
(2011) 12 MAD CK 0100

In the Madras High Court

Case No : Writ Petition (MD) NO. 14689 of 2010 and M.P. (MD) No. 1 of 2010

Gnanawathi

APPELLANT

Vs

The Secretary, Home (Prison IV) Department, The Additional
Director General of Police, Egmore, Chennai-600008, The
Superintendent, Central Prison, Palayamkottai and The
Advisory Board for the Prematurely release of life convicts

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Arms Act, 1959 — Section 25(1)
Constitution of India, 1950 — Article 14, 161, 226, 72
Criminal Procedure Code, 1973 (CrPC) — Section 102, 401, 41(2), 432, 433
Penal Code, 1860 (IPC) — Section 224, 34, 57
Prisons Act, 1894 — Section 59

Citation : (2011) 12 MAD CK 0100

Hon'ble Judges : K.Chandru, J

Bench : Single Bench

Advocate : S.M.A. Jinnah, for the Appellant; TS. Md. Mohideen, AGP for RR1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr.Justice K.Chandru

1. The petitioner is the wife of one Murugesan, who is the life convict and lodged in Central Prison, Palayamkottai and his convict number is 6789. The petitioner's husband was convicted in Crime No.300 of 1984 on the file of the Mathiyapagam Police Station, Thoothukudi. He was tried before the Sessions court, Tirunelveli in S.C. Case No.95 of 1985 and was awarded death sentence for the offence involved under Sections 302 read with Section 34 IPC. The matter was taken on appeal to this court being Criminal Appeal No.926 of 1985, wherein the conviction was confirmed and the sentence was modified to one of life sentence. In this writ petition, she has sought for a direction to the first respondent State to treat that her husband was eligible for pre-mature release in terms of

G.O.Ms.No.873, Home (Prison IV) Department, dated 14.09.2006 and G.O.Ms.No.1326, Home (Prison IV) Department, dated 12.09.2007.

2. When the matter came up on 16.12.2010, this court had ordered notice of motion. Pending the notice of motion, no direction was given though a prayer to that effect was made. On notice from this court, the third respondent has filed a counter affidavit, dated 18.1.2011 together with typed set of documents in support of the averments in the counter affidavit.

3. Since the petitioner has referred to G.O.Ms.Nos.873 and 1326, it is necessary to refer to the contents of those orders. By G.O.Ms.No.873, Home Prison Department, dated 14.09.2006, the State Government had ordered premature release of prisoners who have completed 10 years of actual imprisonment as on 15.9.2006 on the eve of the 98th Birthday of Mr.C.N.Annadurai, former Chief Minister of Tamil Nadu. By the said G.O., total number of 472 life convicts including 16 women life convicts who have completed 10 years of actual imprisonment as on 15.09.2006, as per the annexure appended to the G.O., were directed to be prematurely released. It was claimed that the power was exercised in terms of Article 161 of the of the Constitution by the Governor of Tamil Nadu, who remitted the unexpired portion of sentence of imprisonment for life passed on those 472 convicts. The petitioner was not one of them.

4. Thereafter, by G.O.Ms.No.1326, Home (Prison IV) Department, dated 12.09.2007, the State Government pursuant to the 99th Birthday of Mr.C.N.Annadurai, former Chief Minister of Tamil Nadu had ordered release of 190 life convict prisoners including 5 women life convicts on completion of their actual imprisonment of 10 years as on 15.09.2007. Subsequently though the petitioner did not refer to the subsequent order in G.O.Ms.No.1155, Home (Prison IV) Department, dated 11.09.2008, by that G.O., on the birth centenary of Mr.C.N.Annadurai, 1336 life convict prisoners confined in various Central Prisons and Special Prisons for women and who have completed 7 years of actual imprisonment as on 15.09.2008 and three life convicts who are languishing in Kerala State prison and also 66 life convicts who were aged 60 years and above and have completed five years of actual imprisonment as on 15.09.2008 were also released prematurely.

5. It is not clear as to how those two Government Orders referred to in the prayer of the petition will apply to the case of the petitioner. On the other hand, the petitioner when he was transferred to the Central Prison at Cuddalore on 13.12.1988 on administrative grounds, he was granted leave by the Government for 30 days on 4.7.1989. The leave was extended by further 20 days upto 23.08.1989. But instead of returning to the Central Prison on 24.08.1989, the petitioner made himself scarce. He was rearrested by the Thoothukudi Central Police station on 07.02.1990. He was once again lodged in the Central Prison, Cuddalore. Thereafter, he was re-transferred to the Central Prison, Palayamkottai and admitted to the prison on 25.2.1990. While he was in Palayamkottai Central Prison, he was granted an emergency leave for six days on 02.01.1993 to see

the petitioner who was ailing at that time. He was given a further leave upto 21.8.1993. But instead of returning to the prison, he once again absconded. A criminal case was registered u/s 224 IPC before the Thoothukudi South Police Station in Crime No.283 of 1994. He was arrested by the Thoothukudi Central Police Station in Crime No.123 of 2004 for the offence under Sections 41(2), 102 Cr.P.C. read with 25(1) of the Arms Act. He was once again lodged in the prison on 16.3.2004. His personal identification marks revealed that he was a life convict who escaped from the prison. He made confession while arrest and there was also warrant pending against him u/s 224 IPC in Thoothukudi South Police Station.

6. In the meanwhile, the petitioner filed HCP before this court in HCP (MD)No.93 of 2005 stating that notwithstanding the acquittal by the learned Judicial Magistrate No.II, Thoothukudi in Crime No.123 of 2004, he is being detained in prison. A division bench of this court by an order dated 11.8.2005 had dismissed the HCP and in paragraphs 17 to 19, it was observed as follows:

17....Allowing such challenges to be made in a case of this type with all the abundant materials would only lead to very undesirable consequences.

18. Names of parents, wife, sisters and brothers, age, same employer, identity marks, signature of the wife, everything correspond with each other and if the petitioner thinks that she could still persist in her attempt to deceive the authorities and the Court, such an attitude is highly deplorable.

19. With the result, we are inclined to hold that the H.C.P. is totally misconceived and is a very serious and actionable abuse of process. We wish to say nothing further as we do not want to add to the misery of the petitioner and the detenu though they do not deserve any such sympathy.

7. On 30.10.2007, the Additional Director General of Prisons had informed the petitioner that the question of premature release of the petitioner's husband will not arise, since as on date he was in the prison only for 11 years 6 months. He was not eligible for being considered as he had not completed the actual imprisonment of 14 years before any review could be done. The petitioner sent a further representation to the first respondent. When no reply was forthcoming, she has filed the present writ petition.

8. The grounds raised by the petitioner was that the act of the respondents is arbitrary and violative of Article 14 of the Constitution. It is a case of discrimination. Therefore, the writ petition is maintainable. Her husband had actually completed more than 14 years and 7 months beyond the stipulated period provided u/s 433 of Cr.P.C.

9. In the counter affidavit filed by the respondents, it was stated that the Government Orders referred to above do not benefit the petitioner as at the time of the first G.O, he had only put in 8 years 11 months and 22 days of imprisonment. At the time of second G.O., his name was not recommended

because he had escaped from the parole. At the time of centenary year release, once again it was stated that he was not eligible as his case was not recommended by the Superintendent of the Central Prison. It was further stated that since he had absconded twice, he is not eligible for leave in terms of the Tamil Nadu Prison Manual. The case registered against him is pending before the Judicial Magistrate No.1, Tirunelveli.

10. The Supreme Court dealt with the scope of premature release and considered two factors for premature release, one is the law relating to premature release and secondly, the decision can be taken only by the Government, vide its decision in *Zahid Hussein and Others Vs. State of West Bengal and Another*, :. In paragraphs 4 and 9, the Supreme Court had observed as follows:

4. This Court after examining the provisions of Article 161 of the Constitution, CrPC and IPC has consistently held that a sentence of imprisonment for life does not automatically expire at the end of 20 years of imprisonment including remission, as a sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or part of the sentence. (See *Gopal Vinayak Godse v. State of Maharashtra*²; *State of M.P. v. Ratan Singh*³; *Sohan Lal v. Asha Ram*⁴ and *Bhagirath v. Delhi Admn.*⁵)

9. Learned Additional Solicitor General has rightly pointed out that in view of the law laid down by this Court a positive order of release has to be passed by the Government after due consideration. Now we have to consider whether the impugned orders are sustainable.

11. Further, this issue once again came before the Supreme Court in *Shri Bhagwan Vs. State of Rajasthan*, and in paragraphs 20 to 23, the Supreme Court had held as follows:

20. Section 57 IPC provides that in calculating fractions of terms of punishment, imprisonment for life is to be reckoned as equivalent to the imprisonment for twenty years. In our view, considering the heinous barbaric offence committed by the accused, in no set of circumstances the accused should be released before completion of 20 years of imprisonment. This Court in *Dalbir Singh v. State of Punjab*⁵ considered the question that in case where sentence of death is reduced to life imprisonment, for how many years the accused should be detained in prison. The Court in para 14 held thus: (SCC p. 753)

"14. The sentences of death in the present appeal are liable to be reduced to life imprisonment. We may add a footnote to the ruling in *Rajendra Prasad* case⁶. Taking the cue from the English legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the man's life, but in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts where there are exceptional indications of murderous recidivism and the community cannot run

the risk of the convict being at large. This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder.

(emphasis added)

21. In case of Subash Chander v. Krishan Lal⁷ the said principle is followed by this Court and it was ordered that the accused shall be incarcerated for the remainder of his life and that he shall not be let loose upon the society as he is a potential danger.

22. A question may arise - whether in view of the provision of Section 433(b) read with Section 433-A CrPC an accused should be released on completion of 14 years of imprisonment. For this purpose, we would make it clear that Section 433(b) enables the appropriate Government to commute the sentence of imprisonment for life, for imprisonment of a term not exceeding 14 years or for fine. u/s 433-A, there is an embargo on that power by providing that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided under the law, such person is not to be released from prison unless he had served at least fourteen years of imprisonment. This question is considered by various decisions rendered by this Court and by the Privy Council and it has been reiterated that a sentence of imprisonment for life imposed prima facie be treated as imprisonment for the whole of the remaining period of the convicted person's natural life. It is also established law that rules framed under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life. This Court in State of M.P. v. Ratan Singh⁸ in para 4 held thus: (SCC pp. 473- 74, para 4)

4. As regards the first point, namely, that the prisoner could be released automatically on the expiry of 20 years under the Punjab Jail Manual or the Rules framed under the Prisons Act, the matter is no longer res integra and stands concluded by a decision of this Court in Gopal Vinayak Godse v. State of Maharashtra⁹ where the Court following a decision of the Privy Council in Pandit Kishori Lal v. King Emperor¹⁰ observed as follows:

Under that section, a person transported for life or any other term before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term. If so, the next question is whether there is any 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. No such provision is found in the Indian Penal Code, Code of Criminal Procedure or the Prisons Act.

* * *

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.

The Court further observed thus:

But the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act.... Under the said rules the orders of an appropriate Government u/s 401, Criminal Procedure Code, are prerequisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The Rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions u/s 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release.

It is, therefore, manifest from the decision of this Court that the Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the Rules. This Court further pointed out that the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government u/s 401 of the Code of Criminal Procedure and neither Section 57 of the Indian Penal Code nor any rules or local Acts can stultify the effect of the sentence of life imprisonment given by the court under the Indian Penal Code. In other words, this Court has clearly held that a sentence for life would enure till the lifetime of the accused as it is not possible to fix a particular period of the prisoner's death and remissions given under the Rules could not be regarded as a substitute for a sentence of transportation for life. 23. In *Maru Ram v. Union of India*¹¹ a Constitution Bench of this Court reiterated the aforesaid position and observed that the inevitable conclusion is that since in Section 433-A we deal only with life sentences, remissions lead nowhere and cannot entitle a prisoner to release. Further, in *Laxman Naskar v. State of W.B.*¹² after referring to the decision of the case of *Gopal Vinayak Godse v. State of Maharashtra*⁹ the Court reiterated that sentence for "imprisonment for life" ordinarily means imprisonment for the whole of the remaining period of the convicted person's natural life; that a convict undergoing such sentence may earn remissions of his part of sentence under the Prison Rules but such remissions in the absence of an order of an appropriate Government remitting the entire balance of his sentence under this section does not entitle the convict to be released automatically before the full life term is served. It was observed that though under the relevant Rules a sentence for

imprisonment for life is equated with the definite period of 20 years, there is no infeasible right of such prisoner to be unconditionally released on the expiry of such particular term, including remissions and that is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose.

12. Further, the Supreme Court in a decision in *Swamy Shraddhananda (2) v. State of Karnataka* reported in (2008) 13 SCC 767 has held in paragraphs 77, 80 and 88 as follows:

77. This takes us to the issue of computation and remission, etc. of sentences. The provisions in regard to computation, remission, suspension, etc. are to be found both in the Constitution and in the statutes. Articles 72 and 161 of the Constitution deal with the powers of the President and the Governors of the States respectively to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted for any offence. Here it needs to be made absolutely clear that this judgment is not concerned at all with the constitutional provisions that are in the nature of the State's sovereign power. What is said hereinafter relates only to provisions of commutation, remission, etc. as contained in the Code of Criminal Procedure and the Prisons Acts and the rules framed by the different States.

80. From the Prisons Acts and the Rules it appears that for good conduct and for doing certain duties, etc. inside the jail the prisoners are given some days' remission on a monthly, quarterly or annual basis. The days of remission so earned by a prisoner are added to the period of his actual imprisonment (including the period undergone as an undertrial) to make up the term of sentence awarded by the Court. This being the position, the first question that arises in mind is how remission can be applied to imprisonment for life. The way in which remission is allowed, it can only apply to a fixed term and life imprisonment, being for the rest of life, is by nature indeterminate.

88. It is thus to be seen that both in Karnataka and Bihar remission is granted to life convicts by deemed conversion of life imprisonment into a fixed term of 20 years. The deemed conversion of life imprisonment into one for fixed term by executive orders issued by the State Governments apparently flies in the face of a long line of decisions by this Court and we are afraid no provision of law was brought to our notice to sanction such a course. It is thus to be seen that life convicts are granted remission and released from prison on completing the fourteen-year term without any sound legal basis. One can safely assume that the position would be no better in the other States. This Court can also take judicial notice of the fact that remission is allowed to life convicts in the most mechanical manner without any sociological or psychiatric appraisal of the convict and without any proper assessment as to the effect of the early release of a particular convict on the society. The grant of remission is the rule and remission is denied, one may say, in the rarest of rare cases.

13. The power to order remission does not vest with this court and it is the right of the Government to do so as held by the Supreme Court in *State (Govt. of NCT of Delhi) Vs. Prem Raj*, . In paragraph 16, the Supreme Court had held as follows:

16. We set aside the order of the High Court. We do not propose to restrict the right of the accused to move the appropriate Government for such relief as is available in law. It would be at the sole discretion of the appropriate Government to exercise the power conferred on it in accordance with law.

14. The argument of the petitioner that certain prisoners were let off by the Government Orders referred to above and hence, her husband cannot be treated differently also does not stand to reason. The Supreme Court has held that the Government while exercising power has right to exercise its power in case of certain class of prisoners. In this context it is necessary to refer to a decision of the Supreme Court in *State of Haryana and Another Vs. Jai Singh*, and in paragraph 16, it was observed as follows: 16.Learned counsel for the respondent, as stated above, relying on the judgment of the High Court in *Suresh Kumar case1* has argued that the State Government did not have the power to create a further restriction than what is provided in Section 433-A of the Code in view of the parliamentary enactment of the said section in the Code. We notice that the legislature by enacting Section 432 in the Code has given wide powers of suspension, remission and commutation to appropriate Government which can utilise the said power at any time with or without condition. Such power can be exercised by the appropriate Government either with reference to a single convict or with reference to a class of convicts so long as such classification is a valid classification. However, by enacting Section 433-A in the Code, Parliament has only restricted the power of the appropriate Government to grant remission to the convicts mentioned in that section. It does not do anything more. To grant or not to grant is the power vested in the appropriate Government u/s 432 which the said Government can exercise either by granting remission to all convicts except those mentioned in Section 433-A or by restricting the remission to a class of convicts provided such classification is valid. The High Court in the case of *Suresh Kumar1* erred in holding that the Andhra Pradesh High Court in *Jagaram case2* has held that the power of the appropriate Government to restrict the remission to any class of convicts stands excluded by virtue of the introduction of Section 433-A of the Code. The understanding of the judgment in *Jagaram case2* by the Punjab and Haryana High Court is wholly erroneous. A reading of the judgment of the A.P. High Court in *Jagaram case2* at para 7 clearly shows an argument addressed in that case as to the curtailment of the power of the appropriate Government by virtue of the introduction of Section 433-A of the Code was specifically rejected which the Punjab and Haryana High Court in *Suresh Kumar case1* misread as having upheld the said argument. Be that as it may, we are of the opinion that by introduction of Section 433-A of the Code, Parliament has not excluded or denuded the power of the appropriate Government to restrict the grant of remission to a class of prisoners only or exclude a class of prisoners from such benefit of remission.

15. The very same reasoning was adopted by the Supreme Court in a subsequent judgment in *Sanaboina Satyanarayana Vs. Government of Andhra Pradesh and Others*, wherein the reasonable classification was upheld by the Supreme Court. It was held that such classification cannot be attacked in a writ petition on the ground of violative of Article 14. It is necessary to refer to the following passages found in paragraphs 7 and 9 of the said judgment which reads as follows:

7. We have carefully considered the submission of the learned counsel appearing on either side. In our view, the rejection of the plea on behalf of the appellant by the High Court was well merited and supported by sound reasons. As pointed out earlier, the remission to be granted was in respect of only a specified class of convicts and that too "subject to the conditions" specified in the very government order. Consequently, the claim for remission cannot be made or countenanced dehors the specific conditions subject to which only it has been accorded and inasmuch as the grant as well as the conditions formed a compendious single common pattern or scheme of concession by way of remission, impregnated with a policy designed in public interest and the safety and interests of the society, either the remission could be availed of only subject to the conditions stipulated or the entirety of the scheme fails as a whole, and there is no scope for judicial modification or modulating the same so as to extend the concession in excess of the very objective of the maker of the order who seems to have been guided by considerations of State policy. In such class or category of orders, there is no justification for any addition or subtraction to facilitate enlargement of the scope and applicability of the order beyond what was specifically intended in the order itself.

9. The plea of discrimination needs mention only to be rejected. The remission proposed in commemoration of 50 years of the Indian Republic itself is a boon and concession to which no one had any vested right. As to what classes of persons or category of offenders to whom the remission has to be extended is a matter of policy, particularly when it is also a constituent power conferred upon the constitutional functionary and Head of the State Government, larger area of latitude is to be conceded in favour of such authority to decide upon the frame and limits of its exercise under Article 161 itself. The Constitution of India itself has chosen to countenance the claims of women for favourable treatment and acknowledge the fact that sex is a sound classification. The issue in question being one pertaining purely to the area policy and political philosophy of the State, the courts except in the rarest of rare cases, cannot be called upon to adjudicate on the desirability or wisdom of such decisions. It is no exaggeration to place on record that instances of violence against women and children, particularly females, such as rape, dowry deaths, domestic violence, bride-burning, molestation, brazen ill-treatment of horror, vulgarity and indecency are not only rampant but on phenomenal increase casting a shadow of shame on the society, the culture and governance of this country and it seems that cruelty to women and problems of battered wives have become ironically almost a

worldwide phenomenon. Such a situation deserves a special treatment in the hands of the State. Consequently, the classification in this regard to keep away convicts of crimes against women from the benefits of remission under the order dated 25-1-2000 cannot be said to violate any reasonable principle or concept of law so as to call for its condemnation in exercise of the powers of judicial review. The classification therefore sounds just, reasonable, proper and necessitated in the larger interests of society and greater public interest and consequently, cannot by any stretch of imagination be branded to be invidious to attract the vice of Article 14 of the Constitution of India. A careful scrutiny of the various excepted classes of convicts only shows that the real object is to ensure that those who prey on the community and violate fundamental values of mankind, society and national interest should not get undeserved benefit.

16. In view of the above legal precedents, the power to grant remission solely vest with the State. In exercise of its power, the State can make reasonable classification among the prisoners and such classification cannot be attacked as arbitrary. This court under Article 226 cannot order release of any prisoner which power exclusively vest with the State.

17. In the light of the above, there being no legal or enforceable right on the part of the petitioner, this court do not think that any case is made out for entertaining the writ petition. Accordingly, the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petition stands closed.