any members of the victim's family or with any of the witnesses or their family members who may have deposed in the criminal case against him. He submits that any further remitting the matter to the Board will be quite futile, now that his case has been rejected by this Board on not

less than 7 occasions in the past. He submits that the State Government has framed no guidelines and, therefore, in some cases, prisoners are released soon after they complete 14 years and in other cases prisoners are not released even though they have completed almost 20 years of actual incarceration. He, therefore, submits that this petition be allowed and he be prematurely released at the earliest.

10. Mr. Faldessai, the learned Additional Public Prosecutor defends the decision of the Board on the aforesaid grounds. He submits that this was indeed a case of serious offence and based on the reports of the Probation Officer and the Superintendent of Police, North, Goa, the Board was justified in refusing to recommend the petitioner's premature release.

11. The rival contentions now fall for our determination.

12. There is no dispute that the State, based upon the recommendations of the Board has the power to order the premature release of a life convict subject no doubt, to the restrictions contained under Section 432 and 433-A of the Code of Criminal Procedure(Cr.PC).

13. In the case of ***Sangeet and another vs. State of Haryana***[1], the Hon'ble Supreme Court has held that a prisoner serving a life sentence has no indefeasible right to release on

[1] (2013) 2 SCC 452

completion of either 14 years or 20 years in prison. He is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the Cr.P.C. which, in turn, is subject to the procedural checks in that Section and the substantive check in Section 433-A of the Cr. P.C. In case of a convict undergoing life imprisonment he will be in custody for an indeterminate period, therefore remissions earned by or awarded to such a life convict are only notional. In his case to reduce the period of incarceration a specific order under Section 432 of the Cr. P.C. will have to be passed by an appropriate Government, however, the reduced period cannot be less than 14 years as per Section 433A of the Cr. P.C. Before actually exercising the power of remission under Section 432 of the Cr. P.C., the appropriate Government must obtain the opinion (with reasons) of the Presiding Judge of the Convicting or the Confirming Court. Remissions can only be given on a case to case basis and not on a wholesale manner.

14. Upon conjoint reading of the provisions in Sections 432, 433-A of the Cr.P.C. and the said Rules, in the light of the ruling of the Hon'ble Supreme Court in ***Sangeet*** (supra), the following principles broadly emerge :

(A) A life convict has no indefeasible right to premature release, but he is entitled upon completion of 14 years of imprisonment, to have his case considered by the Sentence Review Board in accordance with the

Prison Rules and for an appropriate recommendation in that regard to the State Government.

(B) The State Sentence Review Board may consider the case of a life convict for premature release upon completion of 14 years imprisonment, and the role of the Sentence Review Board is only recommendatory and the decision on the premature release and the power to grant such release vests with the appropriate Government. The case of such a prisoner for premature release may be considered by the Government, either upon a recommendation made by the State Sentence Review Board in accordance with the Prison Rules or on an application made to it by the Prisoner himself under section 432 of the Cr. P.C.

(C) The State Government before it takes a decision on the recommendation of the Sentence Review Board, or on an application by the prisoner seeking release, has to seek the opinion of the Presiding Judge of the convicting or confirming Court under Section 432(2) of the Cr. P.C.

(D) The Presiding Judge of the convicting or confirming Court has to state his / her opinion on the case of the concerned prisoner with reasons for such opinion

and to forward with the opinion a certified copy of the record of trial or of such record thereof as exists to the Government.

(E) The Government upon receipt of the opinion from the Presiding Judge of the convicting or confirming Court alongwith the records of the case and on considering the opinion of the Court and the relevant material submitted by the Superintendent of the Jail under rule 404(1) of the Prison Rules has to take a decision in accordance with Section 432(1) of the Cr. P.C. read with Rule 404(2) of the Goa Prison Rules, 2006.

15. Having regard to the peculiar circumstance in this matter, that the petitioner's case for premature release was rejected by the Board on not less than 7 occasions, we had called for a report from the Sessions Judge, in terms of the ruling of the Hon'ble Apex Court in the case of ***Sangeet*** (supra) as also the provisions of Section 432(2) of Cr.PC.

16. The Sessions Judge has submitted his report on 15.02.2020, in which, he has stated that 19 years of imprisonment is sufficient and taking into consideration the reformative element of sentencing, the petitioner's case can be considered for premature release. This report of the Sessions Judge is to be found at Exhibit 'L'

(pages 188 to 190) in the paperbook.

17. As regards the first reason cited by the Board, it is no doubt true that the offence committed by the petitioner was a serious one. This is the reason why the petitioner was sentenced for life and as on date has suffered actual incarceration of about 20 years. The Board was, therefore, required to consider whether this sentence was sufficient and commensurate to the crime committed by the petitioner. Merely stating that this was a serious crime without anything else, cannot be a good ground to refuse premature release of the petitioner. The learned Sessions Court has also taken into consideration the seriousness of the crime but, still, the learned Sessions Judge opined that 19 years incarceration was sufficient taking into consideration the reformative element .

18. The second reason relates to the opinion of the Superintendent of Police (North Goa). Now we find that this opinion is based on no material whatsoever. There is no indication as to the premise on which such opinion was tendered. Besides, the record very clearly indicates that this petitioner was released on parole and furlough on not less than 23 occasions. There is no complaint that on any of these occasions the petitioner defied the terms and conditions subject to which he was released. There is no allegation that the petitioner interfered with the family members of the victim or with any of the witnesses who may have deposed against him.

These were relevant provisions which have not at all been considered by the Superintendent of Police as well as by the Board.

19. The third reason is the report of the Probation Officer. Again, it is evident that the Probation Officer has not expressed any independent opinion but has merely stated that the mother and the elder brother of the victim have objections to the release of the petitioner. On the basis of such report, the Board, ought not to have arrived at the impugned decision.

20. The Board, has itself noted that the Probation Officer interacted with the family members of the petitioner, i.e., his brother and sister-in-law, who have indicated their willingness to accept the petitioner in the family home should he be prematurely released. The Board has also referred to the release of the petitioner on parole and furlough but has failed to take into consideration the fact that the petitioner, when on parole, gave no cause for any complaints either from the witnesses or their family members who may have deposed against the petitioner or from the family members of the victim.

21. The Board has also taken into account the medical reports which state that the petitioner does not have any major psychiatric illness at present. In such circumstances, the decision of the Board warrants interference.

22. Normally, in such a situation, after the quashing of the Board's decision, we would have remitted the matter to the Board for a fresh decision. However, as noted earlier, the Board, has for almost the same reasons, has rejected the case of the petitioner on not less than 7 occasions. Therefore, in the peculiar facts in the present case, we feel that it would be quite futile to once again remit the matter to the Board.

23. As noted earlier, in this case, the Sessions Judge, in terms of Section 432(1) has already recommended the premature release of the petitioner. There is no point, therefore, to continue the incarceration of the petitioner any further.

24. On behalf of the State as well, it was submitted that it is only on account of the absence of any recommendation from the Board that the petitioner was not being prematurely released despite his having completed almost 20 years of actual incarceration.

25. In this case, the petitioner has also pleaded that he has behaved himself in the course of his long incarceration and his record as a prisoner is unblemished. The petitioner has also pleaded that he is successfully trained in the skill of plumbing.

26. On consideration of the submissions made by Mr. Faldessai, the learned Additional Public Prosecutor, we are, for the

reasons as aforesaid, satisfied that the view taken by the Board in this matter was unsustainable in the peculiar facts and circumstances of the present case. Though, we agree with Mr. Faldessai that in the matter of this nature we ought to remit the matter to the Board for fresh consideration, in the peculiar facts of the present case where, on at least 7 occasions the Board has rejected the case of the petitioner on almost the same grounds, we feel that it would be quite futile to once again remit the matter to the Board. In this case, the petitioner, has already agreed to file undertakings before this Court that in case he is prematurely released, he will not in any manner interfere with any members victim's family or the witnesses and their family members.

27. The petitioner has also prayed for compensation. According to us, no case is made out for warrant of any compensation to the petitioner. The law is quite clear that the petitioner has no indefeasible right to premature release. In this case, it is not as if any of the authorities acted malafidely. Merely because we may not have approved the reasoning of the Board, that does not mean that there were any malafides involved in the decision of Board or for that matter any other authorities. Therefore, the prayer for compensation was quite misconceived and quite correctly no arguments were made in support of this prayer.

28. There is no record as to whether the petitioner has paid

the fine of ₹5000/- which was imposed upon him by the impugned judgment by which he came to be convicted and sentenced. If such fine is not paid, the petitioner is at liberty to pay the same. In case the petitioner is not desirous of paying the fine, then he will have to suffer in default imprisonment of 6 months.

29. For all the aforesaid reasons, we allow this petition by passing the following order:

ORDER

A) The impugned orders refusing to release the petitioner prematurely are hereby set aside.

B) The petitioner is directed to be prematurely released subject to the following:

(i) The Petitioner filing the undertaking in this Court that he will not in any manner interfere with the family members of the victim or with the witnesses and their family members;

(ii) The payment of fine of ₹5000/-, if, such fine has not already been paid.

C) Upon the petitioner complying with the aforesaid two conditions, the concerned respondents to release the petitioner prematurely, without any unnecessary delay.

D) The prayer for compensation is refused.

30. The Rule is made absolute in the aforesaid terms.

31. There shall be no order as to costs.

M. S. Jawalkar, J. ***M.S. Sonak, J.***

msr.