

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.R 4151 of 2022

Anirudha Halder & Anr.
Vs.
The State of West Bengal

For the Petitioners: Mr. Sudipto Moitra, Sr. Adv.,
Mr. Kartik Kumar Ray, Adv.

For the State: Mr. Ranabir Roy Chowdhury, Adv.
Mr. Sandip Chakrabarty, Adv.

Heard on: 11 January, 2023.

Judgment on: 29 March, 2023.

BIBEK CHAUDHURI, J. :-

1. This is an application under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India filed by two of the life convicts for their premature release under Section 432 read with Section 433 of the Code of Criminal Procedure.

2. In connection with Kultali P.S Case No.4(1) of 1985 37 persons were placed on trial for committing offence punishable under Sections 147/148/324/302 of the IPC. The said case was finally registered as Session Trial No.3(5) of 1993. On conclusion of trial, the learned Additional Sessions Judge, Alipore by his judgment acquitted 58 persons under Section 232 of the Code of Criminal Procedure and remaining 39 persons including the petitioners were placed on trial. The learned

Sessions Judge found six persons including the present petitioners guilty for committing offence punishable under Sections 302/149/323/148/149 of the IPC and acquitted remaining 33 accused persons. The said six convicts preferred an appeal being CRA No.4 of 1998 before this Court. State of West Bengal also preferred an appeal against the judgment and order of acquittal being Govt. Appeal No.17 of 1999 both the appeals were heard together and disposed by a common judgment dated 28th July, 2005. This Court found five persons guilty of offence including the petitioners and other persons were acquitted and appeal against them stood dismissed. It is contended on behalf of the petitioners that they are in custody since 2005 at present the petitioner No.1 is aged about 74 years and the petitioner No.2 is aged about 84 years. The said two persons have no criminal antecedents excepting the present case. They were implicated in the case as they were the active supporters of a particular political party. It is also stated on behalf of the petitioners that due to the old age the petitioner No.1 is suffering from various ailments like Asthama, COPD etc. He was a member of the Panchyat Samity at Kultali at the relevant point of time. Petitioner No.2 was the headmaster of a local High School and obtained Post Graduate Degree in History from the Calcutta University. While in custody, the petitioner No.2 carried on his academic activities from the correctional home and obtained Master Degree in English from the Calcutta University. He was also entrusted to teach other convicts in the correctional home. It is further stated by the petitioners that out of 11 convicts, the authorities concerned, already

released eight of them by invoking the jurisdiction under Section 432 read with Section 433 of the Code of Criminal Procedure and the corresponding provisions under the West Bengal Jail Court. Only the petitioners are languishing in jail for about 18 years.

3. The petitioners made representations before the authorities for premature release on 8th September, 2022. Previously their prayer was favourably considered by the concerned Board, but they could not be released by the appropriate government as the government did not receive the opinion of the Presiding Judge of the court before or by which the conviction was had or confirmed.

4. It is submitted by Mr. Moitra, learned Senior Counsel on behalf of the petitioners that the petitioners are life convicts and they are in jail custody for more than 17 years.

5. In **Dharam Pal & Ors vs. State of U.P & Ors** reported in **(2013) 9 SCC 798**, the Supreme Court directed the life convict to be released since he had completed 14 years of imprisonment. The superintendent of the concern jail was directed to release the person forthwith.

6. Section 432(2) of the Code of Criminal Procedure provides that whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the Presiding Judge of the Court before or by which the conviction was held or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion, a certified copy of

the record of the trial or of such record thereof as exists. Thus, a judicial scrutiny is contemplated in the provisions contained in Section 432(2) of the Code and sufficient reasons are required to be provided so that the appropriate government may not take any arbitrary decision with regard to suspension or remission of sentence. I have already recorded that the prayer of the petitioners for premature release was previously considered favourably by the State Sentence Review Board of the Government of West Bengal but they should not be released by the appropriate government as the government did not receive the opinion of the Presiding Judge of the court before or by which the conviction was held or confirmed. It is urged by Mr. Moitra, learned Senior Counsel on behalf of the petitioners that recently this Court considered the issue in WPA 17248 of 2021. In the aforesaid case State Sentence Review Board refused a prayer for remission of sentence and premature release of a person who was suffering sentence for about 17 years. A Coordinate Bench of this Court was pleased to hold:-

“36. In the present case, it is also to be noted, the SSRB was not composed of the exact officers contemplated in the guidelines of the NHRC, which is cited by the State itself. Whereas a District and Session Judge nominated by the High Court is absent, no reference was even made to a court within the contemplation of Section 432(2) of the Cr.P.C., although the Division Bench, while remanding the matter, specifically directed Section 432 to be considered in its entirety and not sans sub-section (2) thereof.”

7. Thus, the constitutional court held that there are overwhelming materials on record unerringly indicating towards remission of the petitioner, there is no justifiable cause to violate the petitioner's right of equality as enshrined in Article 14 of the Constitution of India in discriminating against the petitioner to refuse such remission. Since the respondents, including the SSRB (which was not validly constituted as per the NHRC guidelines), shirked their responsibility to adhere to the law and relevant criteria, further remand would unnecessarily rob the petitioner of his personal liberty for a further inordinate period, for which this Court cannot be pardoned by its own judicial conscience.

8. In the instant case SSRB recommended premature release of the petitioners. Further they could not be released in view of the fact that SSRB did not have the opinion of sentencing or confirming court under Section 432(2) of the Code. It is already observed that Section 342(2) prescribes for opinion of the Presiding Judge of the court before or by which the conviction was held or confirmed. In the instant case the opinion of the Presiding Judge is not available. Sentence of the petitioners was confirmed by the High Court at Calcutta.

9. This Court has carefully gone through the judgment passed by this Court in CRA 4 of 1998 with Government Appeal No.17 of 1999 disposed of by a common judgment of 28th July, 2005.

10. On perusal of the judgment passed by this Court in appeal it is found that the entire case was based on circumstantial evidence. The petitioners are presently aged about 73 years and 84 years respectively.

There is no reason in favour of petitioners' prayer for refusal of premature release. At the fag end of life they will get mental peace if they are allowed to lead last few years of their life with their family members.

11. In view of such circumstances, the instant revision is allowed.
12. A copy of this order be sent immediately to the Principal Secretary Department of Home Affairs, Government of West Bengal.
13. The Principal Secretary, Home Affairs is requested to convene a meeting of SSRB within a fortnight from the date of communication of this order and pass formal order of release of the present petitioners.
14. The instant revision is, thus, disposed of.

(Bibek Chaudhuri, J.)