

(2009) 02 SC CK 0173
In the Supreme Court Of India
Case No : Criminal Appeal No. 1289 of 2002

State of M.P.

APPELLANT

Vs

Abdul Kadir and Another

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304B, 307, 325, 394

Citation : AIR 2009 SC 1801 : (2009) AIRSCW 1390 : (2009) CriLJ 1713 :
(2009) 1 JLJ 275 : (2009) 2 JT 406 : (2009) 3 SCC 450 : (2009) 2 SCR 430 :
(2009) 2 Supreme 135

Hon'ble Judges : Asok Kumar Ganguly, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Vibha Datta Makhija, for the Appellant; S. Janai, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—The State of Madhya Pradesh is in appeal against the judgment of a Division Bench of the Madhya Pradesh High Court dismissing the Letters Patent Appeal filed by the State. In the Letters Patent Appeal challenge was to the order dated 30.8.2001 passed by learned Single Judge in Writ Petition No. 777 of 2001. Respondent- a life convict had filed the Writ Petition stating that he is entitled to be released under the provision of the Madhya Pradesh Prisoners (Release on Probation) Act, 1954 and the Rules made there under. Plea in the writ petition was that his case had been recommended by the District Magistrate and the Superintendent of Police but the Probation Board in its meeting held at 24.1.2001 did not recommend his case for release on probation.

2. Learned Single Judge by a practically non-reasoned order held that in view of the recommendation of the District Magistrate and the Superintendent of Police and the Probation Officer, the writ petitioner was entitled to be release on probation. This order was challenged before the Division Bench in a Letters Patent Appeal. The Division Bench held that there was no substance in the appeal and also noted that the appeal was barred by 32 days, and, therefore,

dismissed the Letters Patent Appeal.

3. Learned Counsel for the appellant submitted that neither learned Single Judge nor the Division Bench discussed the order of the Probation Board and the reasons given by it for rejecting the recommendation for release on probation.

4. There is no appearance of the respondent in spite of service of notice.

5. It is to be noted that neither the learned Single Judge nor the Division Bench discussed the reasons indicated by the Probation Board. The opinion of the Board shows that taking into account the gruesome nature of the murder and the background in which the murder was committed, the recommendations were not accepted. The State Government, Jail Department accepted the recommendations of the Probation Board. The Division Bench erroneously observed that the Single Judge had set aside the order of the Probation Board. In fact, there is no such finding or conclusion recorded by learned Single Judge. The parameters in the matter of release on probation were dealt with by this Court in *Arvind Yadav Vs. Ramesh Kumar and Others*, it was held as follows:

6. We are unable to sustain the impugned judgment of the High Court. Each of the convicts 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 the State Government for fresh consideration is bound to delay the matter causing further injustice to the convicts.

7. 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 indefeasible 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 20-9-1994 in

Hoshangabad, Madhya Pradesh causing seventeen injuries on him with swords, knives and gupti and that Ramesh Kumar was the accused in fourteen 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 a good sole ground to decline the licence to release. The Rules provide for a detailed procedure for consideration of application for release. Once rejected, again application for release can be made after two years. The Board comprises of the Home Secretary of the State Government or any other empowered officer, IG of Prisons or Deputy IG and another member.

8. 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 victim. 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 a 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 is by itself of no consequence. The recommendation is of the Board and not of an 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.

6. Since the High Court has not considered the issues in the proper perspective, we set aside the impugned order of the Division Bench and we direct it to re hear the LPA on condonation of delay, keeping in view the parameters indicated by this Court in Arvind Yadav's case (supra).

7. The appeal is allowed to the aforesaid extent.