
(1988) 05 BOM CK 0001

In the Bombay High Court

Case No : Criminal Writ Petition No. 251 of 1987

Ashok Vasudeo Shetye

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 06-05-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 432
Penal Code, 1860 (IPC) — Section 302, 307, 326

Citation : (1988) 3 BomCR 137 : (1988) 90 BOMLR 198 : (1989) CriLJ 1399 : (1988) MhLj 903

Hon'ble Judges : P.S. Shah, J;H.H. Kantharia, J

Bench : Division Bench

Judgement

H.H. Kantharia, J.—The petitioner was arrested on 11th June, 1975 for offences punishable under sections 302, 307 and 326 of the I.P.C. on allegations that on that day at about 7.30 p.m. he was blackmarketing cinema tickets at Apsara Cinema along Lamington Road, Bombay and there was not exchange of words and abuses with deceased Ratan Ardeshar Karbhari and Nasarwanji Turner, the head door-keeper and cashier of the Apsara Cinema on account of which the petitioner had stabbed with a gupti the said Ratan Ardeshar Karbhari. Ratan Ardeshar Karbhari succumbed to the injuries received by him and Nasarwanji survived. Petitioner was then tried in Sessions Case No. 401 of 1975 in the Sessions Court at Bombay and was convicted for offences punishable under sections 302 and 307 of I.P.C. for which he was respectively sentenced to suffer imprisonment for life and seven years rigorous imprisonment. The sentences were directed to run concurrently. The said judgment was passed against the petitioner on 20th July, 1976.

2. It is the case of the petitioner that ever since his day of arrest he was in prison as an under-trial prisoner and thereafter as a convict prisoner. Thus, according to him, he had undergone total imprisonment of 16 years, 5 months and 8 days on the day when he had filed the writ petition under Art. 226 of the Constitution on 27th February 1987 as under :

Therefore, he contended that his sentence exceeded 14 years and he was accordingly entitled to be considered for release from prison as was done in case of 9 other life convicts. He also contended that the respondents committed breach of R. 6(i) and R. 25 of the Maharashtra Prisons (Review of Sentences) Rules, 1972 inasmuch as his case was not taken up for consideration for premature release as provided by these rules. It appears that when this writ petition was pending hearing and final disposal in this Court, the Government of Maharashtra, Home Department, vide its order No. RLP-1087/7/113/PRS-3 dt. 19th March, 1987 exercised its jurisdiction under sub-sec. (1) of S. 432 of the Cri.P.C. 1973 and remitted that portion of the sentence of imprisonment for life which was in excess of 24 (twenty four) years of total imprisonment, including all remissions subject to the condition of the petitioner's good behaviour and conduct in the prison till the time of his release and if the said condition was acceptable to the petitioner. Therefore, the petitioner amended this writ petition and further prayed that the order passed by the Government on 19th March 1987 be quashed and set aside and he be released forthwith as the said order was totally arbitrary, illegal and unlawful.

"i) Undertrial period 11-6-1975 to 19-7-1976. : 1 year 1 month 8 days. ii) Actual imprisonment 20-7-1976 to : 10 years 7 months 20-2-1987. 0 days. iii) Remission granted by the Government on : 2 years 0 months 1-5-1984. 0 days. iv) Remission for Gandhi Jayanti : 0 years 9 months 0 days. v) Remission for good conduct according to : 2 years 0 months the provisions of the Prison Rules 0 days. ----- Total : 16 years 5 months 8 days. ----- "i) Actual period undergone till 28-2-1987 : 9 years 5 months 17 days. ii) Remission (Ordinary) : 2 years 5 months 14 days. iii) Remission (State Remission) : 2 years 6 months 0 days. iv) Set off period (from 12-6-75 to 19-7-76) : 1 year 1 month 8 days. ----- : 15 years 6 months 9 days." ----- "(3) Murders for other reasons (a) Where a murder is committed in the course of a quarrel etc. without premeditation in an 16 years individual capacity and where the prisoner (Sixteen years) has no previous criminal history. (6) Escapees. Prisoners who have escaped from lawful custody while undergoing imprisonment or who absconded 24 years while on parole or furlough. (Twenty four years)"

3. The State Government filed returns resisting this writ petition, through J. J. Deshmukh, Desk Officer, Home Department. It is their case that a sentence of imprisonment for life is a sentence for the whole of the remaining period of the convicted person's natural life but S. 432 of the Cri.P.C. gives unfettered powers to the State Government as to when a prisoner who has been awarded life sentence should be released from prison. On behalf of the respondents it was also contended that in accordance with R. 6(1) of the Maharashtra Prisons (Review of Sentences) Rules, 1972 the case of the petitioner was forwarded to the Advisory Board on 31st July, 1985 after he completed 12 years and 7 months of imprisonment. However, the said committee did not recommend the release of the petitioner. The committee then directed that the case of the petitioner be

placed before them after two years. Then in accordance with R. 25 of the Maharashtra Prison (Review of Sentences) Rules, 1972, after completion of 14 years of sentence undergone by the petitioner, a report was sent by the Inspector General of Prison on 19th February 1987 which was received by the State Government on 19th March 1987. And accordingly in exercise of the powers conferred by sub-sec. (1) of S. 432 of the Cri.P.C., 1973, the Government of Maharashtra remitted that portion of the sentence of imprisonment for life which was in excess of 24 years of total imprisonment, including all remissions, subject to the condition of the petitioner's good behaviour and conduct in the prison till the time of release. It was also contended on behalf of the respondents that the petitioner was released on furlough on 20th February 1982 for a period of two weeks and he was to surrender on 7th March 1982 but he failed to surrender on the due date. He was, therefore, arrested on 29th March 1982 by Deorukh Police and was brought to jail on 30th March 1982. He was again granted parole for a period of 5 days on 22nd September 1987 to attend the last rites of his mother who had died on 14th September 1987. He was required to surrender to jail authorities on 28th September 1987 but he did not do it and had to surrender to jail authorities only on 17th February 1988 at the direction of this Court. Therefore, according to respondents, when the petitioner was on parole he had absconded and thus his case was covered by guideline 6 of the guidelines laid down by the Government of Maharashtra for premature release under the "14 Year Rule" of prisoners serving life sentence, under Government letters, Home Department, No. RLP-5171/54309-IV, dt. the 8th January, 1974 and No. RLP-1077/348-XXIV, dt. the 4th October 1977 and not guideline at Serial No. 3(a) of the said guidelines. It was also the contention of the respondents that the petitioner had on 28th February 1987 completed only 15 years, 6 months and 9 days of sentence as under :

4. The various contentions raised in the petition, we feel do not survive for our consideration for the simple reason that Mr. Gawankar, learned Advocate who argued on behalf of the petitioner, submitted that he would accept the contention raised on behalf of the respondents that as on 28th February 1987 the petitioner had undergone total sentence of 15 years, 6 months and 9 days to which a further sentence undergone by him of 6 months and 21 days be added for the period from 28th February 1987 till 22nd September 1987 (the date on which the petitioner went on parole) which would make the total sentence undergone by the petitioner of 16 years and one month. Mr. Gawankar then submitted that as per guideline 3(a) the petitioner was entitled to be released forthwith as his case would not be covered by guideline 6.

5. For appreciating the rival contentions raised on behalf of the petitioner and the respondents it would be worthwhile to quote here guidelines 3(a) and 6 which are as under :

6. The submission of Mr. Bardey, learned Public Prosecutor, is that the case of the petitioner is covered by guidelines 6 solely on the ground that he absconded

while on parole or furlough and, therefore, he was liable to undergo actual sentence of 24 years as has been decided by the Government as per the impugned order dt. 19th March 1987. On the other hand, the argument of Mr. Gawankar is that in the facts and circumstances of the case it cannot be said that the petitioner had absconded while on parole or furlough and, therefore, his case would be covered by guideline 3(a) and would thus be entitled to release forthwith as he has already undergone more than 16 years of sentence.

7. Now, it is no doubt true that a prisoner who absconds while he enjoys the benefit of an order of parole or furlough would be liable to be kept in prison for 24 years of actual sentence. But the facts and circumstances of our case do not show that the petitioner had absconded when he was either on parole or on furlough. It is important to note here that in "absconding" there should always be an element of concealing or hiding. In our case, there is not even an iota of evidence or material to show that while on parole and/or furlough the petitioner concealed himself with a view to avoid the process of law. On the first occasion, it is stated, that he was arrested from his house and on the second occasion, it is further stated, that he was freely moving about and visiting Mantralaya making efforts that the impugned order to be revoked or withdrawn by the Government. Thus the record nowhere shows that he had at any point of time concealed himself in such a manner that he would successfully avoid the process of law. The dictionary meaning of the word "abscond" as can be seen from the New Webster's Dictionary is "to withdraw or absent oneself in a private manner; run away, often with stolen valuables, in order to avoid a legal process; decamp." In other words, to abscond means to depart clandestinely with a view to steal of or secret one's self from the jurisdiction of a court for a fraudulent purpose such as hindering or defrauding the creditors by avoiding legal process. It was held by the Supreme Court in *Kartarey and Others Vs. The State of Uttar Pradesh*, that "to be an "absconder" in the eye of law, it is not necessary that a person should have run away from his home, it is sufficient if he hides himself to evade the process of law, even if the hiding place be his own home" which shows that in absconding there is an element of hiding or concealing or secreting oneself. In case of *The State Vs. Umraokhan and Others*, the Rajasthan High Court had observed :

"On a careful examination of the whole matter, it seems to me that "absconding" does not necessarily mean absconding from one's residence although usually when a person is hiding from his place of residence he is said to abscond. The primary meaning of this word is "to hide".

We may also mention here that the non-surrender of the petitioner after the completion of parole or furlough period can at the most be construed as a breach of condition of parole and/or furlough for which separate liability has been imposed by notification No. MJM 1561/39466 dt. 2nd July, 1964 issued under the statutory rules made by the Inspector General of Prisons which provides under Clause 2(a) that there would be a maximum out of 5 days" remission for each

day of overstay. Therefore, we are of the opinion that breach of any of the conditions of parole or furlough would not by itself amount to "absconding" and at the most it may make the petitioner liable for losing the remission of 5 days for each day of overstay after the parole or furlough period was over. That being so, we have unhesitatingly come to the conclusion that in the instant case the petitioner had not absconded and, therefore, his case would be governed by guideline 3(a) and not by guideline 6. Hence he would be entitled to be released after he undergoes a sentence of 16 years and undoubtedly by now he has undergone more than 16 years of sentence, including remission earned by him.

8. In this view of the matter, the writ petition succeeds and the same is allowed. The respondents are hereby directed to release the petitioner forthwith in this case and if he is not required in some other case. Rule is accordingly made absolute.

9. Petition allowed.