

(1967) 04 KAR CK 0002
In the Karnataka High Court
Case No : Criminal Petition No. 151 of 1967

Alfred J. Peries

APPELLANT

Vs

The State of Mysore and Others

RESPONDENT

Date of Decision : 14-04-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 401, 491
Penal Code, 1860 (IPC) — Section 120 B, 302, 302, 34

Citation : AIR 1967 Kar 181 : (1967) CriLJ 1353 : (1967) 1 MysLJ 634

Hon'ble Judges : M. Sadasivayya, J; D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : B.K. Ramachandra Rao, Amicus Curaie, for the Appellant; G. Dayanand, for State Public Prosecutor, for the Respondent

Judgement

Chandrashekhar, J.—The petitioner is a convict serving his sentence of imprisonment in the Central Jail, Bangalore. In this petition under Article 220 of the Constitution read with Section 491 of the Code of Criminal Procedure, he has prayed for issue of a writ in the nature of Habeas Corpus directing that he be set at liberty. He has claimed that he has served his sentence and should, therefore, be released.

2. As he was not represented by a counsel after admitting the petition, we requested Mr. B.K. Ramachandra Rao Advocate, to appear as amicus curiae and assist us. He agreed to do so. He contacted the petitioner and took instructions from him and addressed arguments at the stage of hearing of the petition. We are grateful to him for his valuable assistance.

3. As directed by us the petitioner was produced before us by the Jail authorities and we permitted him also to make his submissions. Apart from stating a few facts he set out certain circumstances which, according to him would warrant the remission of his sentence.

4. The petitioner is a national of Ceylon. He was tried along with two others for

the offence of murder. By his judgment dated 29-11-1952, the Sessions Judge, South Kanara, convicted him u/s 120B read with Section 302 and Section 109 of the Indian Penal Code and sentenced him to death. The other two accused were convicted u/s 302 read with Section 34 of the Indian Penal Code and sentenced to death. The High Court of Madras confirmed the convictions and sentences. On 18-3-1954 the Supreme Court dismissed the appeal presented by the present petitioner. On a petition for mercy in July 1951 the President of India commuted the sentences of death passed on these three accused to transportation for life.

5. On Reorganization of States, the petitioner was transferred to the Central Jail, Bangalore. It is not disputed by the State that by 11-4-1967 he had served his sentence for a period of 14 years 3 months and 2 days and that by the end of the year 1966 he had earned remission of 4 years 3 months and 3 days. under the Rules framed under the Prisons Act. It is not disputed by the State that under Note to Rule 314-A of the said Rules, option is given to him of converting gratuity earned by him into certain extra remission, subject to Rule 306. Rule 306 provides that the total remission awarded to a prisoner under all these Rules shall not without the special sanction of Government, exceed one-fourth part of his sentence.

6. The contention put forward in the petition was that the Government had no power to detain a convict sentenced to imprisonment for life, after he had served 15 years of imprisonment which would include the actual period of imprisonment and the period of remission earned by the prisoner and that as he had served more than 15 years imprisonment (Including remission earned) he was entitled to be released from Jail. He relied on the ruling of this Court in *Basappa Mudukappa v State of Mysore*. (1959) 37 Mys LJ 202

7. Mr. B.K. Rarnachandia Rao frankly stated that the decision of the Supreme Court in *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, a fully covers the present case. As pointed by this court in WP 1359/65 in the light of the pronouncement of the Supreme Court in *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, a the decision of this Court in *Basappa MuduKappa's* case, (1959) 37 Mys L.J. 202 is no longer good law.

8. In *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, a the Supreme Court explained the legal position thus: A prisoner sentenced to life imprisonment is bound in law to serve the life term in prison, unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure. For the purpose of working out remission which a prisoner is enabled to earn under the rules framed under the Prisons Act the sentence of imprisonment of life is ordinarily equated with a definite period; but it is only for that particular purpose and not for any other purpose. As the sentence of imprisonment for life is of indefinite duration, the remission earned by such a convict does not, in practice, help him unless the appropriate Government remits the sentence u/s 401 of the Code of Criminal Procedure on a consideration, of the relevant factors including

the period of remission earned. The question of remission is exclusively within the province of the appropriate Government

9. In view of this legal position, it is clear that the petitioner, the sentence on whom was commuted to transposition for life, is not entitled to be released unless the appropriate Government remits the remaining part of the sentence, u/s 401 of the Code of Criminal Procedure.

10. The petitioner submitted that --(i) he is nearly 70 years of age and his health has suffered on account of long stay in prison: (ii) his conduct in prison has throughout been good, that he has been entrusted with responsible work in prison and that he has been given the maximum remission: (iii) the Prison Advisory Board had recommended remission of his sentence: (Mr. G. Dayananda learned counsel appearing for the State Public Prosecutor, did not dispute this statement) and (iv) David D" Souza who was convicted u/s 302 read with Section 34 of the Indian Penal Code and sentenced to death along with the petitioner, was released by the order of the Government in HD 39 11PR 64 dated 14-5-1964, though his conduct in prison was not satisfactory.

11. These are matters for the State Government to investigate and to consider. All that we can do is only to observe that in a case like this it is for the State Government to consider the appropriateness of remitting the remaining part of the sentence having regard to all the relevant circumstances including those stated above.

12. With these observations, we dismiss this petition.

13. Let a copy of this Order be sent to the Government.

14. Petition dismissed.