REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NO. 7369 of 2019

Satish @ Sabbe ..... Petitioner(s)

VERSUS

The State of Uttar Pradesh .....Respondent(s)

WITH

SPECIAL LEAVE PETITION (CRL.) NO. 8326 of 2019

JUDGMENT

Surya Kant, J:

1. These petitions, which were heard through video conferencing, have been filed by Satish and Vikky @ Vikendra alias Virendra, seeking special leave to appeal against a common order dated 28.04.2017 of the Allahabad High Court through which their appeal against conviction under Section 364-A of the Indian Penal Code, 1860 (hereinafter, "IPC") and consequential sentence of life imprisonment, was turned down.

FACTS

2. The undisputable facts of the case are that on the evening of 12. 06.2002, when one Vishal Sarawat (the victim) was on his way to meet a friend, he was stopped by an acquaintance - Ramvir Rana who asked him for a lift to his house. The unsuspecting victim walked into Ramvir's house where he was threatened with a pistol and forcibly administered tablets by the present petitioners and one Ashok. Vishal was subsequently coerced to write a letter dated 04.07.2002 to his father, seeking a ransom of Rs 2 crores. In the meanwhile, the victim's father - Nepal Singh (the complainant) filed a missing report with the police regarding his son. Vikky telephoned the victim's father on 10. 07.2002, pretending to be one 'Shekhar'. He exhorted him to seek help of Ramvir as an intermediary and cautioned him against approaching the police. After a series of correspondences, the ransom was renegotiated to Rs 32 lakhs, which was physically brought by the complainant to Ramvir's home on 14.07.2002. Both the petitioners were present in the house, with Vikky having counted the ransom money. Upon assurance that his son would be safely sent back home by that evening, the complainant passed on information to the police who immediately raided the house. Ramvir was arrested, Vishal was rescued and Rs.31.70 lakhs were recovered. Although the police witnessed them talking to Ramvir and Vishal (victim); Ashok, Satish

and Vikky managed to escape from the spot. They were, however, subsequently arrested on 16.07.2002 and charged for the offence of kidnapping for ransom.

3. The case was, after investigation, committed to the Additional Sessions Judge, Fast Track Court – I, Ghaziabad. Eleven witnesses deposed on behalf of the prosecution, which included the victim, complainant, bystanders, and various police officers. In addition, one witness was called by the Court itself. Incriminating voice recordings, Call Detail Records, seized ransom money, and a revolver recovered at the instance of Vikky were also brought on record. The accused denied all charges and examined three defence witnesses.

4. Placing reliance on a wealth of electronic evidence, the trial Court held that the charge under Section 364-A IPC had been proved beyond reasonable doubt against all accused, and additionally charge under Section 25 of the Arms Act, 1959 was also held to have been established against Ashok and Vikky. Life imprisonment and fine of Rs 10,000 (or six months imprisonment in lieu thereof) was awarded to each accused for the crime of kidnapping for ransom, besides concurrent sentence of two years to Vikky and Ashok under the Arms Act.

5. All four accused appealed against their convictions before the

Allahabad High Court. After a detailed re-appreciation of evidence and discussion of various case laws, the High Court found as a matter of fact that all elements required to constitute the offence of kidnapping for ransom, have been proved beyond doubt. But the High Court observed that failure to record disclosure statement under Section 27 of the Evidence Act, 1872 was fatal in proving recovery of the revolver. The High Court thus dismissed the appeals and confirmed the sentence of life imprisonment under Section 364-A of IPC, but conviction under Section 25 of the Arms Act was set aside.

PRESENT PROCEEDINGS

6. The aggrieved petitioners, Vikky and Satish, have filed separate Special Leave Petitions before us, which have been heard at considerable length. On 06.09.2019, this Court tacitly declined to interfere with their conviction for kidnapping, and accordingly refrained from granting leave to appeal. However, limited notice was issued to the respondent-State, calling upon them to furnish details regarding the petitioners' entitlement to premature release. The aforementioned order reads as follows:

> *"Limited notice be issued to the respondent-State of Uttar Pradesh to know whether the petitioner is entitled for premature release from the prison as per the Jail Manual"*

7. Separate counter-affidavits have consequently been filed by the

respondent-State on 18.12.2019, inter-alia, informing that Satish's proposal for premature release under Section 2 of the UP Prisoners Release on Probation Act, 1938 was still under consideration; whereas that of Vikky was duly considered and rejected by a Committee headed by the District Magistrate, Ghaziabad on 26.02.2018.

8. Nevertheless, keeping in mind the long-period of incarceration undergone by the petitioners and infirmities in consideration of their prayers for premature release as highlighted by their counsels, this Court on 08.06.2020 directed fresh consideration of their cases for premature release and passed the following order:

> *"Taking into consideration the submissions made by the learned counsel appearing for the parties, we direct the learned counsel appearing for the State of U.P. to consider the case of the petitioner (Satish @ Sabbe) in Special Leave Petition (Crl.) No.7369 of 2019, which is stated to be pending before the State, as also the case of the petitioner (Vikky Alias Vikendra Alias Virendra) in Special Leave Petition (Crl.) No.8326 of 2019, which was earlier rejected by the said State, for their premature release as per the Jail Manual, within a period of four weeks from today and place the orders before this Court."*

9. It was brought to the notice of this Court on the next date of hearing that the respondent-State had, without due application of mind, passed an unreasoned Order dated 13.07.2020 rejecting premature release of Satish based on an earlier evaluation conducted

on 29.01.2018. This was contended to be in contravention of the directions issued by this Court as well as on a misconceived notion of individual dignity. Similar allegations of evasive compliance and mechanical rejection of Vikky's case for premature release vide Government Order dated 29.07.2020, despite his long incarceration and good conduct, were reiterated. Restricting their prayer(s) in terms of the order dated 06.09.2019 of this Court, learned counsel(s) for Satish and Vikky have cited some judgments, and relied upon various remission guidelines; to substantiate their plea to set-aside the Orders rejecting petitioner's prayer for premature release.

10. Finding that earlier orders directing fresh consideration of petitioners' cases for premature release had not been faithfully complied with, this Court on 25.08.2020, once more directed the respondent-State to consider both cases afresh and pass appropriate reasoned orders within a week. Since the petitioner's prayer for premature release has again been declined vide Government Orders dated 01.09.2020, hence learned counsel for the parties have been heard on the afore-stated limited issue.

CONTENTIONS OF PARTIES

11. Over the course of the final hearing on 08.09.2020, it has been submitted by learned State counsel that the Probation Board

considered afresh Satish's case and has refused probation for the reasons that – *first,* the crime is heinous, *second,* petitioner is hardly 53-54 years old and can repeat the crime, *third,* informant has serious apprehensions against his release, and *fourth,* governmental authorities have adversely commented upon his release considering its direct adverse effect on the society. Likewise, for Vikky, on grounds of his age of 43 years, healthy physical condition, apprehensions of informant and nature of crime; his mercy petition had not been recommended.

12. Counsel for the petitioners have very eruditely controverted the rationale and reasons embodied in both the Government Orders. It was argued that although the impugned orders have been purportedly passed under the Jail Manual and UP Prisoners Release on Probation Act, 1938; but, the mandatory factors of 'antecedents' and 'conduct in prison' have totally been overlooked, and instead various extraneous factors have been relied upon to justify the mechanical action. They urged that no attempt was made to meet the petitioners to ascertain their proclivity for committing crimes in the future, thus evidencing non-application of mind. The lengthy imprisonment, lack of antecedents and good conduct in jail were again underscored by counsel for the petitioners to drive home their prayers for premature release.

ANALYSIS

13. Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free-roaming criminals creating havoc in the lives of ordinary peace-loving citizens. But equally strong is the foundation of reformative theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first-time offenders ought to be liberally accorded a chance to repent their past and look- forward to a bright future.[1]

14. The Constitution of India through Articles 72 and 161, embody these reformative principles by allowing the President of India and the Governor of a State to suspend, remit or commute sentences of convicts. Further, Section 432 of the Code of Criminal Procedure, 1973 ("CrPC") streamlines such powers by laying down procedure and pre-conditions for release. The only embargo under Section 433-A of CrPC is against the release of persons sentenced to life imprisonment till they have served at least fourteen years of their actual sentence.

15. The UP Prisoners Release on Probation Act, 1938 also lays down the principles upon which such decisions to release on probation are required to be taken. Its Section 2 says that:

[1] Maru Ram v. Union of India, 1981 (1) SCC 107.

> *"**2. Power of Government to release by licence on conditions imposed by them –** Notwithstanding anything contained in Section 401 of the Code of Criminal Procedure, 1898 (Act V of 1898), where a person is confined in prison under a sentence of imprisonment and **it appears to the State Government from his antecedents and his conduct in the prison that he is likely to abstain from crime and lead a peaceable life, if he is released from prison**, the State Government may by licence permit him to be released on condition that he be placed under the supervision or authority of a Government Officer or of a person professing the same religion as the prisoner, or such secular institution or such society belonging to the same religion as the prisoner as may be recognized by the State Government for this purpose, provided such other person, institution or society is willing to take charge of him."*
>
> *[emphasis supplied]*

16. It is no doubt trite law that no convict can claim remission as a matter of right.[2] However, in the present case, the circumstances are different. What had been sought and directed by this Court through repeated orders was not premature release itself, but due application of mind and a reasoned decision by executive authorities in terms of existing provisions regarding premature release. Clearly, once a law has been made by the appropriate legislature, then it is not open for executive authorities to surreptitiously subvert its mandate. Where the authorities are found to have failed to discharge their statutory obligations despite judicial directions, it would then not be inappropriate for a Constitutional Court while exercising its powers of

[2] Swamy Sahraddanada v. State of Karnataka, (2008) 13 SCC 767.

judicial review to assume such task onto itself and direct compliance through a writ of mandamus.

17. A perusal of the Government Orders displays that the statutory mandate on premature release has been completely overlooked. The three-factor evaluation of (i) antecedents (ii) conduct during incarceration and (iii) likelihood to abstain from crime, under Section 2 of the UP Prisoners Release on Probation Act, 1938, have been given a complete go-by. These refusals are not based on facts or evidence, and are vague, cursory, and merely unsubstantiated opinions of state authorities.

18. It would be gainsaid that length of the sentence or the gravity of the original crime can't 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.[3] As per the State's own affidavit, the conduct of both petitioners has been more than satisfactory. They have no material criminal antecedents, and have served almost 16 years in jail (22 years including remission). Although being about 54 and 43 years old, they still have substantial years of life remaining, but that doesn't prove that they retain a propensity for committing

[3] Zahid Hussain v. State of West Bengal, 2001 (3) SCC 750.

offences. The respondent-State's repeated and circuitous reliance on age does nothing but defeat the purpose of remission and probation, despite the petitioners having met all statutory requirements for premature release.

19. Indeed, the petitioners' case is squarely covered by the ratio laid down by this Court in ***Shor v. State of Uttar Pradesh***[4], which has later been followed in ***Munna v. State of Uttar Pradesh***[5], the relevant extract of which is reproduced as under:

> *"A reading of the order dated 22.01.2018 shows that the Joint Secretary, Government of U.P. has failed to apply his mind to the conditions of Section 2 of the U.P. Act.* ***Merely repeating the fact that the crime is heinous and that release of such a person would send a negative message against the justice system in the society are factors de hors Section 2. Conduct in prison has not been referred to at all and the Senior Superintendent of Police and the District Magistrate confirming that the prisoner is not "incapacitated" from committing the crime is not tantamount to stating that he is likely to abstain from crime and lead a peaceable life if released from prison.*** *Also having regard to the long incarceration of 29 years (approx.) without remission, we do not wish to drive the petitioner to a further proceeding challenging the order dated 22.01.2018 when we find that the order has been passed mechanically and without application of mind to Section 2 of the U.P. Act."*
>
> *[emphasis supplied]*

4 2020 SCC OnLine SC 626, ¶ 6.

5 Order dated 21.08.2020 in WP (Crl) 4 of 2020.

20. It seems to us that the petitioners' action of kidnapping was nothing but a fanciful attempt to procure easy money, for which they have learnt a painful life lesson. Given their age, their case ought to be viewed through a prism of positivity. They retain the ability to re- integrate with society and can spend many years leading a peaceful, disciplined, and normal human life. Such a hopeful expectation is further concritised by their conduct in jail. It is revealed from the additional affidavit dated 05.09.2020 filed by Anita @ Varnika (wife of Vikky) that during the course of his incarceration in jail he has pursued as many as eight distance-learning courses, which include (i) passing his Intermediate Examination, (ii) learning computer hardware, (iii) obtaining a degree in Bachelor of Arts; as well as numerous certificates in (iv) food and nutrition, (v) human rights, (vi) environmental studies. Vikky's conduct shines as a bright light of hope and redemption for many other incarcerated prisoners. Compounded by their roots and familial obligations, we believe it is extremely unlikely that the petitioners would commit any act which could shatter or shame their familial dreams.

21. In the present case, considering how the petitioners have served nearly two decades of incarceration and have thus suffered the consequences of their actions; a balance between individual and societal welfare can be struck by granting the petitioners conditional

premature release, subject to their continuing good conduct. This would both ensure that liberty of the petitioners is not curtailed, nor that there is any increased threat to society. Suffice to say that this order is not irreversible and can always be recalled in the event of any future misconduct or breach by the petitioners.

CONCLUSION

22. For the reasons stated above, the Special Leave Petitions are disposed of with a direction that the petitioners be released on probation in terms of Section 2 of the UP Prisoners Release on Probation Act, 1938 within a period of two weeks. The respondent- State shall be at liberty to impose conditions as it may deem fit to balance public safety with individual liberty.

…….. J.
(N.V. RAMANA)

…… J.
(SURYA KANT)

……...J.
(HRISHIKESH ROY)

NEW DELHI
DATED : 30.09.2020