
(2003) 02 AHC CK 0006

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 50595 of 2002

Jaleb Singh and Chet Ram (in Jail)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:

Constitution of India, 1950 — Article 161, 72
Penal Code, 1860 (IPC) — Section 302

Citation : (2003) 1 ACR 865

Hon'ble Judges : U.S. Tripathi, J;D.P. Gupta, J

Bench : Division Bench

Advocate : Sushil Kumar Srivastava, for the Appellant; A.G.A., for the Respondent

Judgement

U.S. Tripathi, J.—The Petitioners have filed this writ petition for issuance of direction in the nature of habeas corpus commanding the Respondents to release them and set them at liberty and for issuance of a writ, order or direction not to detain them further in jail in connection with Sessions Trial No. 168 of 1979 u/s 302, I.P.C., P.S. Aanar, district Hamirpur in which they had already been pardoned and released on Republic Day of 2000.

2. It is alleged that both the Petitioners were convicted and sentenced to undergo life imprisonment u/s 302, I.P.C. in Sessions Trial No. 168 of 1979 in the year 1981. In pursuance of above conviction and sentence, the Petitioner No. 1 Jaleb Singh was admitted in jail on 25.2.1980 and Petitioner No. 2. Chetram was admitted in jail on 23.10.1981. The Petitioner Jaleb Singh has served the sentence of 20 years without remission and Petitioner No. 2 served the sentence of about 18 years without any remission. Both the Petitioners, therefore, served more than 14 years of sentence, which was required under law for purposes of premature release of life convicts. The State Government on 11.1.2000 and 25.1.2000 issued orders for premature release of prisoners in the exercise of power under Article 161 of the Constitution of India. Since both the Petitioners

had served the sentence with remission for more than 25 years and were accordingly released from jail on 26.1.2000 in view of the above notifications. However, the above notifications were quashed by a Division Bench of this Court in Criminal Misc. Writ Petition No. 5039 of 2000. In pursuance of above decision, the Government of Uttar Pradesh issued direction for arresting the Petitioners, who were released in view of above notification and Petitioners were arrested on 12.10.2002 by the police of P.S. Aznar, district Mahoba and were kept in Mahoba jail. Thereafter on 21.10.2002, they were admitted in Central Jail, Naini. Some of the persons affected by the above decision filed SLP before the Supreme Court in which interim order was passed on 7.12.2001, according to which, those persons who had served more than 14 years of sentence were not required to surrender. The Petitioners were not party to the Writ Petition No. 5039 of 2000 and, therefore, decision in said writ petition was not binding on them and that in Writ Petition No. 667 of 2001, *Ayub v. Vasik Ahmad*, this Court had justified the similar notification dated 11.8.2000.

3. Heard the learned Counsel for the Petitioners and the learned A.G.A. and perused the record.

4. The learned Counsel for the Petitioners contended that the Petitioners were not party to Writ Petition No. 5039 of 2000 in which the notification dated 11.1.2000 and 25.1.2000 were quashed and the order was passed without hearing them. Therefore, it was not binding on them. He further contended that in the SLP filed against the judgment in above writ petition, the Apex Court issued interim direction on 7.12.2001 directing that all those Petitioners who have not been in custody for more than 14 years shall surrender. Therefore, the prisoners, who had served more than 14 years of sentence were not required to surrender and that the arrest of certain other prisoners was stayed by this Court in Criminal Misc. Writ Petition No. 3554 of 2000 and Criminal Writ Petition No. 7704 of 2002.

5. All these points were considered by Division Bench of this Court in *CrI.M.W.P. Nos. 1933 of 2002, Guru Prasad Tewari and Ors. v. State* ; *CrI.M.W.P. No. 3899 of 2002, Chandrika Prasad and Anr. v. State of U.P.* ; *CrI.M.W.P. No. 4035 of 2002, Rameshwar and Anr. v. State of U.P.* ; *CrI.M.W.P. No. 4220 of 2002, Binda v. State of U.P.* and *CrI.M.W.P. No. 4245 of 2002, Rampal v. State of U. P.*, decided on 29.8.2002 and it was held that the Petitioners were released because the jail authorities felt satisfied that they came within the purview of Government order and satisfied requirement thereof, namely, that they were more than 60 years of age and had undergone three years of sentence. Since no specific order directing their release had been passed after examining their case on merit, there was no occasion or requirement for issuance of any notice to them. That a person, who had been sentenced to imprisonment for life can be released from jail either by grant of pardon by the appropriate authority under Article 72 or 161 of the Constitution. He can also be released on licence under the U.P. Prisoners Release on Probation Act, 1938. At the present moment there is no order of pardon in

favour of Petitioners. Similarly no order for release on licence under the 1938 Act has been passed in their favour. In these circumstances, there is no provision whose sentence of imprisonment for life has become final may claim to remain outside the jail. That the Petitioners were not entitled to remain outside the jail even after Governor Orders on the basis of which they had been released from jail have been quashed by this Court and are no longer in existence. The review petition filed by the State of U. P., Criminal Misc. Application No. 121989 of 2001, was rejected by a Division Bench on 15.7.2002 and it was observed that after a convicted person has been taken into custody, it is always open to State Government to consider his case and pass appropriate order for his premature release strictly in accordance with law. That in view of authoritative pronouncement by the Apex Court it is abso-lutely clear that imprisonment for life means the imprisonment for the whole life and till the last breath.

6. Since, the questions raised in this writ petition were same in the above noted writ petitions and therefore, in view of above decisions the above contentions have no force and are rejected.

7. It was further contended that arrest of those persons, who had served more than 14 years of sentence was stayed by this Court, vide order dated 17.7.2002 in Criminal Misc. Writ Petition No. 3554 of 2002, Udai Bhan and Anr. v. State of U.P. and order dated 12.1.2002 in Criminal Misc. Writ Petition No. 7704 of 2002, Srinath and Anr. v. State of U. P., copies of which have been annexed as Annexures-5 R.A. 1 and 2. The above orders are not applicable to the Petitioners firstly because they have already been arrested and secondly that they were not party to the above petitions. What was their case is not known to us, as the memo of above writ petitions have not been filed. In any way, even if the case of present Petitioners was similar to the Petitioners of those writ petitions, since Petitioners are already in custody, there is no question of applicability of above orders as it related to those Petitioners, who were not arrested.

8. In view of above discussions and observations there is no force in the writ petition and the same is dismissed.