

(1997) 03 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2537 of 1995

Dhan Singh

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 31-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 401
Madhya Pradesh Prisoners Release on Probation Act, 1954 — Section 2
Madhya Pradesh Prisoners Release on Probation Rules, 1964 — Rule 3, 4, 6, 6(2)
Penal Code, 1860 (IPC) — Section 149, 302, 325

Citation : (1998) CriLJ 1388

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : D.D. Bhargava, for the Appellant; V.K. Shukla, for the Respondent

Judgement

R.S. Garg, J.—In W.P. No. 2537/1995 (Dhansingh v. State of M.P. and Ors.), petitioner Dhansingh was convicted under Sections 302/149 IPC, 325/149 IPC, and 323/149 IPC and was sentenced to undergo R.I. for life. R. I. for 3 years and R.I. for six months respectively, the sentences to run concurrently in Sessions Trial No. 105/84 by the Third Additional Sessions Judge, Damoh on 25-9-86. On completion of more than five years, the petitioner submitted his application for release on probation, duly signed by his guardian. According to the petitioner, the Probation Officer, Superintendent of Police Damoh and the District Magistrate, Damoh recommended his case for release but the probation Board rejected his case by its order dated 17-4-95. By the petition, the petitioner submits that his case was wrongly rejected by the Board and the extrenuous material is taken into consideration. The respondents in their return have contended that after considering the antecedents and the totality of the circumstances, the Board was of the opinion that the petitioner was not entitled to be released on licence, rightly rejected the application of the petitioner.

2. In W. P. 426 of 1997 (Ashok Kumar Chourasia), petitioner has been convicted

u/s 302/34 IPC and has been sentenced to undergo R. I. for life in Sessions Trial Nos. 57/82, 82/82 and 83/82 on 12-1-84 by First Additional Sessions Judge, Chhatarpur. On completion of more than five years, he filled up his probation form duly signed by his guardian. His case was recommended by the Probation Officer, S. P. and District Magistrate, but the Probation Board illegally rejected his case. According to him, he had filed M.P. No. 2519/92 challenging the earlier order of the Board, wherein the order of the State Government was quashed and it was directed that his case be reconsidered within a period of six months and if the case remains undecided, he be released on bail. Petitioner was thereafter released on bail on 17-9-93. The case of the petitioner was meanwhile rejected on 5-7-93, therefore, he had filed M.P. No. 137/94. By order dated 9-12-94 in M.P. No. 137/94 this Court directed that the State Government shall dispose of the petitioner's case in accordance with law within a period of six months from the date of receipt of this order. The petitioner submits that his case has been rejected by the Probation Board but the State has not confirmed the order of the Probation Board, therefore, the respondents be directed to decide the case of the petitioner and they be also directed not to take the petitioner in custody. In the present case no return has been filed.

It does not appear from the records that the petitioner's case has been disposed of by the probation Board or the State Government. As the order dated 9-12-94 takes full care of the petitioner's case, no further orders in this petition are needed. This W.P. 426/97 is disposed of. If the petitioner's case is rejected then he shall be free to challenge the order passed by the appropriate authority but before doing so," he shall surrender in accordance with the order under which he has been released.

3. In W.P. No. 4928/96 (Sanjay Gupta) petitioner was convicted u/s 302 IPC and was sentenced to undergo R. I. for life by Third Additional Sessions Judge, Chhindwara in Sessions Trial No. 111/89 on 23/190. According to him on completion of more than five years, he filled up his probation form duly signed by his guardian. The Probation Officer, S. P. and District Magistrate recommended his case for release. According to the petitioner, the report of the probation officer clearly stated that the opposite party or the rivals were not residing in the locality of Junnardeo where the incident took place and as the prosecution witnesses Rajendra and Ramesh Rai had no objection to release on probation he could be released. The Probation Board on 26-8-96 rejected the petitioner's case. The petitioner submits that the order dated 26-8-96 is per se illegal and deserves to be quashed. The respondents in their return have submitted that the authorities did make recommendations in favour of the petitioner but the probation Board after considering the case of the petitioner was of the opinion that the petitioner does not deserve to be released on bail. According to the respondents, they had taken into consideration, the antecedents of the petitioner and the manner in which the offence was committed. According to them, the order does not suffer with any infirmity.

4. In W.P. No. 3410/96 (Shiv Raj, Asha Ram and Chapuwa) petitioners were convicted u/s 302/34 IPC and were sentenced to R. I. for life in Sessions Trial No. 68/83. On completion of more than five years, they filled up their probation forms duly signed by their guardians. The probation officer, the Superintendent of Police and the District Magistrate recommended their case for release but the State Government rejected the probation case on the ground that the guardian was improper. The petitioners filed W.P. No. 2980/95 challenging the order passed by the State Government. The said petition was allowed by this Court on 31-1-95 and the petitioners were directed to name fresh guardian and further directed the authorities to consider the petitioners case within a period of six months. The petitioners case was rejected on 29-3-96. The respondents have not filed their return but have shown me the copy of the order passed by the Board. According to learned Govt. Advocate, the Board was justified in rejecting the case of the petitioners on consideration of the nature of the crime and the manner in which it was committed and the order is also justified as the Board has taken into consideration the antecedents of the petitioners.

5. In W.P. No. 104 of 1997 (Shaikh Ghunna) petitioner was convicted u/s 302 IPC and was sentenced to undergo R. I. for life in Sessions Trial No. 160/88 by Sessions Judge, Chhatarpur on 30-4-88 on completion of more than five years in jail he filed his application for release on probation which was duly signed by the guardian. According to the petitioner, the Probation Officer, the Supdt. Police and the District Magistrate recommended his case for release but the Board illegally rejected his case and the State Government confirmed the order passed by the Board. According to the petitioner, the Board was not justified in rejecting his case. No return has been filed in the case but the learned Govt. Advocate for the State has inter alia contended that the Board has taken into consideration the antecedents of the accused the manner in which the offence was committed, the nature of the offence and the Board has also taken into consideration that the offence was pre-planned. According to the learned Govt. Advocate, the case was rightly rejected.

6. In W.P. No. 4601/96 (Phoolchand) petitioner was convicted under Sections 302/149 IPC, 450/ 149 and 148 IPC by Additional Sessions Judge Sagar and was sentenced to undergo R. I. for life, live years and six months respectively. The sentences were to run concurrently in Sessions Trial No. 103/78 decided on 26-5-84. The petitioner on completion of more than five years had Tiled the application for release on probation which was duly signed by his guardian. On the earlier occasion petitioner's case for release was rejected by the Board/State Government, therefore, he had filed M.P. No. 918/92 before this Court. The said petition was allowed by the judgment, dated 12-01-93 and the State Government was directed to reconsider the probation case of the petitioner and was pleased to direct that if within 4 months the case was not decided, the petitioner would be released on bail. As the case was not decided within the period of four months, the petitioner was released. The petitioner's case was again rejected by the State Govt. on the ground that his guardian was

incompetent, therefore he filed another petition as M.P. No. 1944/94. This Court directed that the petitioner should give the name of proper guardian, the petitioner accordingly did it. The case of the petitioner was again considered by the State and was rejected by order dated 30-9-96. The petitioner submits that the order rejecting his case was patently illegal and deserves to be quashed. The respondents in their return have contended that the petitioner has not surrendered, to undergo the remaining part of the sentence as per the direction of this Court, therefore, the petitioner must surrender first and only then should approach this Court for the redressal of his grievances. It is contended by them that the probation Board was absolutely justified in rejecting the case of the petitioner as in their " opinion it was not a fit case for release. According to the return, the petitioner and many others committed brutal murder of the deceased, therefore the Board was entitled to take into consideration the antecedents of the petitioner and the manner in which the offence was committed.

7. In W.P. No. 4780/96 (Harishankar) petitioner was convicted u/s 302 IPC and was sentenced to undergo R. I. for life by Additional Sessions Judge Tikamgarh somewhere in the year 1984. According to the petitioner on completion of five years, he had filled up his probation form duly signed by his guardian. According to him the Probation Officer, the Supdt. Police and the District Magistrate recommended his case for release. The probation Board, according to the petitioner illegally rejected the case of the petitioner contrary to the provisions of law. The return has not been filed in this case but the learned Govt. Advocate for the State has supported the order passed by the Board inter alia contending that the antecedents of the petitioner were considered, the manner in which the offence was committed was also taken into account and the Board rightly rejected the recommendations made to it. The learned counsel submits that the Board was absolutely justified in rejecting the case and the State Government did not act illegally in accepting the recommendations of the Board. During the course of the argument various submissions were made but the argument basically was in relation to the provisions of Prisoners Release on Probation Act.

8. Section 2 of M.P Prisoners" Release on Probation Act, 1954 (Act No. 16 of 1954) reads as under :-

2. Power of Government to release by licence on conditions imposed by it-- Notwithstanding anything contained. In Section 401 of the Code of Criminal Procedure, 1898, where a person is confined in a prison under a sentence of imprisonment, and it appears to the 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 released from prison, the Government may, by licence, permit him to be nil cased on condition that lie be placed under the supervision or authority officer Govt. Officer or of a person professing the same religion as the prisoner of such Institution or Society as may be recognised by the Government for the purpose, provided such other person, institution or society is willing to lake charge of him.

Explanation - The expression "Sentence of Imprisonment" in this Section shall include imprisonment in default of payment; of fine and imprisonment for failure to furnish security under Chapter 8 of the Code of Criminal Procedure."

9. Rule 4 of M.P. Prisoners' Release on Probation Rules, 1964 provides that save the prisoners specified in Rule 3 any other prisoner who has served one-third of His sentence of imprisonment or a total period of five years without remission, whichever is less, may be released by the Government on licence. Rule 3 of the rules provides the class/classes of the prisoners who cannot be released under the provisions of the Act. Rule 4 provides the eligibility for the release while Rule 6 provides the procedure for release of a prisoner eligible for release. According to Rule 6 any prisoners eligible for release under the rules may make an application in Form A to the Superintendent. On receipt of the application, the application shall be examined by the Superintendent to see if the prisoner and his proposed guardian have duly filled the application and if the application is in order, the Superintendent shall entertain it and cause it to be entered in a register maintained in Form-B, if the prisoner is ineligible under the Rule 3 the Superintendent shall reject the application and inform the prisoner of the order. The properly filled application shall be forwarded by him to the District Magistrate of the District in which the prisoner was convicted. On receipt of an application under sub-rule (2) of Rule 6, the District Magistrate shall immediately consult the Superintendent of Police and the Probation Officers if there is one. On receipt of the reports from the probation officer, If any, and the Supdt. of Police, he shall fill in (he entries meant to be filled in by him and shall forward the same to the Inspector-General of Prisons. The application received from the District, by the Inspector General prisons, shall be considered by a Board consisting of the Home Secretary to the Government of Madhya Pradesh or any other officer empowered, in this behalf by the Government, the Inspector-General of prisons or "he Deputy Inspector-General of Prisons, Madhya, Pradesh and a non-official member to be appointed by the Government. After considering the case, the Board shall submit its recommendations to the State Government, who on receipt of recommendation of the Board, pass such orders as it may deem proper. The prisoner, whose application has been rejected by the Government may again make an application to the Superintendent after a period of two years which shall again be considered in accordance with the procedure prescribed under the rules.

10. Section 2 of the Act provides that a person who is eligible for release under the provisions of the Act and Rules framed thereunder and when it appears to the 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 Govt. 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 institution or society as may be recognised by the Government for the purpose, provided such other person, institution or society is willing to take charge of him.

11. Shri D. D. Bhargav, learned counsel for the petitioner placing reliance upon Division Bench Judgment of this Court in the matter of Rambharose v. State of M.P. and Ors. M.P. No. 225/89, decided on 27-4-89 contended that the word "antecedents" would not include the nature of the offence committed by the prisoner, for considering his conduct prior to the commission of the offence, for which he is undergoing the sentence. In my respectful submission the judgment cannot be relied upon in view of the Full Bench Judgment of this Court in Gangacharan Vs. State of M.P. and Others, . The learned counsel for the petitioner also placed reliance on a judgment of this Court in the matter of Barati v. State of M.P. and Ors. W.P. No. 2646/95, decided on 7-8-95,. The facts of the said case were totally different. In the said case, the Probation Board was of the opinion that as the complainant party was opposing the application for release of the petitioner on licence, petitioner's case was liable to be rejected. This Court held that opposition by the affected party alone was not sufficient to reject the case. This Court also observed that the Board was required to consider the report of the Superintendent of Police, the District Magistrate, the Probation Officer and also of the Jail Authorities which all were in favour of the convict.

12. Reliance was also placed on a single Bench judgment of this Court delivered in the matter of Govind Ram v. State of M.P. and Ors. W.P. No. 4743/96, decided on 20-1-97, the judgment reads that as neither the Probation Board nor the State Government had recorded any reasons for not considering the recommendations, the order passed by the Board and the State Government was liable to be quashed.

13. Shri Bhargav, learned counsel for the petitioner placing reliance on the judgment of this Court delivered in the matter of Ramjiya v. The State of M.P. and Ors., M.P. No. 1035/1986, decided on 25-4-89, contended that if the order of the Board is patently illegal or contrary to law then this Court can certainly quash the order and direct the Board to reconsider the matter afresh. He submits that a prisoner is precluded from making a second application with a simple prayer for reconsideration of his case without anything else within a period of two years from the date of earlier rejection. A Division Bench of this Court doubting the correctness of the judgment of Full Bench in Lalji v. State of M.P. 1988 MPLJ 127 : AIR 1988 MP 82 referred the matter to the larger Bench with the following question :-

Whether this Court, on the Writ side, can make any direction to the State Government and concerned authorities for reconsideration of any application for Release on Probation made under M.P. Prisoners' release on probation Act, 1954 when the Court finds that the application was illegally rejected and whether the decision in Lalji's case (supra) lays down the law correctly ?

The matter was considered by Bench of five Judges. The larger Bench held that High Court can certainly intervene by exercising its jurisdiction under Article 226 of the Constitution and issue a suitable writ and direction to the Government, its officers or public authority concerned, to compel the performance in a proper and

lawful manner. The Bench also observed that the prisoner is only precluded from applying a second time for reconsideration before the Board. In other words, what is barred under Clause (c) of Rule 3 read with the explanation is that the prisoner is precluded from making a second application with a simpliciter prayer for reconsideration of his case without anything further. The Bench observed that where the order itself rejecting the application for release on licence, is attacked or challenged in a petition under Article 226 of the Constitution on the ground that it is arbitrary, capricious, mala fide based on irrelevant considerations ignoring the relevant considerations and materials or otherwise bad in law in any manner, then in that event, the High Court certainly "has the jurisdiction to go into the question and if it finds, the order to be bad on any grounds, it may quash the same and issue necessary writ or direction to the State Government and its officers concerned to decide the case afresh. The High Court observed that in such cases there is no question of applying the second time because after the first order itself is quashed, it is the first application which is revived and is required to be decided afresh, according to writ or direction given by the High Court.

14. From the observation made in this case, it is clear that where the order is attacked on the ground that it is arbitrary, capricious, mala fide based on irrelevant considerations ignoring the relevant considerations and materials or otherwise bad in law in any manner, then in that event, the High Court certainly has the jurisdiction to go into the question. Therefore, while considering an order rejecting the case of the petitioners released on probation this Court must see whether the order is arbitrary, capricious, mala fide based on irrelevant considerations, ignores the relevant, considerations and materials and/or is otherwise bad in law in any manner.

15. In the matter of Gangacharan Vs. State of M.P. and Others, , a three-Judges Bench of this Court appreciating the word "antecedents" occurring in Section 2 observed that :-

There is no logic in restricting the sweep of the word "antecedents" to the period prior to the commission of crime. A person who commits a crime may be at large for a considerable period or he might have been in judicial custody for a considerable period. It may be that conviction takes place several years after the crime. Legislative intention could not have been to ignore as irrelevant the conduct of the prisoner between the date of the crime and the date of his entry into prison. So also, the nature and circumstances of the crime cannot be irrelevant in deciding whether a prisoner is to be released on licence. Background setting and modus operandi of crimes could be different. A crime can be carefully premeditated and executed or it can be committed on the spur of the "moment. A crime can be committed for strong motive or for insignificant or no motive. A crime may be gruesome or otherwise. It may be committed for monetary gain or for no gain. The circumstances of the crime will be helpful in throwing a flood of light on the personality of the criminal. It could not be the legislative intention to

ignore these valuable clues to his personality. The decision of the Government to release or not is dependent on its opinion whether the prisoner is likely to abstain from crime and lead a peaceable life. The opinion is to be based on the consideration of his antecedents and his conduct in prison. All aspects of his antecedents preceding his entry into prison-which will include antecedents prior to the crime, the circumstances of the case-conduct subsequent to crime and in prison have to be taken into consideration in the process of formation of opinion on the crucial question whether he is likely to abstain from crime and lead a peaceable life. No aspect by itself may be decisive. No aspect is to be ignored. The total picture and the colours which go to make up the picture are relevant. This is implied in the words used in Section 2 as well as the Hindi text of the provision.

16. From the Judgment of Gangacharan Vs. State of M.P. and Others, , it is clear that the opinion of the appropriate Government must be based on the consideration of the antecedents and his conduct in prison. All aspects of his antecedents preceding his entry into prison-which would include antecedents prior to the crime, the circumstances of the case-conduct subsequent to crime and in prison have to be taken into consideration in the process of formation of opinion on the crucial question whether he is likely to abstain from crime and lead a peaceable life. The Full Bench was of the considered opinion that no aspect by itself may be decisive and no aspect is to be ignored. The total picture and the colours which go to make up the picture are relevant. The Full Bench was also of the opinion that the expression "antecedents" should not be confined either to the period prior to the commission of crime or to the period he has been in prison. Antecedents as understood by the Full Bench relate to the period prior to the commission of crime, the circumstances under which the crime was committed and the period subsequent to the commission of crime. The Board and the appropriate Government have to take decision considering the totality of the circumstances and on consideration of each and every aspect of the matter. The Full Bench further held that the State Government has to apply its own mind to the facts of each case. The State is not bound to accept the recommendations made by the District Magistrate without any independent application of mind. Each application has to be considered in accordance with the provisions of the Act and the Rules. as interpreted in the matter of Gangacharan (supra). In the Full Bench case, this Court was of the opinion that the orders did not show application of the mind. The Court was obliged to quash the orders with a direction to the State to decide the matter afresh.

17. The legal position emerging from the judgment of Ramjiya's case (supra) and Gangacharan Vs. State of M.P. and Others, can be summarized thus that the order rejecting the application for release on licence can be attacked or challenged in a petition under Article 226 of the Constitution on the ground that it is arbitrary, capricious, mala fide based on irrelevant considerations, ignores the relevant considerations and materials or is otherwise bad in law in any manner. From the order passed or the opinion recorded by the Board it must

appear that the Board has considered "his antecedents and his conduct in the prison." The order must also show that the Board apprised itself about the facts and has considered the three requirements of the law that is the antecedents or conduct of the prisoner prior to the crime, the circumstances of the case which may include the nature of the crime and the manner in which it was committed and his conduct subsequent to the crime and in prison. Authority must also consider each and every aspect of the matter in its true perspective, because no aspect by itself is decisive and no aspect can be ignored. The picture must be seen with the colours which go to make up the picture.

18. Relying upon a Division Bench judgment of this Court delivered in the matter of the State of M.P. v. Sandeep L.P.A. 49/96, decided/on 18-3-96, it was contended by the learned Govt. Advocate that the view taken by the Probation Board cannot be substituted by the views of this Court-. If the Board is of the opinion that the release is not proper then the Court should not interfere with such orders and the Court should refrain from making any interference in the order. In the matter of Sandeep (supra) the Board had considered the nature of offence, letter of the father of the deceased which clearly stated that convict was a dangerous person and if he was released on probation, he would prove to be a danger to the life of the complainant and his wife, that the convict had obtained false medical certificate for his release on probation. The Board considered the totality of the circumstances and formed the opinion that release would not be justifiable decision. Each case has to be considered on its own merits, no hard and fast rule can be made for release of the prisoner but as observed, certain principles laid down by this Court in the matter of Ramjiya's case (supra) and Gangacharan Vs. State of M.P. and Others, have to be taken into consideration. The Division Bench in the matter of Sandeep (supra) was of the opinion that the Board was justified in rejecting the application for release on probation as it had taken full aspect in the matter of the consideration. If the order/opinion meets the requirement of consideration as laid down by this Court in its various judgments then it would not be proper for this Court to interfere with the order passed/opinion recorded by the Board but if the order does not prove its correctness on its examination on the legal touchstone then this Court would be justified in interfering with the order. This view of mine is supported by the observations made by the Full Bench in the matter of Gangacharan (supra).

19. Placing reliance on a Single Bench Judgment of this Court in the matter of Suresh Kumar v. State of M.P. and Ors. M.P. No. 1780/94, it was contended that this Court should not make interference in the orders. In the matter of Suresh Kumar (supra) this Court was of the opinion that, as the Probation Board had considered all aspects prior to the commission of the crime, circumstances in which the offence was committed and the period subsequent to the commission of the crime and conduct after the commission of the crime and also his conduct in jail, the Court was not required to interfere with the order.

20. In view of the law laid down by this Court, each case will have to be

examined on its own merits and the order will have to be scrutinised as to whether the Board has observed law laid down by this Court in the matter of Gangacharan Vs. State of M.P. and Others, , because if the order does not meet the standard of consideration then this Court may interfere with the order and if the Court come to the conclusion that the Board has observed the mandatory requirement of law then this Court would not be permitted to interfere with the order.

21. (Dhansingh v. State of M.P. and Ors. W.P. No. 2537/95, decided on 31-3-97).

The Order observed that on the date of the incident the accused with a pre-concerned and pre-planned motive caused an injury by an iron rod on the head which led to the death of the deceased, therefore, the convict was not entitled to be released on bail. The Board did find that the District Magistrate, the Probation Officer and Jail Superintendent did recommend the case for release but it was not a case for release. In my opinion, the order passed by the Board does not meet the requirement of law. It does not consider the antecedents prior to the commission of the offence and also does not consider the conduct of the prisoner during his detention in jail as under-trial prisoner and his conduct after the conviction. The order deserves to and is accordingly quashed. The Board is directed to reconsider the case of the petitioner afresh within a period of four months from today.

22. W.P. No. 4928/96 (Sanjay Gupta v. State of M.P. and Ors.).

The order passed by the Board does not meet the requirement of the consideration as it does not consider the antecedents of the convict prior to the date of the offence, the conduct of the prisoner as under-trial and also does not consider his conduct after his conviction. The order deserves to and is accordingly quashed. The Board is directed to reconsider the matter within four months from today.

23. W.P. No. 3410/96 (Shiv Raj v. State M.P. and Ors.).

The order passed by the Board deserves to be quashed as the Board has not considered the conduct of each of the prisoners prior to the date of the offence, respondents also did not consider the conduct of each of the prisoner during the course of the trial and failed to consider the conduct of each of the petitioner after their conviction. The order even does not show about the recommendations made by the District Magistrate, the Probation Officer, the Superintendent of Police and the Jail Superintendent. The order deserves to and is accordingly quashed. The Board is directed to reconsider the applications Of the petitioners in accordance with law within a period of four months from today.

24. W.P. No. 104/97 (Shaikha Chunna v. State of M.P. and Ors.).

The order passed by the Board records that the District Magistrate, the Jail Superintendent and the Probation Officer recommended the case for release. The Board did not consider the antecedents of the prisoner prior to the date of the

offence, the conduct of the accused during the course of the trial and his conduct during the period of his lodgment in jail as a convict. The order merely suggests that the Board was influenced by the manner in which the offence was committed. The order deserves to and is accordingly quashed. Board must reconsider the case within a period of four months.

25. W.P. No. 4601/96 (Phoolchand v. state of M.P.).

The Board has observed that the guardian proposed by the convict was not fit to keep effective control on the convict after his release, therefore, the case was worth rejection. It does not appear from the order of the Board that an opportunity was afforded to the convict for proposing another guardian. The Board also did not consider as to whether the convict was entitled to be released or not. The order is contrary to law. It deserves to and is accordingly quashed. The State is directed to provide an opportunity to the convict to provide another guardian. The convict be informed by the Jail Authorities within two months from today. If the convict provides the name of any other guardian then his case shall be reconsidered within a period of four months from the date of submission of the name of the guardian.

26. W.P. No. 4780/96 (Harishankar v. State of M.P. and Ors.).

The Board was influenced in recording its opinion by the manner in which the offence was committed, it failed to consider the antecedents and conduct of the accused prior to the date of the commission of the offence, the Board also failed to consider the conduct of the accused as under-trial prisoner and also failed to consider his conduct in jail as a convict. It is also to be seen that the District Magistrate, the Probation Officer and Jail Superintendent made the recommendations for release but the Board did not agree with the recommendations. As the order does not meet the requirement of law, it deserves to and is accordingly quashed. The Board shall reconsider the matter within a period of four months from today.

27. The orders passed by the Board show that in each of the case, the Board has observed that there was previous enmity between the accused and the deceased. The documents filed before this Court do not show that such material was placed before the Board. The Board must not mechanically reject the application filed by the culprits. When the law provides that the convict is entitled to be released after completion of particular sentence then the reformatory penology should not be sacrificed merely on the ground that some persons or the classes feeling that a convict should not be released and must suffer the consequence of his Act. The law legislated by the State must be given its full effect. It appears that in most of the cases, the Board is rejecting the applications merely observing that the crime was result of previous enmity. The words "previous enmity" does not mean that some oppositions or some disputes was alive between the parties. The enmity must be of such nature which compels the accused to commit the crime. The observation made by the Full Bench in the matter of Gangacharan Vs. State of

M.P. and Others, would be very useful to the Board if those are read in their true perspective. The Full Bench observed that:

A crime can be carefully premeditated and executed or it can be committed on the spur of the moment. A crime can be committed for strong motive or for insignificant or no motive. A crime may be gruesome or otherwise. It may be committed for monetary gain or for no gain. The circumstances of the crime will be helpful in throwing a flood of light on the personality of the criminal.

The decision of the Government to release or not is dependent on its opinion whether the prisoner is likely to abstain from crime and lead a peaceable life.

28. The Board is advised, not only to cite the judgments of this Court, but, to appreciate the law laid down by this Court, understand the true spirit of the judgment, and, decide the matters after appreciating the totality of the circumstances in their true perspective.

29. As a result of the discussion aforesaid, the petitions are disposed of in terms above.