



[illegible]

- If the State Government is satisfied that the prisoner can be released without any danger to the society or to the public it may take steps for issue of orders for his release under Section 401 of the Code of Criminal Procedures, 1898.

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- (i) Whether the offence is an individual act of crime without affecting the society at large;
- (ii) Whether there is any chance of future recurrence of committing crime;
- (iii) Whether there is any fruitful purpose of confining of these convicts any more;
- (iv) Whether the convicts have lost potentiality in committing crime;
- (v) Socio economic condition of the convicts families.

The Review Board refused to grant premature release of the petitioners on the following grounds: (1) Police report is adverse; (2) the convicts are not over aged person and as such have not lost the potentiality in committing crime; (3) since other co-convicts were trying to come out from jail, there was a possibility of re-grouping for anti-social activities; (4) the offence was not an individual act of crime but was affecting society as a large; (5) convicts were anti-social and; (6) the witnesses who had deposed at the trial as well as local people were apprehensive of retaliation in the event of premature release.

In case of one of the petitioners, namely, Md. Talib, Review Board also noted one of the co-convicts was granted premature release who was murdered in an encounter after the release.

We may state here that jail authority recommended premature release of the Writ Petitioners. In our opinion, the conduct of the petitioners while in jail is an important factor to be considered as to whether they have lost their potentiality in committing crime due to long period of detention. The views of the witnesses, who were examined during trial and the people of the locality cannot determine whether petitioners would be a danger to the locality, if released prematurely. This has to be considered keeping in view the conduct of the Petitioners during the period they were undergoing sentence. Age alone cannot be a factor while considering whether the petitioners have still potentiality of committing crime or not as it will depend on changes in mental attitude during incarceration.

While coming to the conclusion for possibility of re- grouping for anti-social activities, the Review Board did not take into account that the life convicts are in jail for more than 18 years. The Board also did not consider whether there would be any fruitful purpose of confining the convicts any more and also the socio-economic condition of their families. Regarding petitioner Md. Talib, the Review Board also noted that one co- convict was released prematurely and was murdered in the encounter with other criminals after his release. The learned Additional Solicitor General informed us that the said co-accused was released in the year 1991 and was murdered in the year 1998 and therefore in our opinion this fact has no nexus for consideration of premature release of the petitioner, Md. Talib.

We are, therefore, of the view that the reasons given by the Review Board for rejecting the prayers for premature release of the petitioners are irrelevant and the devoid of any substance. Accordingly,

we quash the impugned orders of the government and remit the matter again for deciding it afresh within the period of 3 months from today.

In the result the Writ Petitions are allowed. After issuance of the Rule, the same is made absolute.