

(1982) 08 AHC CK 0008
In the Allahabad High Court
Case No : Writ Petition No. 3378 of 1981

Abdul Khaliq

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 09-08-1982

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 432, 432(1), 432(3)
Penal Code, 1860 (IPC) — Section 304(1)

Citation : (1983) 7 ACR 21

Hon'ble Judges : Mahavir Singh, J; M. Murtaza Husain, J

Bench : Division Bench

Advocate : Robin Mitra, for the Appellant;

Judgement

Mahavir Singh. J.

1. This petition has been filed under Article 226 of the Constitution for quashing the order of cancellation of the remission contained in Annexures 1 and 2.

2. The Petitioner was a convict u/s 304 IPC and the sentence ultimately imposed upon him was four years" R.I. According to the Petitioner he has remained in jail for 3 years, 5 months and 7 days but in view of remissions earned by him, the entire term stands served out and he could not be detained in jail any further. But on the order of the State Govt. Annexure 1 as modified by Annexure 2 the jail authorities did not release him as a major part of the remissions earned by him has been cancelled by the Government for overstay after release on parole. The contention of the Petitioner is that the State Government has no such power and in any case he was also not given any opportunity to show cause against the proposed order.

3. The case of the State is that the Petitioner had been granted parole on 7-12-79 for one month. The period was extended till 7-3-80. The Petitioner did not surrender after expiry of this period and rather surrendered on 17-6-80. As

the Petitioner has not surrendered in terms of the release order, action was taken against him by the State Government, and per order Annexure 1 it was ordered that twice the period of unauthorised stay would be deducted from the remissions earned by the Petitioner earlier and as such the Petitioner had not completely served the sentence imposed on him.

4. This is now well settled that even a prisoner has fundamental right and Article 21 applies to his case. If he is being deprived of his liberty otherwise than according to the procedure established by law, his detention is illegal. Section 432 Code of Criminal Procedure deals with suspension of sentence. Section 432(1) empowers the appropriate Government, without conditions or upon any condition to which the person sentenced accedes to suspend the execution of sentence.

5. In the present case, the suspension of sentence (which is sometimes known as parole also if it was for a specific purpose) was granted to the Petitioner subject to certain conditions. The conditions on which parole was granted to the Petitioner are mentioned in the release order quoted in para 5 of the counter affidavit of the State Government. One of the conditions of this release order, namely No. 6, which is relevant for the purposes of this case is:

(6). The failure of the prisoner to surrender himself to jail on the expiry of the sanctioned period of parole would render the prisoner liable to action.

Learned Deputy Govt. Advocate contended that on failure of Petitioner to surrender, the State Government was justified in taking action in accordance with this condition and, therefore, the remission earned by the Petitioner as deducted for the period of which mention has been made in Annexures 1 and 2. Learned Counsel for the Petitioner contends that Sub-section (3) of Section 432 Code of Criminal Procedure which empowers the Government to take action for non-compliance with the terms of agreement on which sentence is suspended, does not empower the State Government to cancel the remission already earned, and the State Government can only cancel the continued suspension and direct the prisoner to surrender to serve out the unexpired portion of the sentence. We do not think it necessary to consider the scope of power of Government under the above Sub-section, because even on the case taken up by the State, the order in question can not be said to flow from the enforcement of the above-quoted condition. This condition merely authorises the State Government to take action against the Petitioner for his not surrendering after expiry of the period of parole, but it has not been specified as to what action could be taken. The condition is thus too vague to be enforced. This condition thus did not authorise the State Government to deduct the remission earned by the Petitioner.

6. This is not disputed that but for this deduction the Petitioner has served out the sentence imposed on him and he was entitled to be released. The Petitioner was however released on bail during the hearing of this petition. Therefore, there is no necessity for him to surrender now.

7. Accordingly the petition is allowed. The order Annexures I and 2 are quashed. The Petitioner need not now surrender to serve the sentence as it stands served out.