

(2017) 09 RAJ CK 0042
In the Rajasthan High Court
Case No : 1742 of 2011

Dasharath Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 07-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 401](#) -
Rajasthan Prisoners Release on Parole Rules, 1958, — Rule 12, Rule 10, Rule 4, Rule 3, Rule 9, Rule 5, Rule 2(d), Rule 10-A (i-a)

Citation : (2017) 09 RAJ CK 0042

Hon'ble Judges : Govind Mathur, Sandeep Mehta

Bench : SINGLE BENCH

Advocate : Kalu Ram Bhati, Amit Sharma, S.K. Vyas, J.P.S. Choudhary

Judgement

1. This reference is before us to answer the following question:-

"WHETHER the Division Bench of this Court in Ram Avtar Khatik & Ors. v. State of Rajasthan & Anr. (2008(3)RLW 2752 (Raj.) was right in holding that the words "all other kinds of parole shall be treated as sentence suspended" incorporated in Rule 12 of the Rules are contrary to the definition of the term "parole" given under Rule 2(d) of the Rules and the period of parole even in emergent conditions as given in Rule 10-A is required to be taken as a part of sentence undergone?"

2. To adjudicate the question referred, it would be appropriate to discuss certain provisions of the Rajasthan Prisoners Release on Parole Rules, 1958 (hereinafter referred to as "the Rules").

3. The Rules aforesaid were enacted by the Government of Rajasthan while invoking powers under Section 401 of Code of Criminal Procedure (1898).

4. As per Rule 2(d) of the Rules, "Parole" means conditional enlargement of a prisoner from the jail under the Rules. The Rules prescribed two types of parole

for the prisoners on basis of different considerations. As per Rule 9 of the Rules, a prisoner, who has completed with remission, if any, one-fourth of his sentence and subject to good conduct in jail, may be released on first parole for 20 days including the days of journey to home and back, and for 30 days on second parole provided his behaviour has been good during the first parole and for 40 days on third parole provided his behaviour has been good during the second parole. If during the third parole also, the prisoner has been of good behaviour/ kept good behaviour well and his character has been exceedingly well and if the prisoner's conduct has been such that he is not likely to relapse into crime, his case is to be recommended to the Government through the State Committee for permanent release on parole on such conditions as deemed fit by the Superintendent Jail and the District Magistrate concerned; the principal condition among them being that if the prisoner while on parole commits any offence or abets, directly or indirectly, commission of any offence, he has to undergo the unexpired portion of the sentence in addition to any sentence imposed upon him by reason of such an offence.

5. In case, the prayer for permanent release on parole is rejected, the prisoner will be eligible for release on parole for 40 days every year subject to the same conditions for the remaining duration of his sentence.

6. As per proviso to Rule 9 of the Rules, the cases of prisoners who have been sentenced to imprisonment for life, for an offence for which death penalty is one of the punishments provided by law or who have been sentenced to death but this sentence has been commuted as per provisions of Code of Criminal Procedure into one of life imprisonment shall not be placed before the State Committee for permanent release on parole unless he has served 14 years of imprisonment excluding remission but including the period of detention passed during enquiry, investigation or trial. Such prisoners are entitled to be released on parole for 40 days every year for the remaining period of their sentence.

7. For claiming parole as per Rule 9 of the Rules, a prisoner is required to submit application for parole to the Superintendent of Jail concerned and the Superintendent of Jail, on receiving such application would forward the same in original to District Magistrate of the District in whose jurisdiction the prisoner wants to spend his parole period. A copy of the application is also required to be sent to the Probation Officer. The District Magistrate after consulting the Probation Officer and if necessary the Superintendent of Police of the District will give his remarks and send all the papers in original to the State Committee or District Committee, as the case may be, for consideration. The committee concerned, on consideration of the application, may grant or reject the same.

8. The other kind of parole under the Rules commonly known as emergent parole is available under Rule 10-A, which provides that notwithstanding the provisions of Rules 3, 4, 5, 9 and 10, in emergent cases, involving humanitarian considerations viz. (1) critical condition on account of illness of any close relations i.e. father, mother, wife, husband, children, brother or unmarried sister;

(2) death of any such close relations; (3) serious damage to life or property from any natural calamity; and (4) marriage of a prisoner, his/her son or daughter or marriage of his/her brother/sister in case his/her parents are not alive, the prisoner may be released on emergent parole. An emergent parole cannot be granted for a period beyond seven days by the Superintendent of Jail and for a period not exceeding 15 days by the Inspector General of Prisons (District Magistrate) on such terms and conditions as may be considered necessary to impose for the security of the prisoner including a guarantee for his return to the jail. As per Rule 10-A (i-a), a pregnant woman prisoner if applies for parole to undergo delivery outside the prison, the Director General-cum-Inspector General of Prisons may grant parole to such a woman prisoner for a period not exceeding 45 days on such terms or conditions as may be considered necessary for security of the prisoner including a guarantee for her return to jail.

9. An important feature of the Rules is that as per Rule 12 of the Rules the period for which a prisoner stays on parole under Rule 9, without violating the conditions laid down for the purpose, is required to be treated as imprisonment served but that is not applicable for all other kinds of parole. Rule 12 referred above reads as follows:-

"12. Parole period regarded as imprisonment served.- The period for which a prisoner stays on parole under rule 9, without violating the conditions laid down for the purpose, shall be treated as imprisonment served by him. All other kinds of parole shall be treated as sentence suspended."

10. A Division Bench of this Court in *Ram Avtar Khatik & Ors. v. State of Rajasthan & Anr.*, reported in 2008(3) RLW 2752 (Raj.), held that the term "Parole" as defined under Rule 2(d) includes all type of paroles including the parole granted as per Rule 10-A and the words incorporated in Rule 12 in the terms "all other kinds of parole shall be treated as sentence suspended", are in conflict with the definition of parole, as such, the period for that a prisoner stays on parole even under Rule 10-A must be treated as part of sentence served and that period is required to be taken into consideration for grant of all kind of remissions and concessions while computing the period sentence served.

11. Disagreeing with the view taken in the case of *Ram Avtar Khatik & Ors.* (supra), a Division Bench of this Court vide order dated 16.5.2011 referred the question under consideration for its adjudication by a Larger Bench, hence, this reference is before us.

12. The argument advanced on behalf of the writ petitioner is that under the Rules there is no distinction in parole, may that be as per Rule 9 or as per Rule 10-A, therefore, the classification sought to be made under Rule 12 for the purpose of excluding the period spent on parole as sentence served is discriminatory as well as unjust. It is asserted that in light of Rule 2(d) of the Rules only one meaning can be given to the term "Parole", hence, the classification made under Rule 12 in parole under Rule 9 and other paroles is

bad, therefore, deserves to be declared ultra vires to Article 14 of the Constitution of India. As such, the law laid down by this Court in the case of Ram Avtar Khatik & Ors. (supra) deserves to be affirmed.

13. Heard learned counsels.

14. We have examined the entire scheme of the Rules. Needless to say that in criminal jurisprudence, the object of awarding parole is to rehabilitate a criminal by placing him in main stream of the society. The parole under Rule 9 of the Rules is a serious and valuable effort to achieve the object aforesaid. While awarding parole as per Rule 9, the competent authority is required to keep in mind the conduct, character and behaviour of the prisoner as well as the chances of his not relapsing in criminal activities. Under this provision, a prisoner is entitled to have parole after specified intervals and also for permanent parole by the competent authority on being satisfied about his conduct, character and behaviour.

15. Pertinent to notice that for considering case of a prisoner for grant of regular parole as per Rule 9, a complete procedure is given under Rules 3, 4, 5, 6, 7 and 8 of the Rules. The competent authority for grant of regular parole is District Parole Advisory Committee and for regular permanent parole, the State Parole Advisory Committee. The committee before awarding such parole is under statutory obligation to consult with the Probation Officer, if appointed, and also to the Superintendent of Police of the District or the District Magistrate, if that is found necessary. The committee is also supposed to look into all the papers forwarded to it by the District Magistrate after having opinion from the Probation Officer and the other relevant officers. The committee may also consult the Presiding Judge of the Court before or by which the conviction was held or confirmed. This detailed procedure is given only to ensure that the parole awarded shall serve the object i.e. of bringing the prisoner in main stream of the society and further there being no chances of his reinvolvement in criminal activities, his rehabilitation is necessary. As a matter of fact release on parole as per Rule 9 is part of the period of serving sentence, not in prison but by remaining in society with constant surveillance of the State authorities about his character, conduct and behaviour, and as such under Rule 12 this period has been treated as a part of the sentence being served.

16. On the other hand, parole under Rule 10-A is having absolutely a different complexion. This kind of parole is essentially based on humanitarian consideration, that may occur at any point of time. The emergent parole may be granted by the Superintendent of Jail for a period of seven days and the Inspector General of Prisons for a period of 15 days just looking to the emergent need of release of the prisoner in the eventualities referred in Rule 10-A itself and that is not dependent to the procedure prescribed under Rules 3 to 8 of the Rules.

17. The purpose of parole under Rule 10-A of the Rules is just to enable a

prisoner to discharge his important social responsibilities. As a matter of fact, emergent parole is a concession for an individual prisoner in certain eventualities where his immediate release without adhering to the procedural formalities is highly desirable to satisfy indispensable social needs. The nature of emergent parole, thus, is absolutely different than the nature of a parole awarded under Rule 9 of the Rules which is applicable for each and every prisoner subject to his conduct, character and behaviour.

18. True it is, Rule 2(d) of the Rules provides for only one kind of parole i.e. conditional enlargement of a prisoner from jail, but merely on that count, it cannot be said that no further distinction can be made in nature of the paroles availed by the prisoners to get further concessions. Though the parole granted under Rule 9 as well as under Rule 10-A are nothing but conditional enlargement of a prisoner from the jail, but their nature is quite different for the reasons already mentioned in preceding paras. As already stated, while awarding parole under Rule 9, conduct, character and behaviour of a prisoner is required to be taken into consideration and that is to be looked into seriously by a competent committee. The period of parole too is of 20 days at first instance, 30 days at second instance and 40 days thereafter on every interval of 11 months and on being satisfied, permanent parole too can be granted. While availing parole, a prisoner remains out of prison with certain checks, conditions and necessary surveillance. At other end, the parole of emergent nature can be of 7 or 15 days and the authority competent to award that is also either the Superintendent of Jail or the Inspector General of Prisons, as the case may be. The object of grant of parole, the mode of consideration, the competent authority to grant a parole under Rule 10-A of the Rules are different and rightly so looking to the difference in the nature of the cause of awarding parole. While considering a case for grant of emergent parole, the prime issue is the personal need of an individual prisoner. Looking to this fact, such a case is not required to be examined by a committee but by officers of the prison only.

19. In entirety, looking to whatever stated above, we are having no doubt that the classification made under the Rules in parole under Rule 12 is based on a reasonable criteria having nexus with object sought to be achieved and as such is justified. Rule 12 does not suffer from any vice to declare the same or any part of it in conflict with the definition of "Parole" prescribed under Rule 2(d).

20. Accordingly, the question referred is answered in following terms:-

- (1) The law laid down in the case of Ram Avtar Khatik & Ors. v. State of Rajasthan & Anr., reported in 2008(3)RLW 2752 (Raj.), is not correct;
- (2) The parole awarded as per Rule 9 of the Rules stands on different pedestal than all other kinds of parole under the same Rules; and
- (3) The parole availed by a prisoner other than a parole under Rule 9 of the Rules, as per Rule 12 of the Rules aforesaid, is required to be treated as a sentence suspended and not as sentence served.