

CASE NO.:  
Appeal (crl.) 641-652 of 2003

PETITIONER:  
ARVIND YADAV

RESPONDENT:  
RAMESH KUMAR AND ORS.

DATE OF JUDGMENT: 28/04/2003

BENCH:  
Y.K. SABHARWAL & H.K. SEMA

JUDGMENT:  
JUDGMENT

2003 (3) SCR 1005

The Judgment of the Court was delivered by Y.K. SABHARWAL, J. Leave granted.

By the impugned common judgment, the High Court allowed number of Letter Patent Appeals and directed the authorities to release all the appellants, who were before the Division Bench, from prison within a period of 15 days. In criminal appeal arising out of SLP (Crl.) No. 3759/02, the judgment of the High Court directing release of Ramesh Kumar who was found guilty of offence under Section 302 IPC for murder of deceased Jitendra, has been challenged by his brother-Arvind Yadav on permission granted to him to file the Special Leave Petition. The State has also filed appeal challenging the direction of the High Court for release of Ramesh Kumar (Crl. A. arising out of SLP (Crl.) No. 4397/02. The directions of High Court to release other convicts are subject matter of challenge in connected appeals.

The crime was committed in the year 1994. The Sessions Court, by judgment and order dated 26th August, 1997 convicted Ramesh Kumar for offence under Section 302 IPC. The appeal filed by Ramesh Kumar challenging his conviction is pending before the High Court. Release from prison has been sought by Ramesh Kumar under Madhya Pradesh Prisoners' Release on Probation Act, 1954 and the Rules framed thereunder. Under the Act, release on licence is not for a limited period and is for entire duration of the sentence or until the licence to release is revoked. The Probation Board under the Act and the Rules did not recommend the release of the convict. The orders of the Probation Board dated 10th April, 2001 and affirmed by the State Government on 25th April, 2001 were challenged by the convict in the High Court in Writ Petition No. 4532/01. The writ petition was dismissed by a learned Single Judge holding that the Board had taken note of factual scenario and had observed that the convict along with others had preplanned murder of the deceased and committed the murder in most cruel manner by lethal weapons and that the manner in which the murder is committed comes within the realm of 'antecedents'. It was held that the order passed by the Probation Board was just and proper and did not call for interference and accordingly the writ petition was dismissed.

The Division Bench in the judgment under appeal allowing the Letter Patents Appeals has observed that the opinion to release or not is to be based on consideration of all the aspects of convict's antecedents preceding his entry into prison including antecedents prior to the crime; circumstances of the case; conduct subsequent to crime and in prison and no single aspect by itself would be decisive nor can it be ignored and the total picture is relevant. The Division Bench has also observed that for formation of opinion, it is also to be considered whether the convict would abstain from the crime, lead peaceful life if released on probation and not repeat the offence and revert back to the life of criminality and has no potentiality to commit crime. The other aspects that can be considered are age, his

social and economic conditions, the relationship with the family of the victim etc. and on consideration of other similar factors, opinion is required to be formed whether the convict is entitled to premature release on licence under the provisions of the Act or not. Having reached the aforesaid conclusions, the learned Division Bench noticed that in all cases, Superintendent of Police, District Magistrate and Probation Officer had recommended the cases of petitioners for release on licence and in cases noticed in para 10 of the impugned judgment, the non-official member of the Board had recommended the release of convicts on probation and in none of the cases the relation of the victims had objected to their releases on probation and that there was no evidence suggesting extreme brutality in the commission of crime. It would be useful to reproduce the reasons that prevailed with the Division Bench in directing the release of all the appellants who had filed letters patent appeal, as contained in para 10 of the impugned judgment which reads as under:

"Having come to the aforesaid conclusion, we advert to these appeals. At the cost of repletion, the offences against prisoners are under Sections 302/307/394B/498A/325 etc. Indian Penal Code. They are lodged in jail, serving their respective sentences. They are qualified for applying for release on licence under the Probation Act 1954. In all the cases the Superintendent of Police, District Magistrate and Probation Officers have recommended the cases of petitioners/ appellants for release on licence. In Letters Patent Appeal No. 255 of 2001 (Anil Kumar v. State of M.P.) L.P.A. No. 284 of 2001 (Ram Raj v. State of M.P.) L.P.A. 304 of 2002 (Manohar v. State of M.P.) L.P.A. No. 6 of 2002 (Ramesh Kumar v. State of M.P.) L.P.A. No. 12 of 2002 (Manohar and Other v. State of M.P.) L.P.A. No. 59 of 2002 Hari alias (Harish Chand v. State of M.P.) L.P.A. No. 122 of 2002 (Cheese Lal v. State of M.P.) L.P.A. No. 128 of 2002 (Raj Kumar v. State of M.P.) and L.P.A. No. 137 of 2002 (Rajesh and Ors. v. State of M.P.) the non-official member has also recommended their release on probation. In none of the cases, the relations of victims have objected their release on probation. In none of the cases, the relations of victims have objected their release on probation. Rather, in some of the cases, namely, L.P.A. No. 224 of 2001 (Shambhu Prasad alias Choola v. State of M.P.) Smt. Sonia (wife of deceased) Shri Ramanuj (son of deceased) and Shri Brajwasi (brother of deceased) speak for his release on probation and Bhagwandin, co-accused has since been released on probation by the State Government. Similarly Shyamlal co-accused in L.P.A. No. 255 of 2001 (Anil Kumar v. State of M.P.) because of whom the quarrel started has also been released on probation. In L.P.A. No. 237 of 2001 (Makhhan v. State of M.P.) son of deceased has not objected to the release of prisoner on probation by furnishing document executed in presence of Sarpanch, Gram Panchayat Batori. In all these cases, there is no evidence of involvement of any of the accused in any other crime or of leading life of criminality prior to the commission of the crime involved in these appeals. There is no evidence suggesting extreme brutality commission of the crimes which have been committed in routine manner, nor there is evidence of bad antecedents after commission and lodgment in prison. There is no whisper from any person, relation or witness suggesting or indicating repetition of crime by the prisoner, causing of violence, propensity to commit breach of peace, nor the abnormality of crime is such which is likely to affect the society."

The High Court did not examine the facts of each case. By a common judgment, without examining facts of individual case, the High Court held that the District Magistrate, Superintendent of Police and Panchayat had recommended the release on probation but the Board, without recording any reason, did not accept those reports and the State Government simply accepted the recommendations of the Board and that the allegation of non-applicability of mind and arbitrariness was clear from the order of the State accepting the recommendations of the Board. Further, observing that the remand to the State Government for fresh consideration would delay the matters and cause further injustice to the convicts, the High Court, instead of remanding the cases to the State Government, directed the release of each of the appellant in the Letter Patent Appeals by a single

omnibus order.

We are unable to sustain the impugned judgment of the High Court. Each of the convict before the High Court had been found guilty of commission of serious crime. The impugned judgment notices that offences against the convicts were under Sections 302/307/394/304B/498A/325 of the Indian Penal Code and the convicts were serving their respective sentences in jail. In all the cases before the High Court, the recommendations of the Probation Board that had been accepted by the State Government were against the release of the convicts. If there was non-application of mind to the relevant considerations, the appropriate course was to remand the case for fresh decisions by the authorities except, if in a given exceptional case, for strong cogent reasons, the High Court may have examined itself the relevant facts and quashed the order declining the release. The High Court instead of adopting this course, has made a general observation that the remand to State Government for fresh consideration is bound to delay the matter causing further injustice to the convicts.

Apart from the fact that there are factual infirmities in the impugned judgment, it is also to be borne in mind that the victim and the family of the victim who have suffered at the hands of the convict have also some rights. The convicts have no indefensible right to be released. The right is only to be considered for release on licence in terms of the Act and the Rules. The Probation Board and the State Government are required to take into consideration the relevant factors before deciding or declining to release a convict. In the present case, the Probation Board had not recommended the release. The State Government had confirmed the order of the Board. The writ petition had failed before the learned Single Judge. The facts of individual cases were not considered by the Division Bench. In the case of Ramesh Kumar, the stand of the State Government was that he along with six others had formed an unlawful assembly and murdered Jitendra son of Shashi Mohan Yadav on 20th September, 1994 in Hoshangabad, Madhya Pradesh causing 17 injuries on him with swords, knivas and gupti and that Ramesh Kumar was the accused in 14 cases filed under various sections of the Indian Penal Code. The manner of Commission of crime is a relevant consideration. In a given case, the manner of commission of offence may be so brutal that it by itself may be good sole ground to decline the licence to release. The Rules provide for detailed procedure for consideration of application for release. Once rejected, again application of release can be made after two years. The Board comprises of Home Secretary of State Government or any other empowered officer, I.G. of Prisons or Deputy I.G. and another member.

The affidavit filed by the State Government in case of Ramesh Kumar also states that he has been released under the impugned order of the High Court after serving less than 8 years and he is already intimidating people after his release from prison. The case of the appellant is that no notice was issued to him or any other member of the family and, therefore, there was no occasion for the family to object to the release of the convict. Therefore, the High Court also committed factual error in observing that notice had been issued to the family members of the victims. The facts are required to be examined in every case individually which was not done. In a given case, the mere fact that the family members of the victim were not objecting or were supporting release may not be sufficient, by itself, so as to direct the release of the convict on that basis alone. In yet another case, by itself, it may be a very strong factor. The fact that a co-accused has been released again, by itself, may not be decisive. In nutshell, the facts and circumstances of each case have to be taken into consideration individually. Likewise, the mere fact that one of the members of the Board or the District Magistrate or the Superintendent of Police or the Panchayat has recommended release as by itself of no consequence. The recommendation is of the Board and not of individual member and the decision is to be taken having regard to all the relevant factors. The State Government and the Board have to take into consideration not only the conduct of the convict but also his criminal antecedents; the effect of such release on

the victims or their family; the propensity of the convict to commit further criminal act and other similar factors which may be considered relevant. The order of the State Government cannot be interfered with only because another view is possible.

Having regard to the aforesaid, we are unable to sustain the impugned judgment of the High Court. It is accordingly set aside.

We direct the State Government to decide afresh the question of release of the convicts in accordance with law without being influenced by any observation on merits made by the High Court or this Court. The convicts released pursuant to the impugned judgment are directed to surrender forthwith failing which, immediate steps shall be taken to take them into custody. The State Government shall consider afresh the cases of the convicts for release only when they are in custody undergoing the remaining part of sentence. On surrender/arrest of the convicts, the State Government shall decide their respective case within two months.

The appeal are accordingly allowed.