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STATE OF M.P.

V.

ABDUL KADIR & ANR.

Criminal Appeal No.1289 of 2002

FEBRUARY 13, 2009

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**[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ.]**

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Madhya Pradesh Prisoners (Release on Probation) Act, 1954 – Release on probation – Entitlement to – Murder – Life convict – High Court did not discuss the order of Probation Board and the reasons given by it for rejecting recommendation for his release on probation – Held : High Court did not consider the issues in the proper perspective – Directed High Court to re hear the matter, keeping in view the parameters indicated by this Court in Arvind Yadav's case.

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Respondent is a life convict. The District Magistrate and the Superintendent of Police recommended his release on probation. But the Probation Board did not accept the recommendations. The State Government accepted the recommendations of the Probation Board. Respondent filed writ petition seeking release under the provisions of the Madhya Pradesh Prisoners (Release on Probation) Act, 1954 and the Rules made thereunder. A Single Judge of the High Court held that Respondent was entitled to release on probation. The order was upheld by the Division Bench in Letters Patent Appeal. Hence the present appeal.

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Allowing the appeal, the Court

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HELD: Neither the Single Judge nor the Division Bench of the High Court discussed the reasons indicated by the Probation Board. The opinion of the Board shows that taking into account the gruesome nature of the

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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 Single Judge. Since the High Court has not considered the issues in the proper perspective, it is directed to re hear the LPA on condonation of delay, keeping in view the parameters indicated by this court in Arvind Yadav's case. [Paras 5, 6] [432-F, G; 435-C, D]

Arvind Yadav v. Ramesh Kumar (2003) 6 SCC 144 – relied on.

Case Law Reference

(2003) 6 SCC 144 relied on Para 5

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1289 of 2002

From the final Judgement and Order dated 5.12.2001 of the High Court of Madhya Pradesh, Indore Bench in Letters Patent Appeal No. 412 of 2001.

Vibha Datta Makhija, for the Appellant.

S. Janani, for the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. 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

A Probation) Act, 1954 and the Rules made thereunder. 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.

B 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.

C 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.

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

E 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.

F 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 v. Ramesh Kumar [2003(6) SCC 144] in paragraphs 6,7 &8 it was held as follows:

G H "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 302/307/394/304-B/498-A/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

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A 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
B 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,
C 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.

D 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
E 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
F 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
G 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
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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.

B.B.B.

Appeal allowed.