
(2013) 07 RAJ CK 0131
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7312 of 2013

Babulal @ Babudia

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Arms Act, 1959 — Section 25, 3

Penal Code, 1860 (IPC) — Section 148, 149, 307, 323, 395

Citation : (2014) 1 CDR 199 : (2014) 2 RLW 1316

Hon'ble Judges : Narendra Kumar Jain, J; Meena V. Gomber, J

Bench : Division Bench

Advocate : Anshuman Saxena, for the Appellant; Alka Bhatnagar, Addl. Government Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

1. The petitioner whose conviction and sentence for offences u/s. 395, 396, 148, 307/149 and 323/149 IPC and section 3/ 25 Arms act, had been upheld by the Division Bench of this court vide judgment dated 22.4.2011 has filed this petition for transfer to Open Air Camp. The petitioner's contention is that he has already served 12 years of imprisonment with remission. Since he has completed more than 1/3 of his sentence long before and had a good conduct in the jail, he was eligible to have been considered for transfer to open air camp under the Rajasthan Prisoners Open Air Camp Rules, 1972 (for short "the Rules of 1972"). However, the competent authority has declined his request on the ground that on account of his conviction for offences u/s. 395 and 396, he could not be transferred as there was a bar in rule 3(d) of the Rules of 1972. Aggrieved therefrom, he had filed D.B. Civil Writ Petition No. 789/2013 which came to be allowed on 11.2.2013 and the directions were issued to the respondents to consider his case. However, prisoners' Open Air Advisory Committee, in its meeting dated 1.4.2013, again rejected his request on the ground that he had been convicted u/s. 395 and 396 and had also been given jail punishment in July 2010. He was denied transfer to open air camp vide order dated 10.4.2013 by

the Advisory Committee.

2. Learned counsel for the petitioner, drawing attention of this court to the word "ordinarily" used in rule 3, argued that this court has interpreted the word ordinarily as not necessarily in a number of judgments on earlier occasions. Since the bar contained in various clauses of rule 3 is not absolute, therefore, rejection of appellant's application by the Advisory Committee on that ground alone, is absolutely illegal, arbitrary and in violation of the order passed by this court. Therefore, in view of the interpretation given by this court on a number of occasions to rule 3, the petitioner is very well eligible for being transferred to the open air camp. So far as jail punishment is concerned, it has been more than two years and nine months since the punishment was awarded and as per rule 3(g), the jail punishment which is more than 2 years and 9 months old, cannot be made a ground to refuse his transfer to open air camp. It was also submitted that co-accused Mahender, Ramji Lal and Kalyan have already been released on permanent parole by the Director General, Prisons Rajasthan vide his order dated 10.4.2012. The petitioner has been behind the bars since last 12 years and there is no one to look after his family. On transfer to open air camp, he would be able to re-socialise in the society and take care of his wife, four children and widowed old mother. According to him, he did not misuse the liberty when he was released on regular parole of 20 days and his conduct in the jail has been extremely good.

3. Learned Additional Government counsel conceded that the word "ordinarily" used, in rule 3 of the Rule, 1972 has been interpreted by this court few times as "not necessarily" and that other co-accused have already been released on permanent parole and that during availment of his first regular parole of 20 days nothing adverse was reported by the prosecution.

4. Considered the arguments. In view of the interpretation given by this court in the case of Pyare Lal v/s. State of Rajasthan and Ors. in its judgment dated 15.1.2013, we are of the view that the rejection of the request of the petitioner on the ground of rule 3(d) cannot be sustained. So far as rule 3(g) is concerned, that bar also does not get attracted because as per annexure R/2, his conduct has been satisfactory and the jail punishment, admittedly, was awarded about quarter to three years before 10.4.2013 i.e. the date of order. In these circumstances we are of the considered view that it is a fit case to grant indulgence to the petitioner. Accordingly, the order dated 10.4.2013 passed by the respondents in its meeting held on 1.4.2013 qua the petitioner is set aside and the respondents are directed to transfer the petitioner Babulal @ Babudia S/o Shri Mulya @ Mularam to the open air camp in accordance with rules.

5. Ordered accordingly. The writ petition stands disposed.