

(1997) 04 MP CK 0051

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3948 of 1996

Jagroop Prasad Mishra

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 29-04-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Criminal Procedure Code, 1973 (CrPC) — Section 432, 432(1), 433A
Madhya Pradesh Prisoners Release on Probation Act, 1954 — Section 9
Madhya Pradesh Prisoners Release on Probation Rules, 1964 — Rule 3, 4
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 27, 32A, 33
Penal Code, 1860 (IPC) — Section 120B, 224, 302, 304B, 354

Citation : (1998) CriLJ 2580 : (1997) ILR (MP) 88 : (1997) 4 RCR(Criminal) 729

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : D.D. Bhargava, for the Appellant; S. Menon, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.—As the challenge in both the writ applications relate to quashment of the Notification dated 9-8-96 with other ancillary and incidental prayers they were heard together and are disposed of by this common judgment.

2. Sans unnecessary details the essential facts of both the applications may be stated thus :-

The petitioner in W.P. No. 3948/96 was arrested on 10-10-79 for commission of an offence u/s 396, I.P.C. After conclusion of the trial he was convicted for life in S.T. No. 29/80 by the learned Additional Sessions Judge, Satna. By the date of filing of the writ application the petitioner had earned remission of three years and seven months and had undergone actual custodial sentence of 16 years 10 months and 20 days. On 9-8-96 the State of M.P. issued a Notification under Sub-section (1) of Section 432 of the Code of Criminal Procedure (hereinafter referred

to as the "Code") granting remission of sentence on the eve of Independence Day i.e. 15-8-96 to prisoners who have been convicted by the Courts of Criminal jurisdiction of the State and are confined in the jails of the State or other States to the extent as has been specified in the Notification. In paragraph 2 of the said Notification. It has been stipulated that remission as specified in sub-paras (1)(2)(3)(4)(5) and (6) of paragraph 1 would not be granted to certain categories of prisoners. In column III (14) of the said paragraph the prisoners convicted under Sections 120B, 224 304B (dowry death) 376, 377, 395, 396 and 498A, I.P.C., 1960 have been excluded. Because of this stipulation in the Notification the petitioner has not been granted the benefit of remission which is the cause of his grievance.

In W.P. No. 441/97, the petitioner was tried for an offence u/s 376, I.P.C. in S.T. No. 275/82 and was acquitted of the offence. The State of M.P., feeling aggrieved by the said judgment of acquittal, preferred an appeal forming the subject matter of Cr. A. No. 1023/83 and this Court partly allowed the appeal convicting the petitioner u/s 354, I.P.C. and sentencing him to pay a fine of Rs. 3000/-, in default to undergo RI for six months. The judgment of this Court was called in question by one Madangopal Pakkad before the Hon"ble Supreme Court in Cr.A. No. 447/88 wherein, their Lordships allowed the appeal, convicted the petitioner u/s 376, I.P.C. and sentenced him to undergo RI for seven years and fine of Rs. 25000/-, in default, further RI for six months. Though on various times the State Government has given special remissions to the prisoners who were convicted u/s 302, I.P.C. and others offence the petitioner was not given the benefit. Presently the challenged is to the recent Notification as there is a denial of remission to the prisoners who have been convicted for the offences u/s 376, I.P.C. It has been putforth by the petitioner that he has completed actual sentence of more than four years and his case u/s 359 of the Jail Manual has been sent to the State Government but the same has not yet been decided.

3. A return has been filed by the respondents in W.P. No. 441/97, in support of the Notification contending, inter alia, that the said Notification does not offend the principles enshrined under Articles 14 and 21 of the Constitution. With regard to the release of the petitioner in W.P. No. 441/97 under Regulation 359 of the Jail Manual it is pleaded that the same has been rejected by the State Government on the basis of the recommendation of the Advisory Board.

4. We have heard Shri D. D. Bhargava in W.P. No. 3948/96 and Shri Jagdish Tiwari along with Shri D. D. Bhargava in W.P. No. 441/97 on behalf of the petitioners and Smt. S. Menon, learned Government Advocate for the State.

5. Learned counsel appearing for the petitioners have challenged the legal validity of the Notification dated 9-8-96 (Annexure-A). Their submission is that the State Government has discriminated between the prisoners who are suffering the sentence by granting remission to a class of prisoners and denying the same privilege to the prisoners of the likes of the petitioners and such discrimination is arbitrary and without justifiable foundation and thereby is violative of Article 14

of the Constitution. It is their further submission that no reasons have been indicated while denying the benefit of remission to certain; categories of prisoners and in absence of perceptible reasons in the Notification, the same is vulnerable and is liable to be declared as "ultra vires". Their further ground of assailment is that it is within the domain of the Courts to adjudicate and opine with regard to the gravity of the offences and the executive cannot weigh the gravity of the offence inter se among the prisoners and create an artificial classification as the same amounts to usurping of jurisdiction.

6. Combating the submission of the learned counsel for the petitioners, Smt. S. Menon, learned G. A. has contended that the Government on due deliberation, has not extended the benefit of remission to certain categories of prisoners and the classification made by the State Government being reasonable, does not come within the inhibition of Article 14 of the Constitution. She has, further preponed that the executive wing of the State has not adjudged the gravity of the offence committed by a prisoner qua another prisoner relating to similar offence but has demarcated certain categories keeping in view the nature of offence and the cry of the society for deterrent punishment prescribed under the law. It is her further submission that indication of reasons may be a requisite factor while rejecting the prayer for remission of individual prisoner but is not essential at the time of issuing a notification inasmuch as classification is made taking into consideration the nature of offences.

7. To appreciate the rival submission raised at the Bar it is essential to refer to Section 432(1) of the Code which has been invoked by the State Government in bringing the impugned Notification. Sub-section (1) of Section 432 of the Code reads as follows :-

432. Power to suspend or remit sentences - (1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Under the said provision the appropriate Government has been authorised to exercise the power of suspension of the execution of the sentence or the remission either in whole or in part with or without imposition of any condition. From the notification we find that under Paragraph 1 various types of prisoners have been mentioned for grant of remission and certain eligibility criteria have been laid down. In paragraph 2 of the Notification remission has been denied to certain categories of prisoners. Clause (iii) of the paragraph deals with certain categories of prisoners who have been denied the benefit. The said clause is reproduced below :-

(iii) the prisoners who are convicted for offences under the following Acts:-

1. The Drugs and Cosmetics Act, 1940 (No. 23 of 1940).

2. The Foreign Exchange Regulation Act, 1973 (No. 46 of 1973).
3. The Employees Provident Funds and Miscellaneous Provisions Act, 1952 (No. 19 of 1952).
4. The Prevention of Food Adulteration Act, 1954 (No. 37 of 1954).
5. The Essential Commodities Act, 1955 (No. 10 of 1955).
6. The Protection of Civil Rights Act, 1955 (No. 22 of 1955).
7. The Customs Act, 1962, (No. 52 of 1962).
8. The Madhya Pradesh Excise Act, 1915 (No. 2 of 1915).
9. The Narcotic Drugs and Psychotropic Substances Act, 1985 (No. 61 of 1985).
10. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (No. 52 of 1974).
11. The Representation of the People Act, 1951 (No. 43 of 1951).
12. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (No. 46 of 1988).
13. The National Security Act, 1980 (No. 65 of 1980).
14. The offenders convicted under Sections 120B, 224, 304B (Dowry Death), 376, 377, 395, 396 and 498A, I.P.C., 1860.
15. The Dowry Prohibition Act, 1961 (No. 28 of 1961).
16. The Terrorist and Disruptive Activities (Prevention) Act, 1987 (No. 28 of 1987).

Apart from this Clause other type of prisoners have also been excluded from grant of remission. On a perusal of the list of prisoners we find that the State Government has applied its mind while denying the said benefit. Prisoners under certain offences which relate to social crimes, the economic offences, offences dealing with Narcotic Drugs and Psychotropic Substances and Illicit Traffic in N.D.P.S., offences relating to national security, dowry prohibition, violation of foreign exchange, conservation of foreign exchange and protection of smuggling activities and similar others have been excluded. In this connection we may refer to Section 32A of the Narcotic Drugs and Psychotropic Substances Act (61 of 1985) which reads as follows :-

32A- No Suspension, remission or communication in any sentence awarded under this Act- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted.

Similarly in respect of certain offences where the Central Government is the

appropriate Government the State Government has rightly excluded the convicts from the operative sphere of the Notification. The learned counsel for the petitioners have emphatically high-lighted that the convicts u/s 302 have been allowed to avail remission whereas under Clause III(14) the offenders convicted under Sections 120B, 224, 304B, 376, 377, 395, 396 and 498A, I.P.C. have been excluded. The submission is that this classification is discriminatory. We have referred to the offences under other Acts which form a part of the "exclusion clause" to indicate that there is application of mind of the appropriate Government. It is luminously clear that the Notification has not made any distinction between the same class of prisoners. To elaborate, a person convicted u/s 302, I.P.C. with all other similar foundations has not been discriminated from a convict in respect of the same offence. The State Government has excluded convicts for certain offences to avail the benefit of the Notification. The executive wing of the State in its discretion on consideration of the cry and aspiration of the society for imposition of the deterrent punishment on certain type of offenders, has not conferred the benefit of remission., An offence u/s 376 is not only an offence against a singular individual but against the collective as it offends the dignity of a woman and creates a terror trodden atmosphere in the society because a rapist is a menace in the civilised society. Some times liberal delineation with a convict of this nature decreases the faith in the system and a feeling of insensitivity prevails. Offences for dowry death and cruel treatment for demand of dowry have their own social impact as the said offences corrode the essential social fabric and slowly denude it of stability affecting the age-old established institutions. Similar logic can be applied to other offences which have been excluded. It is well settled in law that when a classification has been made with reasonable justification the same cannot be construed as illegal. At this juncture we may refer to the decision of this Court in the case of Shyam Singh and Others Vs. State of Madhya Pradesh and Others, , wherein, dealing with the validity of Rule 3 of M.P. Prisoners Release on Probation Rules, 1964 this Court held thus :-

Rule 3 of the M.P. Prisoner's Release on Probation Rules, 1964, even though it provides that prisoners who have been convicted even for a much serious offence u/s 302 Indian Penal Code are entitled to be released under the M.P. Prisoners' Release on Probation Act, in so far as it excludes prisoners convicted u/s 460 Indian Penal Code for being released under the M.P. Prisoners' Release on Probation Act, is not "ultra vires" on the ground of being discriminatory under Article 14 of the Constitution. It is in exercise of the power conferred on it by Section 9 of the M.P. Prisoner's Release on Probation Act, that the rules have been framed by the State Government. The benefit of the Act was contemplated to be conferred not on all prisoners, but only on certain prisoners on conditions imposed by the M.P. Government. In exercise of the power conferred on it in this behalf, the State Government while framing the rules, provided in Rule 4 the classes of prisoners who were not to be released under the Act. These classes of prisoners are enumerated in Clauses (a), (b), (c), (d), (e) and (f) of Rule 3. It

would thus be seen that the offences and persons classified under the various Clauses (a) to (e) of Rule 3 constitute a class by themselves in regard to whom the State Government seems to have been of the view that they are hazardous and constitute greater peril to the peace of the society and risk to peace loving citizens. It cannot be said that the purposes of the Act being to provide an opportunity to the prisoners to reform themselves and consequently a prisoner convicted u/s 460 of the Indian Penal Code also deserves to be given the same opportunity. one cannot travel beyond the scheme of the (sic) to give effect to any such supposed purpose. The right to be released on probation is neither a fundamental right nor a common law right, but is a statutory right and flows from the Act and the Rules framed in this behalf. In order, therefore, to find out the extent and scope of the right, the provisions in the Act and the rules appear to be the only guide.

8. In this connection we may also refer to the decision in the case of *Amritlal and Others Vs. State of M.P.*, wherein, taking into the age factor as an acceptable and reasonable basis for classification, this Court held as under (at p. 1097) :-

Remission are granted under special circumstances by the State and also with the object of reforming the prisoners after ensuring that there is no possibility of repeating the offences. Average life span in India can be taken to be 65 years. So life convicts attaining the age of 65 years are given remissions after completing 14 years of jail sentence, including remissions, but younger people are given remissions after completing a long period of jail sentence i.e. 17 years including remissions. So there is justification for treating all life convicts, who have attained 65 years of age, differently as a class from other life convicts. So the classification is reasonable and does not violate Article 14 of the Constitution." In view of the law laid down in the aforesaid decisions and applying the said parameters to the case at hand, we are of the considered view that the Notification does not cause any violence to the doctrinal premises and the cherished ideals of Article 14 of the Constitution.

9. Now we shall proceed to deal with the contention that reasons have not been ascribed in the Notification while making this classification. Reliance has been placed on the decision rendered in the case of *Baljitsingh v. State of Punjab* 1986 Cri LJ 1037, wherein, an application by a life convict for premature release was not granted solely on the ground that the District level committee had not recommended his case. The said order was set aside by the Punjab & Haryana High Court on the ground that no reasons were given. In this context we may also refer to the decision in the case of *Harbans Singh Vs. State of Punjab and Others*, wherein, overruling the aforesaid decision *M.M. Punchi, J.* (as his Lordship then was) speaking for the Court expressed thus (para 10):-

Even on the practical side, the rule laid down in *Baljit Singh's* case (1986 Cri LJ 1037) (supra) when applied would lead to floodgates of litigations and unnecessary wastage of public time and effort. On practical application it means that the Government shall in the first instance pass a proposed speaking order

and serve the same on the prisoner inviting his representation. This means that the Government is obliged to cause inroads on its sovereign or constituent power as conferred under the Constitution and its laws. So the Government in a way turns itself into a quasi-judicial Tribunal, if not a Court. Enjoining the executive Government to assume such a role would obviously be requiring it to do something which the basics of our laws and the Constitution prohibit.

We have referred to the aforesaid case to indicate that even individual rejection does not call for giving reasons. However, we will not delve further into the said aspect as in the case at hand it is not a case of individual rejection. Challenge is to the Notification on the ground that there is absence of reason. We may hasten to add that the Notification is not discriminatory on the ground of caste as had been laid down in the case of Mohan Singh Vs. The State of Madhya Pradesh, , wherein special remission to persons belonging to Scheduled Caste and Scheduled Tribe was granted and this Court extended the benefit of the Notification to the petitioner therein on the ground that the petitioner was bound to be treated equally with the prisoners belonging to the Scheduled Caste and Scheduled Tribe. Such is not the case here. The reasons are not to be manifestly indicated in a Notification of this nature. We are not addressing ourselves with regard to the non-mentioning of reasons in a case of an individual prisoner. The notification speaks for itself and we find that convicts have been denied the benefit because of the nature of the offence. As we have already held that the classification made has its own justifiability, non-mentioning/non-providing of reasons in the Notification would not invalidate the same.

10. The next submission relates to the role of the Court and the executive in adjudging the gravity of the offence it is well settled in law that imposition of sentence is within the domain of the Court. The Court imposes the sentence keeping in view the mandate of law, the heinous nature of the crime and the background in which it is committed. Remission is within the domain of the executive. Heavier punishment may be imposed in respect of a particular offence and less punishment is imposed for another offence. Imposition of sentence by itself cannot be summum bonum to claim remission. It cannot be the sole governing factor while granting remission. A convict u/s 376 may be sentenced to imprisonment for seven years and a convict u/s 302 has to be sentenced for life imprisonment. A life convict can be extended the benefit of remission but a convict for the offence of rape may not be extended. The submission of the learned counsel for the petitioners, in fact, relates to the quantum of sentence as imposed by the Court to be sole determining" factor for grant of remission but, we are afraid, the said cannot have acceptance.

11. As we are not persuaded by any of the submissions raised by the learned counsel for the petitioners we are of the considered view that the Notification stands close scrutiny and is accordingly upheld.

12. In course of hearing learned counsel for petitioner in W.P. No. 3948/96 submitted that he has already spent more than 14 years in custody and,

therefore is entitled to remission. It is well settled in law that completion of the minimum period does not confer a right on the convict to claim remission. In the case of Shankar Babu Ghavali Vs. State Of Maharashtra, , while dealing with this aspect their Lordships has observed as follows :-

Section 433A imposes restrictions on the clemency powers of the Government mandating that notwithstanding anything contained in Section 432 or Section 433, the convict-prisoner shall not be released from prison unless he has served atleast 14 years of imprisonment. This does not mean that upon completion of 14 years of imprisonment, there is a right in the convict for being released.

Accepting the said view we hold that it is up to the State Government to grant remission or no. However, we observe that if the petitioner makes. an application for grant of remission the same shall be duly considered by the State Government. The case of petitioner Naval Dubey (petitioner in W.P. No. 441/97) as has been indicated in the return, has already been rejected by the State Government. In view of this there is no justification in asking him to make a fresh representation.

13. In the result, both the Writ Applications fail and accordingly, they are dismissed.