

(2011) 01 AHC CK 0025

In the Allahabad High Court

Case No : Criminal M. Habeas Corpus W.P. No. 2357 of 1997

Bachche Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Uttar Pradesh First Offenders Probation Act, 1938 — Section 2

Citation : (2011) 2 ACR 1814 : (2011) 8 RCR(Criminal) 1976

Hon'ble Judges : N.A. Moonis, J; Amar Saran, J

Bench : Division Bench

Advocate : From Jail, for the Appellant; A.G.A., for the Respondent

Judgement

Amar Saran and N.A. Moonis, JJ.—We have heard Sri Patanjali Mishra, Learned A.G.A. on behalf of the State of U.P. and Sri Pradeep Tiwari, who appeared for Petitioners Ram Singh and Sidh Gopal Dwivedi in Crl. Writ Petition No. 7714 of 2009 and Cr. Writ Petition No. 710 of 2010 respectively.

2. Sri Patanjali Mishra, Learned A.G.A. has filed an affidavit dated 20.12.2010 and also drawn our attention to an affidavit dated 12.7.2010 which has been filed by the authorities at the Naini Central Jail, Allahabad on behalf of the State Government. An affidavit has also been filed in Crl. Writ Petition No. 710 of 2010, preferred by Sidh Gopal Dwivedi.

3. At the outset, we must express our utter dissatisfaction with the cursory nature of the reply furnished on behalf of the State Government in respect of the 583 lifer prisoners, (earlier wrongly counted as 585 prisoners by the State authorities) who have undergone more than 14 years. After 30.6.2010 only 11 prisoners (6 by way of Form A and 5 by way of nominal role) were released. We had expressed our discomfort in our order dated 5.2.2010 that only in 3 cases, nominal roles were accepted and the prisoners were released under paragraph 198 of Chapter VIII of the Jail Manual, and five prisoners had been released on licence on Forms A u/s 2 of the U.P. Prisoner's Release on Probation Act, 1938. We, therefore,

issued a detailed direction keeping in mind the directions set out by the National Human Commission on 26.9.2003 and 8.11.1999 and the earlier Division Bench decision of this Court in Mehendi Hasan Vs. The State of U.P. and Others, that reports of the S.P., D.M, Probation Officer and Advisory Board should be based on objective considerations and they must pass reasoned orders recording reasons why they are refusing to release a particular prisoner. The opinion must be based on antecedents and conduct in prison and other relevant factors and not be the mere ipse dixit of the authorities concerned. We, therefore, asked the Government to reconsider the cases of nominal roles and applications in Form A and inter alia directed the Governmental authorities at all levels to follow the time imperatives as laid down in the G.O dated 6.9.2004 both for healthy prisoners as well as for infirm or terminally ill prisoners. We had also directed the Member Secretary Legal Services Authority (L.S.A.), Lucknow to ensure that effective legal aid is given especially in the case of the 583 prisoners who are in jail for more than 14 years and have no person to do pairvi on their behalf and had also directed the L.S.A. to oversee that the on line computerized record set up regarding the status of disposal of cases of prisoners eligible for premature release or release on licence is being maintained efficiently, and that time schedules are being scrupulously observed.

4. We regret to note that there is no improvement in the position and only in a ritual manner, some of the cases have been reconsidered, even though a large number of prisoners have undergone more than 14 years sentence and some prisoners have even been detained for 30-32 years as was detailed in our order dated 5.2.2010. We think that reconsideration of rejected nominal roles or applications for release on licence under Form A are not a ritual exercise, but there should be a real application of mind by the authorities concerned as to whether any useful purpose would be served in keeping such prisoners in jail, who have remained incarcerated for prolonged periods of time and where the crimes had been committed two or three decades back. We think that refusing to release such prisoners by simply stating that enmities or a law and order problem still subsisted was to treat this serious matter too lightly.

5. We think that an honest effort needs to be made for really enquiring into the matter at all levels. We do not see what benefit the State gains in rejecting the applications for release in a routine manner when prisons all over the State are keeping prisoners at double their capacities, giving rise to law and order problems due to over-crowding, especially as Courts with inadequate number of Judges are not in a position to dispose of cases relating to persons in jails in a reasonable period of time. It is also irrational to cast an undue burden on the State exchequer to detain such persons in jail who may after their long incarceration have lost any further potential to commit a crime and the situation in the local area may have completely changed.

6. When this Court in *Mirza Mohd. Hussain v. State of U.P.* 2002 (1) JIC 342 : 2001 (3) ARC 2276, observed that there should be no mechanical orders at the

time of special occasions releasing all prisoners of particular categories, for example due to age, it was expected that the authorities would apply their minds to individual cases. But it seems that the present Probation Board, and other authorities have swung to the other extreme, and are now routinely rejecting all cases which again shows that administrative and executive authorities refuse to independently and judiciously exercise their minds when considering these matters, in accordance with the direction issued by this Court, the Apex Court and the N.H.R.C. As a matter of fact what we see today is that decision makers are suffering from a peculiar paralysis in action. Either they will avoid disposing of the matters before them, or they take a negative decision in 99 per cent of the cases, because they want to play safe as they carry an impression that the philosophy of their immediate political or executive master at the moment is that there is a grave law and order situation. No thought is given as to whether the person who was involved in the crime which took place 30 or 40 years ago was a professional criminal or whether the offence for which the offender was convicted was a one-time affair arising from an individual dispute for which the prisoner may have suffered 20 or 30 years imprisonment and the ground situation may have completely changed by now.

7. In paragraph 4 of the State's counter-affidavit dated 14.12.2010 it has simply been mentioned that the orders of this Court dated 5.2.2010 and 12.7.2010 have been complied with in letter and spirit. Prima facie this assertion seems completely unwarranted. On 10.3.2005, the earlier Probation Board had recommended premature release of Petitioner Ram Singh who had undergone actual imprisonment of over 21 years but it appears that the Government called for reconsidering the matter and now the newly constituted Probation Board has refused to recommend premature release of the said prisoner.

8. We would now like the authorities to place the entire record regarding this prisoner and the earlier order, passed by the Probation Board dated 10.3.2005 as well as the subsequent order, passed by Probation Board dated 27.12.2005 and as well as the order dated 31.7.2007, passed by the Government refusing to release Ram Singh, and to explain to us why there was a need to depart from the earlier opinion of the Probation Board to release this prisoner.

9. We would also like to note that paragraph 4 of the affidavit dated 20.12.2010 indicates that 305 matters relating to release on licences in Forms A were pending before the District Magistrates, 52 matters were pending at jail levels and 125 matters relating to nominal roles were pending before the District Magistrates and 80 matters were rejected and 327 were held to be incompetent. We would like a detailed explanation in tabular form on how these blanket orders rejecting various applications have been passed, and why the matters have remained pending at different levels, and what the Board and other authorities have done for speeding up disposal of such cases.

10. There is also a letter of the Member Secretary, U.P. State Legal Services Authority, Lucknow dated 11.3.2010 mentioning that a letter was sent to the

Director General (Prisons) on 18.2.2010 (with reminders on 23.2.2010 and 4.3.2010) for furnishing the records of the prisoners who have spent more than 14 years in Jail, so that effective Legal Aid may be provided to them at various levels in compliance with our earlier order. A letter was also sent to Principal Secretary (Prisons), Government of U.P. on 4.3.2010. The letter was also sent to the Superintendents of concerned jails, where the detainees were detained for providing legal aid to the prisoners at the District levels. However the said requirement remained unfulfilled, as there was no response from the authorities on these points. We would like to be informed as to who is responsible for this dereliction of duty in failing to comply with our direction which was communicated by the Member Secretary, L.S.A. and whether any action has been taken against the defaulting authorities.

However one important fact mentioned in the letter of the Member Secretary to this Court was that the State Government had set up a web site with the web address-[www. jailbandi.com](http://www.jailbandi.com) where the general public can see the status of consideration of Forms A, and nominal roles and the L.S.A. can oversee the matter of the 583 prisoners who are in jail for over 14 years.

11. In the order dated 12.7.2010, passed in Crl. Writ Petition No. 7714 of 2009, we had directed that the directions given in the said order should also apply in Crl. Writ Petition No. 710 of 2010 relating to the prisoner Sidh Gopal but in the counter-affidavit dated 14.12.2010, there is No. reference to the status of disposal of the fresh consideration of the nominal role or the application in Form A of this Petitioner who is said to have undergone an actual period of about 29 years in jail. We would also like D.G. (Prisons) to send the entire record by the earlier Board, as well as the present Probation Board and other records relating to his case so far the the Petitioner Sidh Gopal Dwivedi is concerned similar to the case of Ram Singh.

12. We have also received information that there are a large number of children whose ages are below 18 years who are lodged in regular jails in various districts in U.P. We would like a detailed report from the Director General (Prisons) with respect to such children who are below 18 years of age and who are being detained in regular prisons, the period since when they are so detained, and the circumstances and reasons why they are detained in regular prisons. The District Judges in all districts in U.P. are also directed to obtain reports with regard to such prisoners who are below 18 years in age and are in prison in the jails in their districts and the reasons and periods for which they have been detained there. The District Judges should also inform this Court on the next date as to whether the ages of the accused who are sent to jail are invariably being mentioned in the custody warrants or not.

13. Although we are completely dissatisfied at the disposal of these matters by the Probation Board and the State Governments and the mechanical compliance with our directions in these connected writ petitions, but on the next date of listing we are not summoning the D.G. (Prisons) and the Principal Secretary

(Home), U.P., but would like them to file personal affidavits on all the points and questions raised above on which we have sought explanations.

14. These directions shall also apply in Crl. Writ Petition No. 710 of 2010 preferred by Sidh Gopal Dwivedi and Crl. Writ Petition No. 7714 of 2009 preferred by Ram Singh.

List this case on 14.2.2011.

Office must ensure sending of record of Crl. Writ Petition No. 17533 of 2009 preferred by Hari Shankar on the next date of listing.

Copy of this order may be given to the Registrar General who shall send the same to Director General (Prisons), Principal Secretary (Home) U.P., and District Judges concerned as well as Member Secretary (Legal Services Authority), Lucknow within a week, for compliance. Let a copy of this order be also given to Learned A.G.A within five days for necessary compliance.