
(2014) 03 AHC CK 0009
In the Allahabad High Court
Case No : Criminal Writ PIL No. 2357 of 1997

Bachchey Lal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 433A, 437A

Citation : (2014) 85 ALLCC 619

Hon'ble Judges : Vijay Lakshmi, J; Amar Saran, J

Bench : Division Bench

Advocate : Patanjali Mishra, Advocate for the Respondent

Judgement

Amar Saran and Vijay Lakshmi, JJ.—We have heard Sri Sudhir Mehrotra, learned special Counsel for the High Court, learned Government Advocate Sri Akhilesh Singh, Sri Vimlendu Tripathi, learned A.G.A. and Sri Patanjali Mishra, learned Amicus Curiae appointed by this Court. Learned A.G.A. has filed affidavits on behalf of (a) Home Department, (b) I.G. (Prison), Principal Secretary Medical and Health and (c) ADG/IG (Prisons). He has also filed 5 charts mentioning tabular details as sought for by this Court. Reports by the District Judges, forwarded by the registry and UP SLSA (U.P. State Legal Services Authority, Lucknow) have also been filed.

2. Directions for convicts in jail for more than 14 years whose cases were to be considered for premature release.

In our order dated 27.11.2013 we have found the figure of 1223 such convicts to be unacceptably high and had directed that there should be a significant reduction in the number of such convicts by the next listing. Regretfully, the chart No. 1 relating to such convicts prisoners, who have undergone 14 years and more actual sentence without remission shows that the figure is still 1157. There seems to be no significant reduction from the earlier figure. The number of convicts who have been actually freed after the previous orders is not clear from

the said chart. It is also not clear from the chart as to whether the nominal roles or the Form A disposals are being held up at the D.M.'s, or at the Jail, or at headquarters or at the Government. (Advisory Board's) levels, but the major hurdle appears to be at the District Magistrates level. We would like better information on the next listing about the level at which delays are taking place and issuance of directions to the District Magistrates or other functionaries, where the disposals may have got stuck for expediting the process. Explanations should also be sought from these authorities for the reasons for the delays, and why the G.O. dated 6.9.2004 fixing the time schedule for consideration of the matters at different stages is not being strictly followed.

3. We are shocked to note that in some cases, even though the prisoners have been in jail for periods of 14 years and much more mentioned at serial Nos. 2, 18, 19, 23, 92, 93, 96, 97, 100, 110, 152, 156, 167, 270, 276, 277, 288, 297, 302, 304, 307, 310, 314, 316, 319, 320, 321, 323, 326, 330, 331, 342, 345, 396, 666, 674, 676, 677, 681, 695, 696, 697, 706, 929, 986, 1006, 1007, 1008, 1009, 1019, 1020, 1022, 1057, 1149 and 1150 of Chart I, where the considerations of Forms A or nominal roles have been held up at the Court level, because the judgments are not available. One of the glaring example is at S.N. 396 relating to Pappu @ Chandrapal, who is detained in Central Jail Agra since last 29 years and his case has not even been considered at the jail level because of non availability of copy of judgment. We would like an explanation why even the judgments in the aforesaid serial numbers and other similar cases are not available, stalling consideration of applications in Forms A or nominal roles, even though the prisoners have been in jail for 14 or more years. We direct that immediate steps must be taken for making the judgments available at the jail level.

4. Likewise, another disturbing reason for non-consideration of applications in Form A for release on Probation appears that guardian is not available. A prisoner who has crossed 75 or more years of age may have lost his wife or most of other relatives who are accepted as guardians. Probation officers often refuse to be guardians. The result is that the applications in Form A of such prisoners are not considered beyond the jail level. Immediate directions must be issued that absence of private guardians will be no reason for non-consideration of Form A, and that probation officers or other suitable functionary shall be given the charge of his guardian on the release of the convict on probation or license.

5. A cursory perusal of Chart 1 shows that prisoner Ambika Prasad at serial No. 474 aged 71 years is detained in Central Jail, Varanasi for 47 years and only a letter has been sent by the prisoner to the D.M. on 24.4.2011. Likewise prisoners at Serial Nos. 28, 396, 397, 398, 399, 400, 461, 602, 614, 616, 618, 619, 848 and 849 have done 28 or more years, but their Form A applications, nominal roles are pending at different stages, including before the jail authorities and the D.M. On the next date of listing, we would like to have complete records of all the prisoners, who have undergone actual periods of more than 28 years in

prison from all the jails and how their remissions have been dealt with, and what are the special reasons for not releasing these 14 or 15 prisoners who have undergone such inordinately long periods in prisons, and whether there is any proposal to expedite their applications for facilitating their release. It should also be indicated whether fresh applications have been moved each year after the rejections of the Forms A or nominal roles as per the relevant G.O.

We also find from a perusal of Chart I that there are about 153 convicts above the age of 70 years who have served out more than 14 years actual period in prison and whose cases have either not been considered for want of judgments or proper guardians, or are pending at the Jail, D.M., headquarters or Government levels, or have been rejected by the Government by one line orders, that they are unfit for release. Prima facie, under normal circumstances there appears no good reason for further detaining such old prisoners (some of whom have crossed 75, 80 or even 90 years, and some are incapable of walking without support or are suffering from other ailments), whose continued detention is a burden on the jail and the State after they have served out 14 or more years, whose cases cease to be covered by the 14 year minimum period in jail restriction u/s 433A, Cr.P.C. and who would normally be expected to have lost any potentiality to further commit a crime. We direct that the applications in Form A, nominal roles or mercy petitions of these approximately 153 prisoners who are over 70 years old and have undergone more than 14 years be considered and decided within 3 months, and in the cases of rejection, written orders be passed mentioning reasons why further detention of this old prisoner is necessary and the concrete information on which this inference is based, for perusal by this Court. Where judgments are not available, they must be obtained within two weeks. The Registrar General and the District Judges of the districts must ensure that the copies of the judgments when requested for by the jail or other authorities are provided within ten days of the demand. Background information and other required formalities be completed and joint meetings of the jail superintendents, D.M.s., and S.S.Ps/S.P.s be held preferably in the jail or other suitable premises, where the convict is available within 6 weeks for immediate consideration of the applications in Form A or nominal roles, at the initial stage for forwarding to the next level. No case should remain 5 pending for consideration at the jail or other level for absence of guardian, and in case the old prisoner is unable to provide a guardian, the State must issue an order directing probation officers or other suitable functionaries to act as guardians. The immediate progress in compliance of this direction be informed to this Court on the next listing.

6. Preparation of circulars for prisoners having served more than 14 years.

In the affidavit of compliance filed by the Home Department, Government of U.P., it has been mentioned that an order has been passed by another Division Bench in Criminal Appeal No. 209 of 1993, *Mewa Lal v. State of U.P.*, wherein the said Court has held that a prisoner, whose appeal is pending, even if he has

completed an actual period of more than 14 years cannot be released under the U.P. Prisoner's Release on Probation Act, 1938 or on consideration of his nominal role. This is contrary to view taken by this Court in Criminal Misc. Writ Petition No. 2357 of 1997 by the order dated 27.11.2013 and also the Government Order issued by the Government dated 14.7.2004. However, we are informed that a SLP challenging the order of the D.B. in Criminal Appeal No. 209 of 1993, has been filed before the Apex Court. Be that as it may, we fail to understand why the other part of our directions relating to preparation of a draft circular for prisoners having served out more than 14 years on the line of Maharashtra Government circular dated 11.4.2008, which was shown to us by the State in the interactive previous hearing in chambers, which makes a detailed categorisation of different categories of crimes as mentioned in pages 4, 5, 6 and 7 of our previous order dated 27.11.2013, has not been issued. We hope that by the next listing at least a draft circular will be produced before this Court for its perusal, so that a proper Government Order can be issued at the appropriate time, and the problem of non-disposal of applications in Form A or nominal roles which has resulted in a very large number of convicts (including very old or ailing convicts) remaining in jail even after periods where their further detention appears futile.

7. Make the jailbandi.com website or other website operational.

We regret to note that in spite of our previous order jailbandi.com website which was to detail the stages and progress of consideration of their applications under Form-A and nominal roles has not been made operative, which could have enabled the UPSLSA or other authorities or persons to verify in a transparent manner that the matters are being dealt with in a proper manner and the time schedule is being adhered to. Learned A.G.A. informs that a new website upprison.nic.in has been set up, but he was not in a position to say whether the data has been fed in the said website or whether it is operational. We would like proper details on these matters on the next listing. The UPSLSA which is required to keep a watch to ensure whether the disposals of Forms A, and nominal roles are taking place in a scheduled time period should oversee whether the web site is functioning and monitor disposal of matters and report compliance on each date of listing.

8. Sentence remission benefits for prisoners serving fixed term sentences not covered by section 433A, Cr.P.C. restriction. In this connection, Chart 2 has been furnished by the Jail Authorities, which mentions that there are 1965 such prisoners, who have undergone 1/3rd of their sentence and would be eligible for their Form A being considered. We regret to note that neither prisoners have been identified, nor does it appear that any action has been taken for releasing the prisoners, which would help reduce the prison population, which is creating major law and order and human rights problems. We have not been informed about the progress of utilizing the sentence remission benefits for limited term prisoners, whose cases were not covered by the restriction u/s 433A, Cr.P.C. from the District Judges, Subordinate Judicial Officers, Jail visitors lawyers or from the

jail authorities and U.P. SLSA. We would like a better details in this regard on the next listing.

9. Report in Connected Criminal Appeal No. 2773 of 2005 Gobardhan Singh and another v. State of U.P., regarding old ailing or long confined prisoners.

Chart 5 has been furnished, which mentions that between the ages of 70 to 75 years there are 931 such prisoners. Above the age of 75 years there are 620 prisoners. Most of these prisoners have been in jail for more than 10 years, and in most cases their appeals are pending in the High Court. There are 33 under trial or convicted women prisoners, who are in jail for more than 10 years. In cases other than 304-B, I.P.C. there are 599 under trial or convicted male prisoners, who are in jail for more than 12 years. Even in cases other than 304-B I.P.C., there are 24 under trial or convicted women prisoners, who are in jail for more than 7 years. These figures are unacceptably high. We are of the view that no adequate or concrete steps have been taken for reducing the numbers of such prisoners. It shows the complete inefficacy of the legal aid system that the vast majority of these prisoners who are old or have spent long periods in jail are not seeking legal aid. In most of the cases the response recorded to the query about whether the prisoner desired legal aid was N.A. or No. We fail to understand how an old and ailing prisoner who may even have engaged a lawyer, but whose lawyer is either not arguing his first bail application or the prisoner is not able to afford fees for moving a second bail application being moved would not be interested in getting bail. We are indeed disturbed to note that even though, such a large number of prisoners are in jail for such long periods of time, as per information collected from the jail authorities and papers forwarded to this Court from the District Courts, as pointed out by the High Court Counsel Sri Sudhir Mehrotra, only about 42 prisoners have asked for legal aid. We have reasons to doubt the correctness of this figure and it appears that no sincere effort has been made by the DSLSA's or other judicial officers or jail visitor lawyers to cross-check the information furnished by the jail authorities as directed by the previous order, or to actually elicit information by interviewing prisoners as to whether they would like legal aid at the District Court or High Court levels. This is another illustration for showing that the legal aid system is virtually nonfunctional and inspires no confidence amongst the prisoners or for general public. Forty two cases relate to jail appeals pending in the High Court. As a beginning these limited number of prisoners identified by the High Court Counsel may be provided with legal aid. There is further need to contact the old, ailing and long confined prisoners described above and to make them an offer of effective legal aid at the district or High Court levels. The DLSAs after convincing such prisoners that effective legal aid would be provided to them, must forward requests to the High Court. The High Court also needs to streamline procedures for providing legal aid for such prisoners.

10. Directions to CJMs to take steps for release of prisoners, who are in jail for period over 2 months after bail order. We are disturbed to note that in October,

2013, as per the tabular chart supplied in October, 2013 pursuant to the order dated 25.9.2013, there were 155 such prisoners, who are in jail after being granted bail by the Lower Court and High Court. Now the numbers as per the chart furnished on 26.3.2014 reveals that there are 168 such prisoners. Therefore, their numbers have even increased by 13 from 155 as per the earlier figures. As per the said chart, it is only in Gorakhpur range, there has been decline of 33 to 22 such prisoners. In other ranges of Allahabad, Meerut, Lucknow, Agra, Bareilly, there has been no change, or even an increase. This is in blatant violation of our order dated 25.9.2013 in Criminal Appeal No. 2773 of 2005 Gobardhan Singh and others v. State of U.P. where at page 4, we have referred to Moti Ram and Others Vs. State of Madhya Pradesh, and Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, . In these cases the Apex Court has reprimanded the subordinate Courts for considering the obligation to pay a sum of money on forfeiture of the bonds or sureties for non-appearance to be the only means for enforcing the attendance of the accused to face trial or to receive sentence, and for fixing bail amounts only in terms of the nature of the crime, which approach favours the wealthy and discriminates against the impecunious litigant, and eschews other criteria, such as roots of an accused in the community, his financial standing, or other features, such as the incapacity of an accused to abscond on account of his young or old age, or being a woman, or physically infirm or ailing. Similarly, in our previous order in Criminal Public Interest Litigation No. 2357 of 1997, Bachchey Lal v. State of U.P., dated 27.11.13 we had called for an explanation from the District Judges, and other jail visiting judicial officers as to why these prisoners (which include prisoners who are in jail for 9, 10 or 11 years after bail orders as pointed out in pages 14 and 15 of our order dated 27.11.2013) continue to languish in jail for want of adequate sureties. We had suggested that such prisoners be released by the appropriate Lower Court Judges by accepting any other alternative security, or on personal bonds, with or without conditions, such as periodical reporting before police stations or Courts concerned, or alternatively prisoners can be released from jail on personal bonds and given time to arrange for sureties, after fulfilling which requirement the periodical reporting before the Court or the police station could be done away with. The bonds could even be reduced in appropriate cases, and even the requirement for providing sureties may be given the go-by in onerous cases, where the prisoner lacks means to obtain adequate sureties for his release, forcing him to illegally and unconstitutionally remain in jail for long periods of time. We would like an explanation from the District Judges concerned for the inaction especially regarding the prisoners, which are mentioned in Proforma 6 of Chart 5 furnished to us on 26.3.2014. Proforma 6 of the said chart may be forwarded to the District Judges by the Registry and U.P. State Legal Services Authority immediately. It is ridiculous to note that one case, in which the accused is in jail, is pending since long at the final stage of hearing arguments, only due to non-availability of sureties u/s 437A.

11. Information sought about prisoners confined in jail for more than 5 years

desiring legal aid.

We think that no genuine effort has been made by the jail or judicial authorities in regard to this direction in our order dated 27.11.2013. We direct the jail and the DLSAs to sincerely comply with this direction and to send proper feed back on the next listing.

12. Prisoners suffering from mental ailments. Chart II has been furnished which points out that there are a total of 247 prisoners in jails in the 6 ranges of Agra, Allahabad, Bareilly, Lucknow, Meerut and Gorakhpur. However we find that only a limited number of these prisoners are being kept in the Mental hospitals (mainly at Varanasi, and a few in Agra), and the rest are confined in the normal jails. There appears to be no proper protocol for treating or caring for these prisoners in the jails. We would like better information on this point from the ADG (Prisons) and Director General (Medical and Health), U.P. on the next listing.

13. Problems of women prisoners.

It has been mentioned in the affidavit on behalf of the Director General (Medical and Health) that directions have been issued for providing private health care for women prisoners in Kanpur and Allahabad jails, and that an order has been issued on 21.2.2014 by the Director General (Medical and Health) to the CMOs to assign duties of specialist Government women doctors for female inmates and for their minor children in jails. On the next listing we would like a feedback from the Jail Superintendents and District Judges regarding the extent to which this direction is being carried out, and doctors have been provided who are visiting jails and addressing problems of women prisoners and their minor children.

14. Better details be also furnished regarding the other remaining points in the order dated 27.11.2013 in Criminal Public Interest Litigation No. 2357 of 1997 (Bacchey Lal v. State) and the order dated 25.9.2013 in Criminal Appeal No. 2773 of 2005 (Govardhan v. State) on the next listing.

15. As we are passing orders on several prison reform related matters in these connected petitions and appeal, and often different sets of responses are forwarded to the UPSLSA and to this Court from the Lower Courts and administrative authorities, we direct the Registrar General to appoint an appropriate Judicial Officer to vet files and to present responses systematically and to be available during the periodical hearings in these connected matters.

16. The Registrar General, High Court and the Member Secretary, U.P. Legal Services Authority are directed to communicate and ensure compliance of the aforesaid directions and to submit a report on the next listing. We also direct the Member Secretary and Secretary, UPSLSA, not merely to forward the responses received by the Authority to this Court, but to pro-actively issue directions to the DLSAs and to take other necessary steps as these matters relate to prisoners confined in jails and their need for legal aid. Copies of this order be provided to Member Secretary, UPSLSA, all District Judges for communicating to members of

DLSAs, CJMs and other concerned judicial officers, District legal aid Counsel, ADG (Prisons), U.P. for communication to all Jail superintendents, Law Secretary and LR, Home Secretary, U.P., Director General (Medical and Health), U.P., learned Government Advocate, learned AGA Sri Vimlendu Tripathi, Special Counsel for High Court, Sri Sudhir Mehrotra, learned Amicus Curiae, Sri Patanjali Mishra, and also to place the same before the R.G. High Court for compliance and submission of feedback on next listing. We hope that the said authorities or at least the high level representatives on their behalf who are capable of taking decisions in the matters and answering the queries that may be raised by the Court, shall attend the hearing on the next listing.