
(1984) 09 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 148 of 1984

Jai Parkash @ Kaku

APPELLANT

Vs

State of Sikkim and ors.

RESPONDENT

Date of Decision : 07-09-1984

Acts Referred:

Citation : (1984) 09 P&H CK 0055

Hon'ble Judges : Pritpal Singh, J

Advocate : D.S. Keer, Hemant Kumar Gupta, R.K. Mittal, Jatri Salwan, V.K. Jindal, Advocates for appearing Parties

Judgement

Pritpal Singh, J.

1. The petitioner Jai Parkash committed the offence of murder at Gangtok in the State of Sikkim on May 13, 1976. His trial commenced, in the Court of Sessions Judge, Sikkim, at Gangtok. However, pending trial his case was transferred to the Court of Sessions judge, Darjeeling, in the State of West Bengal by the Supreme Court vide order dated September 30, 1977 (Annexure P. 1). It was directed that the Sessions Judge". Darjeeling will take the case at Siliguri and according to the procedural law applicable in Sikkim. The Sessions Judge, Darjeeling, convicted the petitioner under section 302, Indian Penal Code on June 8, 1979, and sentenced him to undergo imprisonment for life. Thereafter the petitioner by way of interState transfer was sent to Punjab where he is currently undergoing imprisonment in Central Jail, Patiala. In this writ petition the petitioner has impleaded the States of Sikkim, West Bengal and Punjab as respondents and has claimed two reliefs. The first relief is that the respondentState of Sikkim be directed to decide the premature release case of the petitioner, expeditiously. The second relief is that his case for premature release be determined in accordance with the old Code of Criminal Procedure, 1898 and accordingly the provisions of section 433 A of the New Code, of 1973 should not be applied.

2. The States of Sikkim and Punjab have put, in appearance in these proceedings

the State of West Bengal has failed to appear despite service and has been proceeded against ex parte.

3. The first point to be decided in this case is as to which of the respondent State is the appropriate Government" to deal with the petitioner's case for premature release under section 432 of the Code of Criminal Procedure. This point has been set at rest in *Hanuman Dass v. Vinay Kumar and others* A.I.R. 1982 Supreme Court 1052. In this judgment it has been authoritatively held by the Supreme Court that according to section 432 (7) of the Code of Criminal Procedure the appropriate Government is the Government of the State of conviction and not the Government of State where the offence was committed. It is, therefore, manifest that the petitioner having been convicted by the Sessions Judge, Darjeeling, the State of West Bengal is the appropriate Government to consider the premature release case of the petitioner.

4. It is next to be considered as to the procedural law of which States will be applicable to consider the premature release case of the petitioner. The petitioner committed the offence in the State of Sikkim. He was tried by the Sessions Judge, Darjeeling in the State of West Bengal but according to the procedural law applicable in the State of Sikkim. It, therefore, becomes clear. that his case for premature release has also to be considered in accordance with the procedural law applicable in Sikkim. It will be anomalous to hold that while the petitioner was entitled to be tried in accordance with the law and procedure applicable in the State of Sikkim, his case for premature release should be considered according to the procedural law applicable in some other State. The Supreme Court although transferred the petitioner's case for trial from the Court of the Sessions Judge, Sikkim. to the Court of the Sessions Judge, Darjeeling, in West Bengal, but the case was deemed to be tried as if the trial was taking place within the State of Sikkim In such circumstances the petitioner indeed is entitled to seek the relief of premature release as if he was convicted in the State of Sikkim and was undergoing sentence in the Jail of that State. The inevitable conclusion. therefore, is that the premature release case of the petitioner has to be considered by the State of West Bengal, which is the appropriate Government, but in accordance with the procedural law applicable in the State of Sikkim.

5. It is admitted that the State of Sikkim has adopted the rules of the State, of West Bengal regarding the premature release cases of prisoners. Rule 591 of the Rules for the Superintendence and Management of Jails and Subsidiary Jails in West Bengal, lays down that every case in which a convict has undergone a period of continued detention amounting to fourteen years including remissions shall be submitted within a month of completion of such period by the Superintendent of Jail in which the convict is for the, time being detained, through the Inspector General, for the orders of the State Government for his release. In the present case it is not disputed that the petitioner has not so far undergone fourteen years of imprisonment including remissions. It is, therefore, not obligatory at this stage, upon the Superintendent of Jail in which the

petitioner is undergoing imprisonment to initiate his case of premature release. As stated by the State of Sikkim in the written statement the petitioner may himself approach the State of West Bengal for grant of appropriate relief in accordance with law.

6. The contention on behalf of the petitioner that section 433A of the New Code of Criminal Procedure, 1973 is not applicable to his case for premature release is not without merit. It is admitted by the State of Sikkim in the written statement that the New Code of Criminal Procedure of 1973 has not so far been made applicable in this State and that as yet the Old Code of 1898 is applicable. It is, therefore, manifest that the provisions of section 433A of the New Code according to which a prisoner undergoing life imprisonment cannot be released from prison unless he has served at least fourteen years of imprisonment are not applicable to the premature release case of the petitioner.

7. As a result of what has been stated above it is held that the State of West Bengal is the appropriate Government to consider the premature release case of the petitioner, that the premature case of" the petitioner has to be considered in accordance with the procedural law applicable in the State of Sikkim and that the Old Code of Criminal Procedure, 1898 being applicable in the State of Sikkim, the provisions of section 413A of the New Code of 1973 will be inapplicable to his case. This writ petition is disposed of with these observations.