
(2004) 08 AHC CK 0056

In the Allahabad High Court

Case No : Criminal Writ Petition No. 2357 of 1997

Bachchey Lal (In Jail)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-08-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 161, 21
Criminal Procedure Code, 1973 (CrPC) — Section 433A
Uttar Pradesh First Offenders Probation Act, 1938 — Section 4
Uttar Pradesh Prisoners (Release on Probation) Rules — Rule 6(3), 6(4), 6(5)

Citation : (2004) 3 ACR 2791

Hon'ble Judges : Sushil Harkauli, J; Amar Saran, J

Bench : Division Bench

Advocate : A.G.A., for the Respondent

Judgement

Sushil Harkauli and Amar Saran, JJ. : Backdrop :

1. We had issued several directions by our order dated 19.4.2004. The original records of the cases related to 108 prisoners maintained at the Prisons Section of the secretariat at Lucknow and at the Varanasi Central Jail were also produced before us on 6.7.2004 and 8.7.2004. Thereafter on the previous hearing on 8.7.2004 we had orally directed the Secretary Legal Services Authority, and the Deputy Chief Probation Officer who were present to come out with concrete suggestions on how legal aid to convicts in prison who had served over 14 years could be made more effective and timely, and how the Probation Officer could ensure greater objectivity in the reports submitted by the District Probation Officers. Several affidavits and reports of different authorities have been filed on 6.7.2004 and 30.7.2004. The reports show that there are 510 prisoners in various prisons in U.P. who have undergone over 14 years in prison. These include 249 prisoners who were convicted prior to 18.12.1978, and 261 prisoners who were convicted after that date.

2. Disturbing Findings: We must say that even on a cursory perusal of the

material, records and affidavits before us, we are greatly disturbed with the approach adopted by the State Government in dealing with the cases of prisoners who have undergone over 14 years in prison and were eligible for consideration of their cases for pre-mature release under the Jail Manual and the Prisoners Release on Probation Act. The two most disturbing features are:

1. Delays and indefinite postponement of the cases of eligible prisoners.-Para 198 (a) of the Jail Manual requires the Jail Superintendent to submit the life-convict's nominal roll for consideration of the orders of the State Government "as soon as the term of imprisonment undergone by the convict together with any remission earned by him under the rules amounts to fourteen years". In the case of convicts to whom Section 433A of the Code of Criminal Procedure applies, i.e., convicts convicted by the trial court after 18.12.1978, the period of fourteen years is counted excluding the period of remission. Chatrapal son of Ram Kumar was sentenced by the Moradabad Sessions Court on 28.5.1973. While his nominal roll was eligible for forwarding in 1990, it was actually forwarded by the Superintendent Bareilly jail, after 12 years of the due date, on 24.7.2002. Thereafter it is languishing with the D.M., Moradabad. Kalakatar son of Jamuna, was convicted by the Sessions Court on 10.3.1977. His nominal roll was eligible for being forwarded by the Bareilly Jail Superintendent in June, 1995. It was actually forwarded 7 years after its due date on 24.7.2002, and it is lying with the D.M., Budaun, ever since. Ghanshyam son of Arjun Singh was convicted by the Sessions Court, Bareilly, on 22.12.1971. His nominal roll was forwarded by the Jail Supdt. on 24.9.1999 its due date by the Jail Supdt., Bareilly. But it is lying in ice with the D.M., Bareilly, for the last 5 years. These are just two or three illustrative cases. There are very many such cases where there have been unpardonable delays in forwarding the application by the Jail Supdts., or by the S.P., D. Ms. , Probationary Officers, Advisory Boards or even by the State Government. The original record of Chandrabali son of Ram Kripal who had undergone 14 years sentence without remissions on 29.5.1997 shows that the D.M. and S.S.P., Gonda, and the Advisory Board recommended release of the convict in 1998, as the conduct of the prisoner in jail was good, there was no existing dispute with the family members of the deceased. Yet unbelievably, in the 6 years thereafter the file has not even been put up before the State Government for appropriate orders.

2. Predisposition to reject applications for premature release on flimsy, untenable grounds.-Convicts who have undergone 14 years in prison are unlikely to engage in further crimes, and have been punished adequately, and usually the relations of the victims have also been sufficiently assuaged by the extent of sentence undergone by the convict. It is noteworthy that virtually all the 510 prisoners are described as non-habitual prisoners who were involved in this single incident. The crimes were crimes arising out of land disputes or other momentary conflicts with particular individuals, and the convicts were not habitual criminals whose career was crime. (It is needed strange that there would not be more than one or two cases of a hardened criminal whose career and livelihood is crime who is

detained in any prison in U.P. for over 14 years. We are unable to say whether this is due to absence of convictions of hardened criminals, or their uncanny success in securing early releases. However, in our over view of the records we did not come across a single case where the convict was described as a habitual criminal).

3. Usually the enmity between the parties had also ended with lapse of time. Yet in a routine manner, the nominal rolls or Form A applications of virtually all the convicts are being rejected. Bald statements of the police authorities, D. Ms. or probationary authorities, unsubstantiated by any material for the conclusions that tension or enmity between the parties still exists, or there was danger to the lives and safety of the opposite party or the prisoner, or simply the ipse dixit of the D.M. or S.S.P. that they do not favour release, or that the convict is not likely to have a livelihood when he turns home, have been taken as sufficient grounds for refusing applications for premature release.

4. Stay in jail for an indefinite length of time leads to irreparable break down of family life, absolute penury in the family, and exploitation of children and females.

5. The cost to the State of keeping a prisoner who has lost the potentiality of committing a future crime is also a factor to be taken into account for not allowing prisoners to remain in jail unnecessarily for unlimited periods of time.

Government officials are mistaken if they think that the safest course is either to reject or to postpone an application for premature release. Such a cavalier rejection of the application of the convict for premature release, ignoring the criteria contained in the jail manual, Prisoners Release on Probation Act or in decisions of the High Court or the Supreme Court apart from being a human rights violation of the convict, also violates, the convict's fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. It may on occasion invite the censure of the Court against negligent authorities. It is too late in the day for the authorities to contend that these fundamental rights are shut out before the locked doors of the prison. Likewise, the fear of authorities that they would lay themselves open to charges of corruption if they were to allow any application for premature release is unfounded. If the orders are passed honestly on objective criteria laid down in the statutes, without discrimination between similarly placed prisoners, in line with the judicial dicta of this Court and the Apex Court, and decisions are based on concrete verifiable material, there is no reason for the authorities to apprehend that such decisions on individual cases on merit would be frowned upon by Courts.

6. The suspicions of the Court are however aroused if the authorities single out just one or two cases for release, as the solitary two cases out of the 108 prisoners confined in Varansi Central Jail. Thus, in the case of one released prisoner Raj Bahadur son of Surya Baksh, who was involved in a double murder case, we find that the reports of the D.M. and S.S.P. did not favour Raj Bahadur's release as he had overstayed his home leave by a month and they

feared that he would abscond. The Form "A" had also been rejected earlier. This has left the Court wondering as to what was so special about the case of Raj Bahadur, compared to the many other prisoners whose releases were being refused on flimsy grounds. This is not to say that the Court is recommending putting Raj Bahadur back in prison. Raj Bahadur was involved in an individual and sudden dispute. He had undergone 14 years imprisonment, the jail report was favourable, he was not a habitual offender, and the disputes of the parties appear to have ended long back.

7. However, such preferential treatment in one case, compared to other similarly placed convicts, creates a perception in a prisoner that he is being discriminated against, and breeds anger and hostility against the whole system. Thus, if the perception is that the sentencing system is unfair or insensitive, or the sentence unduly prolonged and disproportionate to the crime it either cripples and breaks the spirit of a human being and "benumbs" (to use the expression of justice Krishna Aiyar) making him unfit for contributing productively for his family or society on return home, or it "brutalizes" a person and makes him develop a vindictive attitude towards society, or it makes him develop an attitude of indifference and disregard for the legal system, which he feels is loaded against him. This renders the prospects of the prisoner's reform, which ought to be the avowed aim of any scheme of enlightened penology, that much more difficult.

8. It is unfortunate that premature releases are either ordered only by Court orders (such as the recent Supreme Court order dated 23.7.2004, in the case of Special Leave Petition, Bhagwandas and Ors. v. State of U.P. (Criminal) No. 1523 of 2004, directing release of 43 prisoners who had undergone 14 years) or by a blanket Government order under Article 161 of the Constitution of India, directing releases of all prisoners belonging to a particular category which has invited the wrath of this Court in the case of Mirza Mohammad Husain v. State of U.P. 2001 (3) ACR 2276: 2002 (1) JIC 342 (All). But no orders are being passed after considering individual cases on merit. It is also sad that prisoners with financial clout as the abovementioned 43 prisoners have only been able to secure releases from the Supreme Court, but what about the fate of the forgotten penniless prisoners who have no one to represent their cases that this Court is especially concerned about.

Directions:

9. In the light of the above discussion the Court is issuing the following directions:

1. Direction to Director General Prisons and Principal Secretary (Prisons) to decide pending nominal rolls or applications in Form "A" within four months.

10. The learned Government advocate has prayed for three months further time for disposing of the pending premature release matters regarding 19 prisoners whose nominal rolls are pending, and 32 prisoners whose Forms "A" are pending relating to Varanasi Central Jail. We grant this time to him. However, we direct

the Principal Secretary (Prisons) and the D.G. (Prisons) to have the pending nominal rolls and Form A applications of all eligible prisoners in U. P. prisons disposed of, if possible within four months, i.e., at the Jail Supdts., D. Ms. , S.S.P./ S. Ps. Probation Officer (if applicable), Advisory Boards and finally State Governments levels. Greatest expedition must be exercised in the cases of infirm or ailing prisoners who may be eligible for the benefits of paras 195, 196 or 197 of the Jail Manual, or those who have suffered the longest periods in jail, or those who have done over 14 years and are over 70 years in age. Apparently there appears no good reason to keep the eligible category of prisoners over 70 years in age, in jail any longer, unless there are very strong grounds based on objective materials to deny them an order of premature release at this stage. The Principal Secretary (Prisons) or the D.G. (Prisons) are required to furnish a progress report on these directions by the next date of listing.

2. Direction to the Principal Secretary (Prisons) to ensure that time schedules are observed by different authorities including the Government in deciding nominal rolls or applications in Form A, and evolving procedures for re-submission of nominal rolls after the expiry of a certain length of time.

11. As we have emphasised above that a time schedule for disposal of prisoners premature release matters after they have undergone 14 years is of the essence. This is imperative not only under Article 21 of the Constitution, but also under the provisions of the Jail Manual and the Prisoners Release on Probation Act, 1938 and Rules framed thereunder. We have already alluded to the time imperative in para 198 (a) of the Jail Manual and the duty on the Jail Supdts. to forward the nominal rolls "as soon as" the prisoner is eligible under the 14 years rule. Under the same sub-paragraph the D.M. is also to move the Court "immediately" for a copy of the judgment on receipt of the nominal roll from the Jail, and to record his opinion on the question of immediate release, (in consultation with the D.M. of the home district of the prisoner if that is different from the district of conviction), and in case of any objection, indicate the further period which in his opinion, the prisoner should serve, and a brief account of the circumstances of the crime. Para 200A further provides that the D.M. shall, while forwarding the nominal roll to the State Government, inform the Jail Supdt. who should check any delays in transmission or orders of the Government on the rolls, and in the event that orders are not received within "two months" of their being forwarded by the Government, he shall issue a reminder to the Government. There appears to have been complete amnesia so far as this provision is concerned.

12. Likewise under Rule 6 (2) of the U. P. Prisoners Release on Probation Rules, 1938, the Jail Supdt. was required to forward the Forms A of the prisoner to the D.M. "as soon as may be" after his receipt and processing of the Form A application. The D.M. also under Rule 6 (3) was required to "immediately" apply for the Court's judgment on receipt of the application from the jailor under Rule 6 (2), and to forward it after filling in the entries meant for him to the Inspector

General of Prisons "without delay". For checking delays the D.M. is required to maintain a register in Form C under Rule 6 (4), showing the date of receipt of the application from the Jailor, date of dispatch to the I.G. etc. The meetings of the Board which are to finally consider the Form A applications are required to be held "at least once every month" to make recommendations, in view of Rule 6 (5). The All India Committee on Jail Reforms, 1980-83-Report, headed by Justice A. N. Mulla had also recommended at item 563 that

the case of every prisoner which is ripe for review should be decided within a maximum period of six months from the date of eligibility".

13. So far as the other issue relating to the need for re-submission of nominal rolls even after an earlier rejection, paragraph 201 of the Jail Manual provides that when nominal rolls are being considered under para 198, there is no power to reject a nominal roll once and for all. On the contrary para 201 provides either for release forthwith, conditional or unconditional, or for future conditional or unconditional release after the prisoner serves out a stated period of sentence or as in para 201 (3): "that the case be reconsidered after a stated period or after the convict has served out a specified period of sentence inclusive of remissions". This period for re-consideration after a rejection has not been specified, but in the opinion of this Court, 6 months would be an appropriate period.

14. We find that in complete ignorance of these provisions the State Government appears to be rejecting nominal rolls once and for all, for all time to come, and on occasion such orders of rejection are being passed even in cases where the D. Ms. or Advisory Boards have recommended reconsideration of the cases after a certain length of time. The D.G. (Prisons) and the Principal Secretary (Prisons) must submit a report explaining the non-observance of time schedules at different levels, non-placing of the nominal rolls for fresh consideration and the corrective measures proposed by the next date of listing.

3. Criteria for decision on applications for premature release.

15. As stated above that mechanical rejection of applications in Form A or nominal rolls should not be the avowed aim when the cases of those prisoners who have undergone over 14 years imprisonment are being considered for premature release. In para 5 of the Laxman Naskar Vs. Union of India and Others, , the Supreme Court has approved of the following criteria, when an application for premature release is being considered:

- (i) Whether the offence is an individual act or crime without affecting the society at large ;
- (ii) Whether there is any chance of future recurrence of committing crime ;
- (iii) Whether the convict has lost his potentiality in committing crime ;
- (iv) Whether there is any fruitful purpose of confining this convict any more
- (v) Socio-economic condition of the convict's family.

16. If there are any conclusions to the contrary, i.e., if it is suggested that there is possibility of a crime recurring, or the accused is likely to engage in a life of crime as a means for securing his livelihood or if tensions exist between the families of the victims and the accused after the lapse of 14 or more years, then these conclusions must not be reached on the mere ipse dixit of the D.M. or S.S.P. or Probation Officer or Advisory Board, but must be based on objective verifiable material, with reasons.

4. Principal Secretary to issue directions to all subordinate authorities, i.e., D.G. (Prisons), Jail Supdts., D. Ms. and S.S.P./S. Ps. Probation Officers, Advisory Boards to observe time schedules and to decide applications for premature release on the objective criteria spelt out above.

17. Compliance report may be sent to the Court by the next date of listing.

5. Requirement for maintenance of transparent records and charts for showing disposal of cases relating to premature release.

18. A chart has been prepared pursuant to our earlier directions mentioning names, parentage, date of conviction by the trial court of prisoners, dates when their cases became eligible for consideration of nominal rolls or Forms A after completing 14 years with remissions in the cases of convictions prior to 18.12.1978, and 14 years without remissions in post 18.12.1978 convictions, reasons for rejection of nominal rolls or Forms A, report on local circumstances, whether prisoner was a habitual or casual criminal. Some of the columns are repetitive or redundant, such as the column mentioning that prisoners have been awarded life imprisonment, or that nature of crime is grave etc. The Principal Secretary (Prisons) and the D.G. (Prisons) in consultation with the Government Advocate may apply their minds for trimming and rationalizing these columns. The columns for date of forwarding nominal rolls and Forms A should be separated. Some other details such as the date of incident and in the event of rejection, the subsequent date for reconsideration by State Government, some objective material in support, of reason for rejection of Form A should also be mentioned in this Chart which should be maintained at the Secretariat level. This is needed for objective and immediate appreciation of the different cases for premature release, their stages and reasons for rejection etc. Some data relating to local circumstances etc. needs to be obtained from the D. Ms. of the convict's home districts, and filled up at the Secretarial level, but that has not been done as yet, as only Supdts. of Jails have furnished the data with them.

19. Absence of a transparent table containing such information which could be conveniently perused by superior authorities and Courts appears to be the reason why Chandrabali's case remained stuck at the secretariat level even though as mentioned above his release had been recommended by the D.M., S.S.P. and Advisory Board as far back as 1998. A compliance report about the action taken in this regard may be sent to the Court by the next date of listing.

6. State Government and Principal Secretary (Prisons) could consider

appropriateness of an amendment in the Rules for reducing period for consideration of Forms A from 14 years to a lesser period of about 10 years or so.

20. This recommendation is being made because currently both Forms A and nominal rolls are forwarded after completion of an actual jail period of 14 years, in cases to which Section 433A, Cr. P.C. applies, and to 14 years with remissions to convictions prior to 18.12.1978. The procedure for release under Form A are more complicated and time consuming, as a Probation Officer's report is also needed after the D.M. and S.P./S.S.P.'s report. The reason for this more complicated procedure was that earlier the releases on licence under the Prisoners Release on Probation Act, 1938, were releases monitored by the Probation Officer, or other appropriate guardian, after the prisoner had undergone only about 5 years or 1/3rd of the sentence period whichever was lesser, which was counted towards the prisoner's sentence. The release under Para 198, was a release after 14 years and was usually an unmonitored release. Presently if a prisoner submits an application under Form A, he suffers the risk of having the consideration of his nominal roll deferred as the proviso to para 198 (3) mentions that nominal rolls will be submitted only after the disposal of the application in Form A. The result is that consideration of the nominal roll of an improperly advised convict is unnecessarily held up, who first makes an application in Form A, without any corresponding advantage. It would make sense therefore, if the period when an application in Form A may be considered, is reduced from 14 years to about 10 years or so.

21. Section 433A, Cr. P.C. would not constitute a bar to reducing the period as this release on licence under Form A is really treated as a jail period, as has been clarified by Hon'ble Krishna Aiyar, J., in the Constitution Bench decision of the Apex Court in Maru Ram and Others Vs. Union of India (UOI) and Others, . In paragraph 69 the said decision notes: We, heart-warmingly, observe experiments in open jails, filled by lifers, liberal paroles and probations, generosity of juvenile justice and licensed release or freedom under leash a la. The Uttar Pradesh Prisoners' Release on Probation Act, 1938. We cannot view without gloom the reversion to the sadistic superstition that the longer a life-convict is kept in a cage the surer will be his redemption. It is our considered view that, beyond an optimum point of say, eight years-we mean no fixed formula-prison detention benumbs and makes nervous wreck or unmitigated brute of a prisoner.

Likewise in paragraph 72 (11) the same law report again reiterates: "The U. P. Prisoners' Release on Probation Act, 1938, enabling limited enlargement under licence will be effective as legislatively sanctioned imprisonment of a loose and liberal type and such licensed enlargement will be reckoned for the purpose of the 14 years duration. Similar other statutes and rules will enjoy similar efficacy.

22. Also Section 4 of the U. P. Prisoners' Release on Probation Act, 1938, provides that the period which a person is absent from prison under licence under the Act is treated as part of the period of imprisonment to which he was

sentenced.

23. Before parting with this suggestion, this Court commends the prompt steps taken by the Government to bring out a Government order dated 14.7.2004 superseding the earlier Government orders dated 22.12.1975 and 3.7.1992 and permitting consideration of nominal rolls and applications in Form A even during pendency of criminal appeals by the prisoner. This G.O. in fact exceeds the Courts recommendation for the reasons mentioned in the order dated 19.4.2004, which was confined only to recommending consideration of Forms A under the U. P. Prisoners' Release on Probation Act, 1938, while appeals against convictions were pending.

7. Directions to Legal Services Authority for making legal aid to convicts more effective, calling for feed back from D. Js. and for overseeing the disposal of cases relating to premature releases of prisoners in the Secretariat.

24. The port of the Secretary, L.S.A., shows that some letter has been issued to the District Judges to provide Legal Aid to resourceless convicts for filing appeals and also for forwarding applications for premature release. Without calling for feed back from the District Judges and without effectively monitoring the implementation of such directions, such a letter will be of no avail. Because only the motions of justice are not to be made, but justice and legal aid must actually be provided.

25. We also desire that the Legal Services Authority oversees whether the records are being properly and transparently maintained at the Secretariat, whether time schedules for disposal of prisoners cases are being observed at different levels, and the objective criteria as detailed above are being followed. This direction is needed because it is not possible for this Court to directly and continuously monitor the cases of 510 prisoners who have undergone over 14 years in prison and are eligible for consideration of their nominal rolls or applications in Forms A. This Court feels that a system must be evolved for effectively monitoring this process. The Secretary L.S.A. must submit his report about the steps taken in compliance of this order within two months.

8. Direction to District Judges to comply with directions of the Legal Services Authority for providing legal aid to resourceless prisoners for filing criminal appeals and moving applications for premature release, and to submit a report to this Court about action taken and other problems relating to district or Central Jails under their jurisdiction.

26. At the initial stage such a direction must go to the District Judges, Allahabad, Varanasi, Bareilly, Moradabad, Rampur, Sitarganj (Udhamsingh Nagar), Lucknow, Gorakhpur, Sultanpur, Faizabad, Meerut, Ghaziabad and Agra, where the 14 years Jail prisoners are lodged. Monitoring the conditions of prisoners and providing Legal Aid to prisoners has also been enjoined under Sections 12(g) of the Legal Services Authorities Act, 1987, on the District Judges who chair the District Legal Services Authority. The District Judges must also get a survey

conducted on the problems in the jails under them and submit a report to this Court so that if needed necessary directions may be issued by this Court to the concerned authorities on different matters. The District Judges' compliance report may reach this Court within two months.

9. Registrar-General to take steps for disposing of 231 appeals up to 2000 where Appellants are in jails within a period of about one year.

27. The report from the Registry shows that there are 231 criminal appeals of life convict prisoners upto the year 2000 where Appellants have not been released on bails. We have already seen how the disposal of applications for premature release have been held up due to this pendency of appeals. Apart from being a human rights problem of the prisoner and a violation of his fundamental rights guaranteed under Articles 21 and 14 of the Constitution, such appeals result in repeated applications for bails wasting the Court's precious time, or in releases on technical grounds. The Hon'ble Chief Justice has already passed orders for preparation of paper books and listing of these cases. In consultation with the Hon'ble Chief Justice, the feasibility of having more Benches or giving one or two criminal appeals to each Division Bench of the High Court every week, could be considered so that these 231 criminal appeals are disposed of in a maximum period of about one year. The Registrar-General must also get data prepared on the total number of Appellants (in addition to the number of appeals), who are in jail upto the current period. The compliance report and action taken by the Registrar General in respect of this direction may reach this Court by the next date of listing.

28. List for further orders on 17.9.2004.