

(2016) 07 RAJ CK 0111

In the Rajasthan High Court

Case No : Civil (Parole) Writ Petition No. 3716 of 2016

Fateh Lal @ Fanta Lal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Citation : (2016) 342 ELT 55

Hon'ble Judges : Gopal Krishan Vyas and G.R. Moolchandani, JJ.

Bench : Division Bench

Advocate : Shri Vishnu Kachhawaha, P.P, for the Respondent

Final Decision : Disposed Off

Judgement

1. The instant parole petition has been filed by the petitioner/convict, Fateh Lal @ Fanta Lal s/o Harla, from Open Air Camp, Chittorgarh, for release of him on permanent parole on the ground that he has completed 14 years of sentence awarded to him including remission.

2. The case of the petitioner was considered by the respondents vide order dated 27-11-2015 and the prayer of the petitioner was rejected on the ground that the petitioner/convict failed to deposit the amount of fine to the tune of Rs. 1,00,000/- imposed upon by the learned trial court while convicting him for the offence under Section 8/18 of the N.D.P.S. Act for ten years" rigorous imprisonment with a fine of Rs. 1,00,000/-, with the default stipulation to undergo one year"s additional simple imprisonment.

3. The contention of the learned Public Prosecutor is that till consideration, the petitioner/convict did not deposit the amount of fine of Rs. 1,00,000/-, therefore, his prayer was rejected by the State Level Parole Committee vide its order dated 27-11-2015.

4. Considering the reasons incorporated in the application filed by the convict, Fateh Lal @ Fantalal, who is confined at Open Air Camp, Chittorgarh, we are of

the opinion that petitioner's case is required to be considered by the Central Government in view of observations made in the case of Shambhu Dayal v. State of Rajasthan reported in 2012 (4) RLW 3073 (Raj.), in which following directions were made while answering the question framed in the said parole petition :-

"28. In view of the discussions made above, the two questions framed by this Court are answered in the following manner :-

Question No. (1)

(1) Whether the Rajasthan Prisoners Release on Parole Rules, 1958 are applicable in the cases where sentence of imprisonment is for an offence relating to a matter to which executive power of Union extends such as under NDPS Act?

Answer

The Rajasthan Prisoners Release on Parole Rules, 1958 are not applicable in the cases where conviction is under NDPS Act and also where convict is sentenced to imprisonment for an offence against any law relating to a matter to which the executive power of the Union extends and such cases have to be dealt with in accordance with the Rules of 1955 framed by the Central Government, Ministry of Home Affairs vide Notification dated 9th November, 1955 published in the Gazette of India, November 19, 1955.

Question No. (2)

Whether it is necessary for consideration of application for parole that fine imposed is deposited before application for parole is considered?

Answer

Deposit of fine cannot be a condition precedent for consideration of application for parole. There is no such requirement under the Rules of 1955 framed by the Central Government under which present case of convict under the NDPS Act is to be considered. Hence, it is not appropriate to insist on deposit fine for consideration of parole application."

5. Upon perusal of this adjudication made by this Court in the aforesaid petition of Shambhu Dayal (supra), we are of the opinion that the case of the petitioner is required to be considered by the Central Government and the reasons which have been incorporated for denial of permanent parole that the convict has not deposited the fine amount of Rs. 1,00,000/-, is also not sustainable in law as on account of non-payment of fine, the convict served the additional sentence imposed by the trial court. Accordingly the petitioner's case is required to be considered for the purpose of grant permanent parole.

6. In view of above, the order dated 27-11-2015 passed by State Level Parole Committee, qua the present petitioner/convict, is hereby quashed and it is ordered that the petitioner's case may be forwarded to the Central Government for consideration and it is further directed that at the time of considering the

case of the petitioner for grant of permanent parole, the directions issued by Division Bench of this Court in the case of Shambhu Dayal (*supra*) shall be taken into consideration and thereafter the prayer of the petitioner for grant of permanent parole may be decided strictly in accordance with Rules within a period of one month from the date of receipt of application from the respondent-State.

7. With these observations and directions, the instant parole petition is hereby disposed of.