

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 58 OF 2020

SHOR

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH & ANR.

Respondent(s)

WITH

WRIT PETITION (CRIMINAL) No. 45/2020

O R D E R

The facts of the case in W.P. (CrI.) No. 58/2020 is taken up - being similar, both writ petitions are disposed of by this order.

Pursuant to our order dated 30.10.2017, an order dated 22.01.2018 has been passed in which it is recorded that though the petitioner has undergone 28 years 08 months and 21 days without remission (otherwise including remission) having undergone imprisonment of 37 years 01 month and 18 days, yet premature release cannot be given in the facts of this case as the prisoner along with 20 co-accused committed the murder of 11 persons with deadly weapons and injured others.

This being the case, the order states "premature release of this kind of prisoner would send a negative message against the justice system in the society". It was then also mentioned that the Senior Superintendent of Police and the District Magistrate have confirmed that the prisoner is not incapacitated from committing crime.

Section 2 of the United Provinces Prisoners Release on Probation Act, 1938 ("the U.P. Act" for short) states:

"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."

It is clear that under this Section what has to be seen by the State Government is (i) antecedents (ii) conduct in the prison and (iii) the person, if released, is likely to abstain from crime and lead a peaceable life. If having regard to these factors, the person is released, the State Government may do so on conditions stated in the Section.

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.

In these circumstances, we set aside the aforesaid order and set the petitioners free. It will be open for the State Government to impose such conditions as are mentioned in Section 2 of the U.P. Act on the footing that the petitioners now stand released forthwith.

The Writ Petitions stand allowed in the aforesaid terms.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(NAVIN SINHA)

New Delhi;
August 05, 2020.

ITEM NO.14 Court 4 (Video Conferencing) SECTION X
 S U P R E M E C O U R T O F I N D I A
 RECORD OF PROCEEDINGS

Writ Petition(s)(Criminal) No(s). 58/2020

SHOR

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH & ANR.

Respondent(s)

(FOR ADMISSION

IA No. 55206/2020 - EXEMPTION FROM FILING O.T.

IA No. 25434/2020 - EXEMPTION FROM FILING O.T.

IA No. 25433/2020 - GRANT OF BAIL)

WITH

W.P.(Cr1.) No. 45/2020 (X)

(FOR EXEMPTION FROM FILING O.T. ON IA 19832/2020

FOR GRANT OF BAIL ON IA 19833/2020

Date : 05-08-2020 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s) Mr. Z.U. Khan, Adv.
 Mr. Yunus Malik, Adv.
 Mr. Anish Maheshwari, Adv.
 Mr. Aman Malik, Adv.
 Mr. Samir Malik, AOR

For Respondent(s) Mr. Rajan Kumar Chaurasia, Adv.
 Mr. Sarvesh Singh Baghel, AOR
 Ms. Shivranjani Ralawata, Adv.

 Mr. Ajit Singh Pundir, AOR
 Mr. Arijeet Singh, Adv.
 Mr. D.V. Singh, Adv.

UPON hearing the counsel the Court made the following
 O R D E R

The Writ Petitions stand allowed in the aforesaid terms of the signed order.

Pending applications stand disposed of.

(R. NATARAJAN)
 ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
 BRANCH OFFICER

(Signed order is placed on the file)