

2 In the proceedings before this Court, two grounds form the basis of the relief which has been sought:

(i) It has been submitted that the State has been releasing other similarly placed convicts involved in heinous crimes, but the same benefit of premature release or of parole has not been extended to the petitioner; and

(ii) It has been submitted that the sole ground on which the petitioner has been discriminated against is that he belongs to the State of Uttar Pradesh, whereas the offence took place and the petitioner was prosecuted in the State of Odisha.

3 In pursuance of the notice that was issued by this Court on 13 October 2020, the State of Odisha has entered appearance and a counter affidavit has been filed.

4 We have heard Mr Ajit S Bhasme, learned Senior Counsel appearing on behalf of the petitioner and Mr Shibashish Misra, learned counsel appearing for the State of Odisha.

5 Mr Ajit S Bhasme submitted that the petitioner has undergone seventeen years of imprisonment without parole. He has urged that in some other cases, this Court has, while entertaining a petition under Article 32 of the Constitution, granted interim relief by releasing the convict and that a similar course of action may be followed in the present case so as to monitor the conduct of the petitioner. He has submitted that under Section 433-A of the Code of Criminal Procedure 1973, which was introduced by way of an amendment, it has been clarified that where a sentence of imprisonment for life is imposed on the conviction of a person for which death is one of the punishments provided by law or where a sentence of death has been commuted to imprisonment for life, such

a person shall not be released from prison unless he has served fourteen years of imprisonment.

6 In the present case, it has been submitted that threshold of fourteen years has been completed and a fit and proper case has been made out for the release of the petitioner.

7 Opposing the petition, Mr Shibashish Misra submitted contrary to the assertions in the petition, the case of the petitioner for pre-mature release has been duly considered in accordance with the remission rules. The conduct of the petitioner has been adverted to in detail in the counter affidavit which has been filed and, hence, it has been urged that the State was justified in declining to grant pre-mature release.

8 In the counter affidavit which has been filed on behalf of the State of Odisha, certain material facts having a bearing on the issue as to whether the petitioner was entitled to pre-mature release have been set out. Relying on the decision of this Court in **State of Madhya Pradesh v Ratan Singh**¹, the State has submitted that the Senior Superintendent of the Circle Jail, Baripada sent a proposal for pre-mature release of the petitioner to the Additional DG of Prisons, Odisha by a letter dated 23 February 2018. The proposal was rejected by the State Sentence Review Board which was communicated to the Senior Superintendent of Circle Jail, Baripada by a letter dated 25 October 2019.

9 For considering whether a convict is entitled to remission, an assessment is made with regard to the overall conduct in jail. In the present case, it has been submitted that the petitioner has been repeatedly transferred from various jails due to his indisciplined conduct and behaviour. On 26 May 2013, the petitioner was transferred to the Circle Jail, Cuttack. On 30 October 2013, he was

1 (1976) 3 SCC 470

transferred to the Circle Jail, Sambalpur. On 7 September 2015, he was transferred to the District Jail, Baleswar. On 23 May 2016, he was transferred to the Circle Jail, Baripada. In the counter affidavit, the State has adverted to the following noting which has been made by the Superintendent of the District Jail, Balasore on 27 April 2016 in the convict history ticket of the petitioner:

“Enquired into the matter. This life convict Rajan Mishra and another life convict [Rajesh Behera have combinely (sic) made a planned conspiracy to hurl bomb at the jail gate and Superintendent quarter with the assistance of some local criminals to terrorize the jail staff for illegal use of mobile phone and to keep net-working with the outside crime world from jail. They have induced 04 (four) UTPs of this jail (Arhay Palei, Bijay Kumar Jena, Ramesh Chandra Mallick and Pranab Ray) as ascertained from the statement of individual prisoners. The letter has been written down by the UTP Ramesh Chandra Mallick as detected by both the convicts with threat. Examined the CCTV footage and the fact of involvement of the convicts is confirmed. As such he is punished as under:

1. Telephone facility is ceased for twenty days. He can only talk with parents/Advocate after twenty days.
2. Interview is ceased for twenty days.
3. Both the convicts be kept segregated from each other and not allowed to talk to each other.

Sd/-
Superintendent
District Jail
Balasore”

10 A copy of a communication addressed on 17 December 2015 by the Senior Superintendent, Circle Jail, Cuttack has been adverted to in the counter affidavit. The State avers in the counter that the petitioner is a member of a professional kidnapping gang and his release will be prejudicial to society at large. The petitioner was entitled to a consideration of his application for pre-mature

release in accordance with law. This has been done. The contents of the counter affidavit and the considerations which have weighed with the authorities are not extraneous to the exercise of the jurisdiction while considering an application for premature release.

- 11 Under the circumstances, we are unable to come to the conclusion that the petitioner has been discriminated against. The ground that he has been discriminated against for the reason that he belongs to another State is manifestly erroneous as is evident from the material which is placed on the record.
- 12 For the above reasons, we are not inclined to entertain the petition under Article 32. The petition is accordingly dismissed.
- 13 However, it may be noted that on 25 October 2019, the Deputy Inspector General of Police, Odisha addressed a communication to the Superintendent of Jail, stating that cases of convicts whose proposals have to be placed before the State Sentence Review Committee for re-consideration after the expiry of a period of one year from the date of the last rejection, should be placed for re-consideration. In view of the above communication, the case of the petitioner shall be duly considered in accordance with law and in terms of the above communication dated 25 October 2019 expeditiously.
- 14 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER