

(2000) 07 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19873 of 1997

Bandi Prakash

APPELLANT

Vs

Superintendent, Central Prison and Others

RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

Constitution of India, 1950 — Article 161
Criminal Procedure Code, 1973 (CrPC) — Section 433A

Citation : (2000) 2 ALD(Cri) 508 : (2000) 5 ALT 146 : (2000) 4 RCR(Criminal) 342

Hon'ble Judges : Ramesh Madhav Bapat, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : S.R. Sanku, for the Appellant; Govt. Pleader for Home, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Madhav Bapat, J.—The petitioner herein, Bandi Prakash, son of B. Ramaiah, convict No. 7893, lodged in Central Prison, Chenchalguda, Hyderabad, has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with the following averments: That he is a life convict undergoing the sentence of life imprisonment at Chenchalguda Central Prison, Hyderabad as convict No. 7893. The Additional Sessions Judge, Adilabad, convicted him for life in Sessions Case No. 317 of 1987 on 21-4-1994 in connection with Crime No. 79 of 1984 of Mandamarri Police Station, Adilabad District.

2. It is further averred by the petitioner that the Government of Andhra Pradesh issued G.O. Ms. No. 193 and released as many as 289 lifers who underwent 7 years of imprisonment and 10 years of imprisonment with remissions on the occasion of "Golden Jubilee of the Country's Independence Day i.e., on 15-8-1997".

3. It is the further case of the petitioner that there has been several instances of

granting remission to the prisoners on important occasions such as the Birth Centenary of Mahatma Gandhi on October 2, 1969 and Birth Centenary of Tanguturi Prakasam Panthulu on August 22, 1972. Similarly on the occasion of Silver Jubilee of the Country's Independence on 15th August, 1972, etc. It is further pleaded by the petitioner that on all the above occasions prisoners serving life imprisonment who have completed 7 years of actual sentence and 10 years of total sentence including remission were released.

4. It is the further case of the petitioner that he is one of the convicts, who is eligible prisoner to get special benefit which was conferred on prisoners vide G.O. Ms. No. 193. The petitioner claims to have completed 7 years of actual sentence and 10 years of total sentence including remission. It is further averred by the petitioner that the same fact was not properly and correctly recorded in his history ticket and in the admission register maintained by the jail authorities, Warangal Central Prison.

5. It is the further case of the petitioner that his date of first arrest and admission in jail was not properly recorded by the authorities and therefore the petitioner prays for intervention by this Court for recording the correct date of first arrest and admission in jail so as to enable him to claim the benefit of G.O. Ms. No. 193.

6. It is the further case of the petitioner that he was facing in all three cases. Mandamarri Police registered the first case on 20-10-1984 as Crime No. 73 of 1984 for the offences punishable under Sections 324 and 427 IPC. The second case was registered on 4-11-1984 as Crime No. 79 of 1984 for the offences punishable under Sections 148, 449, 302 and 324 IPC of Mandamarri Police. The third case was registered as Crime No. 26 of 1986. The petitioner and three others were prosecuted in the said case. The petitioner was arrested in connection with third case on 12-3-1986. The III Town Police, Kothagudem, arrested him. Immediately after the petitioner was arrested, he was remanded to judicial custody and he was lodged to Warangal Central Prison. This fact was also published in the popular newspapers like Indian Express on 15-3-1986. Though the petitioner has been in judicial custody in Cr. No. 26 of 1986 of III Town Police Station, Kothagudem since 12-3-1986, it has not been calculated for the purpose of total period of sentence, which he underwent.

7. It is the further case of the petitioner that in Cr. No. 79 of 1984 of Mandamarri Police Station, Adilabad District, which was registered subsequently as Sessions Case No. 317 of 1993 on the file of the Additional Sessions Judge, Adilabad in which he was sentenced for imprisonment for life. He has been undergoing imprisonment, which crime happened to be earlier to 12-3-1986. Even though he has been in judicial remand since 12-3-1986 as an under-trial prisoner, the said fact and the date were not taken into account for the purpose of remission. This happened due to negligence of the authorities concerned in getting the details of period of detention, which the petitioner underwent from 12-3-1986 to 31-1-1987 from the jail authorities. This resulted in not including the period of

10 months and 18 days to the credit of the petitioner. The authorities calculated the detention of the petitioner since 31-1-1987. In fact, the petitioner was arrested and lodged in the Central Jail since 12-3-1986.

8. It is the further case of the petitioner that he spent 10 months and 18 days of remand period in Warangal Central Prison as an under trial prisoner. If the said period had accounted for, he would be eligible for getting the benefit of the said G.O. referred to above.

9. It is the further case of the petitioner that he has completed 6 years 9 months of actual sentence as on 15-8-1997 if the date of arrest is taken as 30-1-1987. If his detention is counted from 12-3-1986, then he underwent imprisonment of 7 years 7 months but this benefit was denied. Therefore, under these circumstances, the petitioner prays that this Court may be pleased to issue a Writ of Habeas Corpus or any other writ declaring the detention of the petitioner as illegal as his remand period is not added from 12-3-1986 and he has not been given benefit of G.O. Ms. No. 193.

10. On presentation of the writ petition, notices were issued to the respondents. On behalf of the respondents, the first respondent herein i.e., one Ch. Ramakrishna, S/o Jagannadham, Superintendent In-charge Central Prison, Hyderabad, has filed the counter-affidavit. It is stated by the 1st respondent in the counter-affidavit that the petitioner was convicted and sentenced for life in Sessions Case No. 317 of 1993 on the file of Additional Sessions Judge, Adilabad on 21-4-1994.

11. It is further stated in the counter- affidavit that the Government issued G.O. Ms. No. 193, Home (Pri. C) Department, for release of life convicts, who underwent 7 years of actual sentence and 10 years of total sentence including remand period and remission on the occasion of "Golden Jubilee of the Country"s Independence Day i.e., on 15-8-1997.

12. It is further submitted that the petitioner herein has undergone the actual sentence of three years three months and 24 days as on 15-8-1997 including the remand period, which the petitioner has undergone the sentence as on 15-8-1997 was 6 years 8 months and 24 days (remission not included). Hence, the prisoner has not completed 7 years of actual sentence and 10 years of total sentence including remand period and remission as on 15-8-1997. Therefore, he is not released from the jail as per G.O. Ms. No. 193.

13. It is the further case of the first respondent that the petitioner was received in jail by transfer from Central Prison, Warangal on 3-10-1994 to undergo life imprisonment in Sessions Case No. 317 of 1993 on the file of the Additional Sessions Judge, Adilabad (Cr. No. 79/1984).

14. It is the further case of the first respondent that the particulars of Cr. No. 73 of 1984 are not available in the office. Cr. No. 79/84 was numbered as Sessions Case No. 317/1993 on the file of the Additional Sessions Judge, Adilabad and the

prisoner was convicted and sentenced to suffer life imprisonment in the said case on 21-4-1994. The remand period as per the committal warrant was from 30-1-1987 to 11-2-1987 and from 11-2-1987 to 16-8-1988 and from 10-7-1992 to 10-4-1994.

15. It is the further case of the first respondent with regard to Cr. No. 26/86 of III Town Police Station, Kothagudem, the petitioner was remanded to judicial custody on 12-3-1986. The remand period in this case was extended from time to time by the Additional Judicial First Class Magistrate, Kothagudem up to 10-8-1987. Further particulars of the case are not available in the office.

16. It is the further case of the first respondent that in the office letter No. CRH/RC.I/1388/97, dated 16-9-1997 he requested the Court to send the particulars of this case. There is no other direction of the Court to take remand period from 12-3-1986 in Cr. No. 26/86 and in Cr. No. 79/84, hence the remand period from 12-3-1986 is not taken into consideration by the learned Judge in Sessions Case No. 317 of 1993. The said two cases are filed in different Courts and there was no direction from the Courts to give the benefit of remand period from 12-3-1986. Therefore he is not released as per G.O. Ms. No. 193 as the petitioner has not completed 7 years of actual sentence and 10 years of total sentence including remission as on 15-8-1997. With these averments the first respondent prayed that the writ petition be dismissed with costs.

17. The 3rd respondent, Superintendent of Police, Khammam, Mr. T. Krishna Raju, filed the counter-affidavit. In the counter-affidavit it is stated that the contents of para (1) is generally correct and no reply is necessary. As far as the contents of para (2) of the affidavit of the petitioner is concerned, it is stated that it is beyond his knowledge. He admits that the Government has issued G.O. Ms. No. 193 giving benefit to the prisoners, who have completed 7 years of actual sentence and 10 years of sentence including remission. The fact of admission of the petitioner in not maintaining proper record by the jail authorities is said to be beyond his knowledge. Lastly the 3rd respondent herein states that the claim of the petitioner in para 10 of the affidavit is not tenable for release. With these averments, it was prayed that the petition be dismissed.

18. Before we start discussing the merits of this case, we would like to put it on record that the Superintendent, Central Jail, Hyderabad cannot say that the particulars of first arrest of the petitioner are not available in the prison. It is totally ridiculous whether the benefit is to be given to the petitioner on his arrest at the first instance or otherwise is. altogether a different issue. Every record of the prisoner must be made available by all concerned authorities to the Superintendents of Prisons and if such record is not available, it is also the duty of the Superintendent of prison to enter into the correspondence and get all the particulars. The negligence of not maintaining proper record in respect of the present writ petitioner is hereby deprecated.

19. The learned Counsel for the petitioner Mr. B. Tarakam submitted at the Bar

that three cases were registered against the petitioner herein. The first case was registered on 20-10-1984 under Sections 324 and 427 IPC by Mandamarri Police, Adilabad District. The second case was registered on 4-11-1984 in Cr. No. 79/84 under Sections 148, 449, 302 and 324 IPC by Mandamarri Police, Adilabad District. Whereas Kothagudem Police registered the 3rd case on 12-3-1986 in Cr. No. 26/86 and the petitioner was in judicial custody since then. But as far as Cr. No. 79/84 (Sessions Case No. 317 of 1993) is concerned, though he was in judicial custody, he was shown arrested in connection with the said case on 31-1-1987 and that date is to be taken as the crucial date in calculating the remission or giving benefit of the G.O.

20. The learned Counsel Mr. B. Tarakam pointed out the provisions contained in Section 428 Cr. P.C., which read as under:

"428. Period of detention undergone by the Accused to be set-off against the sentence of imprisonment:- When an accused person has, on conviction, been (sentenced to imprisonment for a term not being imprisonment in default of payment of fine) the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set-off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him."

Therefore, it was contended that the benefit should have been given to the petitioner herein treating 12-3-1986 as a crucial date.

21. The learned Counsel for this purpose relied upon a ruling reported in State of Haryana and Others Vs. Balwan etc., . In that case their Lordships were pleased to hold that if at all the remission is given to the petitioner by the Government, then the Government is empowered to give the remission as per the provisions contained in Sections 432, 433 and 433-A Cr. P.C. Before insertion of Section 433-A Cr. P.C. if the accused is convicted, the Government can give benefit. After insertion of Section 433-A Cr. P.C. only the President of India and the Governor of State can exercise their powers under Articles 72 and 161 of the Constitution of India respectively to release the convict before expiry of 14 years of imprisonment.

22. The learned Counsel also relied upon a ruling reported in Gopal Vinayak Godse Vs. The State of Maharashtra and Others, . in which their Lordships were pleased to hold at para (5) as under:

"There is no provision of law where under a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. Section 57 IPC does not say that transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all embracing fiction. A sentence of

transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

23. The learned Counsel also relied upon a ruling reported in *Bhagirath Vs. Delhi Administration*, . Their Lordships while interpreting Section 428 Cr. P.C. were pleased to hold at para (2) as under:

"The appellant, Bhagirath, filed a petition in the Delhi High Court asking that his case be referred for the orders of the Delhi Administration under paragraph 516-B of the Punjab Jail Manual since, though sentenced to life imprisonment, he had undergone a period of detention in jail amounting to 14 years together with the remissions earned by him. A learned Single Judge of the High Court rejected that petition on the ground that, in computing the period of 14 years, the period spent by the convict in the jail as an under trial prisoner cannot be taken into account because, Section 428 of the Code which allows such a set-off applies only when an accused has been sentenced to imprisonment for a term, and the sentence to life imprisonment is not an imprisonment "for a term". In coming to the conclusion that Section 428 has no application to cases in which an accused is sentenced to life imprisonment, the learned Judge relied upon a judgment of this Court in *Kartar Singh and Others Vs. State of Haryana*, ."

24. The learned Counsel also relied upon a ruling reported in *Madhav Shankar Sonawane Vs. State of Maharashtra*, . in which their Lordships were pleased to hold that the direction by the Court that the convict cannot be released unless he has undergone 25 years of imprisonment is bad in law.

25. The learned Counsel further relied upon a ruling reported in *Shabhu and Another Vs. State of U.P. and Another*, . in which their Lordships were pleased to interpret u/s 428 Cr. P.C. and held that:

"Under Section 428, the period of detention as an Under-trial of an accused in a particular case can be set- off only towards the sentence ultimately awarded to him in that very case. Whether or not the detention of a person in one case should also be treated to be his detention for the purposes of any other case, wherein he is wanted is a question to be decided upon the facts and circumstances of each case. No set formula can be laid down in that behalf. If the facts and circumstances of a particular case indicate that a person already detained in one case was also subsequently wanted in another case and he was not formally detained in that other case on account of the negligence of the concerned authorities, and for no fault of his, he can, with all justification, claim that his detention in the earlier case should also be deemed to be his detention for the purposes of the . second case. In that event benefit of Section 428 Cr. P.C. can be extended to him."

26. The learned Counsel further relied upon a ruling reported in *Government of Andhra Pradesh and Another Vs. Anne Venkatesware and Others*, . Their Lordships laying down the law as to what is meant by set-off u/s 428 Cr. P.C.

Their Lordships held in para (7) of the Judgment as follows:

"It is true that the Section 428 speaks of the "period of detention" undergone by an accused person, but it makes it clear that the period of detention which it allows to be set-off against the term of imprisonment imposed on the accused on conviction must be during the investigation, enquiry or trial in connection with the "same case" in which he has been convicted. Therefore, the period during which the appellants accused were in detention under Preventive Detention Act could not be set-off u/s 428 against term of imprisonment imposed on them on their conviction in Sessions Cases for offences under Penal Code. (1976) 2 APLJ(HC) 98, Affirmed."

27. By looking to the entire case and the facts in hand, we have to consider the main point as to what date is to be taken into consideration as a date for giving benefit or denying the benefit to the petitioner.

28. There is no dispute that the petitioner was facing in all three cases. But he seems to be absconding. The Police Officers of different police stations were not in a position to effect his arrest. But he was arrested on 12-3-1986 in connection with Cr. No. 26/86 of III Town Police Station, Kothagudem and he was remanded to judicial custody. This was not within the knowledge of Mandamarri Police. When they realised about the arrest of the accused in connection with the crime registered by Kothagudem Police, the Mandamarri Police arrested formerly the accused in connection with Cr. No. 79/84 on 31-1-1987. With this factual position on record, it was contended by the learned Counsel Mr. B. Tarakam appearing for the petitioner that the petitioner is entitled to set-off from the period of his first arrest i.e., from 12-3-1986 as he was in jail as an under trial prisoner.

29. We are not in agreement with the submission made by the learned Counsel. The accused has to be arrested formerly in connection with every crime though he is already arrested in connection with other crime. This is because of the fact if the accused is released on bail in connection with one of the offences, he cannot be set at liberty immediately because of the fact he is also required in some other crimes. Unless the arrest is shown in the second case, the accused cannot be continued to be in judicial custody. Therefore applying the same logic, the petitioner was arrested in connection with the Cr. No. 79/84 on 12-3-1986 though he was in judicial custody since 31-1-1987. It was reported that the accused was convicted in connection with Cr. No. 79/84 i.e., Sessions Case No. 317 of 1993 and he continues to be in jail as a convict. If the set-off is to be given to the accused subject to the restrictions put u/s 433-A Cr. P.C, set-off is required to be given in the same case "in which the petitioner is convicted. Set-off cannot be given in a case where he was acquitted. This is the law laid down by the Apex Court. Therefore, while deciding as to whether the petitioner is entitled to the benefit of G.O. or not, the crucial date is to be taken as 31-1-1987 on which the detenu was arrested in connection with Cr. No. 79/84 in which he was convicted and sentenced to suffer imprisonment for life.

30. The word "set-off" used in the Code of Criminal Procedure and the word "remission" used under Article 161 of the Constitution of India are not synonymous. The word "set-off" is a right conferred on the convict-accused by the statute whereas the power given to His Excellency the Governor under Article 161 of the Constitution of India is much higher power and moreover they are discretionary powers. The accused has no right to make a representation to the Governor if the set-off is not given on a particular occasion. Therefore, we hold that the rulings cited above by the learned Counsel have no application in the present set-off facts. Therefore, the contentions raised by the learned Counsel for the petitioner are rejected.

31. Considering the legal issues and factual issues involved in this case, we are of the considered view that as per G.O., issued by the Governor exercising the powers conferred under Article 161 of the Constitution of India, the petitioner has not completed 7 years of actual sentence or 10 years of imprisonment including the remission.

32. Therefore, we hold that there is no merit in the writ petition and the view taken by the respondents is correct one. Hence we dismiss the writ petition.