
(2022) 02 CHH CK 0057
In the Chhattisgarh High Court
Case No : Writ Petition (Criminal) No. 452 Of 2021
Abhinav Chaturvedi Vs State Of Chhattisgarh

Date of Decision : 23-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 226
Indian Penal Code, 1860 — Section 34, 302, 304B, 307, 325, 394, 450
C.G. Prisoner's Release on Probation Rules, 1964 — Rule 4
Code Of Criminal Procedure, 1973 — Section 433, 433(d), 482

Citation : (2022) 02 CHH CK 0057

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Shakti Raj Sinha, Sushil Sahu

Final Decision : Disposed Of

Judgement

1. Heard.
2. The present petition has been filed under article 226 of Constitution of India for issuance of appropriate direction.
3. The petitioner is a convicted prisoner suffering sentence for the offence punishable under Sections 302/34, 450 of the IPC in S.T. No. 121/2007 passed by Sessions Judge, Bilaspur, District-Bilaspur C.G. vide order dated 02.07.2008 and he is in jail since 28.02.2007.
4. Learned counsel appearing for the petitioner submitted that the petitioner has made an application under Rule 4 of the C.G. Prisoner's Release on Probation Rules, 1964 on the ground that he has completed more than 14 years without remission, therefore he is entitled to be released on probation as per the Rules of 1964 in particular second proviso of Rule 4. A copy of the C.G. Prisoner's Release on Probation Rules, 1964 (relevant) is annexed herewith as Annexure-P/1. He next submitted that the application of the petitioner under Rule 4 of the C.G. Prisoner's Release on Probation Rules, 1964 is pending consideration before the respondents since considerable period but the same has not been considered by the Chhattisgarh Probation Board till date and no final order has been passed.

Further it is submitted that it has come to the knowledge of the petitioner that the respondents claim that he has not completed jail sentence of 14 years without remission whereas it is evident from their own record that the petitioner has already completed the jail sentence of more than 14 years without remission. A copy of the custody certificate of the petitioner is annexed as Annexure-P/2. It is also submitted that after waiting for considerable period the petitioner made an application through his advocate under Right to Information Act, 2005 asking for the pending application before the Board and in return, reply dated 07.02.2021 was given which states that since the appointment of one member of the Chhattisgarh Probation Board is still pending therefore the meeting could not have been conducted. A copy of the reply obtained under R.T.I. by the Director General, Jail and Correctional Services Chhattisgarh is annexed herewith as Annexure-P/4. He lastly submitted that the application of the petitioner under Rule 4 of the C.G. Prisoner's Release on Probation Rules, 1964 is pending before the respondents and the same is not decided by the respondents in a considered period, such act is arbitrary in nature and is straight away violative of Article 21 of the Constitution of India. Learned counsel for the petitioner placed reliance in the matter of Manoj Agrawal Vs. State of Chhattisgarh & Ors. passed in WPCR No. 107/2018 and in the matter of Neeraj @ Golu Mali Vs. State of Chhattisgarh & Ors. passed in WPCR No. 898/2019 by this Court.

5. Learned counsel appearing for the State/Respondents opposes the petition.

6. Heard counsel for the parties and perused the material available on record.

7. It is clear from the documents filed by the petitioner that while this Court was dealing in similar matter of Manoj Agrawal Vs. State of Chhattisgarh passed in WPCR No. 107/2018, in the matter of Neeraj @ Golu Mali Vs. State of Chhattisgarh & ors. passed in WPCR No. 898/2019 wherein reliance has been placed in the matter of Arvind Yadav vs. Ramesh Kumar (2003) 6 SCC 144 and State of Madhya Pradesh and others vs. Khuman Singh and another (2014) 15 SCC 188 and has directed the respondents to decide the application of the petitioner.

8. In Arvind Yadav (Supra), the Supreme Court observed as under :-

"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 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 consideration, 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 State Government for fresh consideration is bound to delay the matter causing further injustice to the convicts."

9. Similarly, in the matter of State of Punjab Vs. Kesar Singh (1996) 5 SCC 495, the Supreme Court observed as follows :-

"3 We have heard learned counsel for the parties. In our opinion the direction given by the High Court was not at all appropriate or permissible in law. The mandate of Section 433 CrPC enables the Government in an appropriate case to commute the sentence of a convict and to prematurely order his release before expiry of the sentence as imposed by the courts. Clause (b) of Section 433 CrPC provides that the sentence of imprisonment for life may be commuted for imprisonment for a term not exceeding 14 years or fine. Undisputedly, the respondent had not completed 14 years' sentence when he filed the petition under Section 482 CrPC seeking premature release. The direction of the High court therefore to prematurely release the respondent and set him at liberty forthwith could not have been made. That apart, even if the High court could give such a direction, it could only direct consideration of the case of premature release by the Government and could not have ordered the premature release of the respondent itself. The right to exercise the power under Section 433 CrPC vests in the Government and has to be exercised by the government in accordance with the rules and established principles. The impugned order of the High court cannot, therefore, be sustained and is hereby set aside."

10. In Khuman Singh (supra), the Supreme Court while overturning the decision of the M.P. Probation Board and the State Government has held that even if the approach adopted by the Board and the State is not germane, normally, the procedure to be followed by the High court is to remand the matter to the competent authority by making appropriate observations.

11. In the light of above orders, principles and observation of the Hon'ble Supreme Court in the case of Arvind Yadav (supra), it is directed that the respondents shall consider the application of the petitioner to grant him the privilege of release/parole in accordance with provisions of C.G. Prisoner's Release on Probation Rules, 1964, within a period of 45 days from the date of production of the copy of this order, if not decided yet.

12. With the aforesaid observation, the Writ Petition (Criminal) finally stands disposed of. There shall be no order as to costs.