
(2002) 08 AHC CK 0127

In the Allahabad High Court

Case No : Criminal Miscellaneous W.P. No. 3899 of 2002

Chandrika Prasad and Anr.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Citation : (2002) 08 AHC CK 0127

Hon'ble Judges : G.P.Mathur, J and N.K.Mehrotra, J

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This writ petition under Article 226 of the Constitution has been filed for quashing of Government Order, dated 1432002. A further prayer has been made that a writ of mandamus be issued commanding the respondents not to arrest the petitioners in pursuance of the aforesaid Government order.

2. The State Government issued order on 1112000 and 2512000, by which general directions were issued for premature release of prisoners who had undergone a very small portion of sentences imposed upon them. Though several directions for release were made but the main direction was that all such male prisoners of 60 years or above and all lady prisoners of 50 years or above who had been sentenced to imprisonment for life and had undergone 3 years of sentence without remission by 2612000 would be released. These Governments orders were challenged in Crl. Misc. Writ Petition 5039 of 2000 (Mirza Mohammad Husain v. State of U.P. and others). A Division Bench of this Court speaking through one of us (G.P. Mathur, J.) quashed the Government orders dated 1112000 and 2512000. A further direction was issued to the Chief Secretary and Principal Secretary (Home), Government of U.P. to ensure that all such persons who had been released from Jails on the basis of the aforesaid Government orders shall be taken into custody to undergo the sentence imposed upon them. this direction had to be complied with within 2 months of the receipt of the copy of the judgment. The State Government, thereafter, issued a Government order, dated 1432002 to ensure compliance of the directions issued

in Crl. Misc. Writ Petition No. 5039 of 2000 regarding taking into custody of all such prisoners who had been released from Jails on the basis of the Government orders dated 1112000 and 2512000.

3. It is alleged in the writ petition that Petitioner Nos. 1 and 2 were prosecuted in Sessions Trial No. 102 of 1980 and were convicted under Section 302/149 IPC and were sentenced to imprisonment for life by the judgment and order dated 921982. The Petitioner No. 3 was similarly convicted under Sections 302/149 and was sentenced to imprisonment for life by the Sessions Judge, Ghazipur. The conviction and also the sentences imposed upon the petitioners became final as they were upheld in appeal. Subsequently, they were released from Jail in pursuance of the Government orders dated 1112000 and 2512000. It is averred that in view of the subsequent Government order dated 14 32002, the police is trying to arrest them and to take them into custody. It is, in these circumstances, that the petitioners have preferred the present writ petition.

4. Sri Dilip Gupta, learned Counsel for the petitioners, has submitted that no opportunity of hearing was afforded to the petitioners before quashing of the Government Orders dated 111 2000 and 2512000 and, therefore, they should not be taken into custody. In our opinion, the contention raised is wholly misconceived. The Government order dated 1112000 and 2512000 merely laid down the conditions for release of prisoners of different categories including those who had been sentenced to imprisonment for life. The only condition provided therein was that the male prisoners should be of 60 years or above and the female prisoners should be 50 years or above and should have undergone 3 years of sentence. The individual case of the writ petitioners herein had not been examined by the State Government nor any specific order for their release had been passed. The petitioners were released because the Jail authorities felt satisfied that they came within the purview of the Government orders and satisfied the requirement thereof, namely, that they were more than 60 years of age and had undergone 3 years of sentence. Since no specific order directing their release had been passed, after examining their case on merit, there was no occasion or requirement of issuing any notice to them.

5. The main question which requires consideration is whether the petitioners who had been sentenced to imprisonment for life can claim to remain outside the Jail even after the Government orders, on the basis, of which they had been released from Jail, have been quashed by this Court and are no longer in existence. It may be stated that the State Government filed a review petition being Crl. Misc. Application No. 121989 of 2001 praying for correction/modification of the judgment and order dated 2792001 and to permit the State to consider cases of the convicted persons individually and separately on the basis of the facts and circumstances of each case and, thereafter, to follow the direction regarding arrest of the persons who had been released on the basis of Government Order dated 1512000 and 25 12000. This prayer was rejected by a Division Bench on 1572002 and it was observed that after a convicted person has been taken into

custody it is always open to the State Government to consider his case and pass appropriate order for his premature release strictly in accordance with law.

6. There is no dispute that the petitioners have been sentenced to imprisonment for life. The effect of such a sentence has been explained in *Gopal Vinayak Godse v. State of Maharashtra*, AIR 1961 Sc 600, as under:

“There is no provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government can be automatically treated as one for a definite period. Section 57 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.”

7. This view has been reiterated by a Constitution Bench in *Maru Ram v. Union of India*, AIR 1980 : 1980 SC 2147, and in *State of Punjab v. Joginder Singh*, AIR 1990 SC 1396 and *Sat Pal v. State of Haryana*, AIR 1993 SC 1218.

8. In view of these authoritative pronouncements it is absolutely clear that imprisonment for life means the imprisonment for the whole life and lasts till the last breath.

A person who has been sentenced to imprisonment for life can be released from Jail either by grant of pardon by the appropriate authority under Article 72 or 161 of the Constitution. He can also be released on licence under the U.P. Prisoners Release on Probation Act, 1938. At the present moment there is no order of pardon in favour of the petitioners. Similarly, no order for release on licence under the 1938 Act has been passed in their favour. In these circumstances, there is no provision of law under which the petitioners, whose sentence of imprisonment for life has become final, may claim to remain outside the Jail. They must remain inside the Jail to undergo the sentence imposed upon them. Thus there is no illegality in the Government order, dated 14/3/2002.

9. Sri Dilip Gupta, learned Counsel for the petitioner, has also submitted that the petitioners have undergone 14 years of sentence and an order similar to one passed by the Hon'ble Supreme Court on 14/12/2002 in CRLMP No. 13434 of 2001 wherein it observed that all those petitioners who have not been in custody for more than 14 years shall surrender, be passed in their favour. The petitioners have not filed a certified copy of the order but have merely filed a typed copy of the same. The record of Crl. Misc. Writ Petition No. 5039 of 2000 contains a letter sent by the Assistant Registrar of the Supreme Court on 17/7/2002 enclosing a certified copy of the order dated 12/7/2002 passed in CRIMP No. 13434 of 2001 and SLP (Crl.) No. 2404 of 2002 and several other connected matters and the same reads as under:

?It is surprising notwithstanding the order of this Court dated 7122001, neither the petitioners have surrendered nor the State has arrested them. On 142002 the Counsel appearing for the State had undertaken that the order of the Court directing arresting of the accused persons will be complied within four weeks from today. Inaction on the part of the State indicates that the State is colluding with the accused persons, who have been granted pardon pursuant to some orders of the Government of Uttar Pradesh, which orders have been annulled by Allahabad High Court. The order has not been complied with till today. As a last chance, we grant four weeks time from today to the State Government to comply with the Court's order and also to file an affidavit why there has been inaction on the part of the State Government so far. The Director General of Police, State of U.P. should be present in the Court on the next date of hearing.?

10. The aforesaid certified copy of the order, which was sent to this Court, shows that order has been passed on 7122001 for arresting the accused persons. In fact, the State of U.P. had been granted 4 weeks' time on 1272002 to comply with the order of the Court and to arrest the prisoners. In these circumstances, we do not think that there is any ground whatsoever to grant the prayer made by the petitioners that a writ of mandamus be issued directing the respondents not to arrest the petitioners.

The writ petition has no merit and is accordingly dismissed.

W.P. dismissed.