

(2001) 05 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1550 of 2001

Jeevan Singh Verma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-05-2001

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 32A
Prisoners Act, 1900 — Section 31A, 31B, 31C, 31D, 31E
Prisons Act, 1894 — Section 46

Citation : (2001) 5 MPHT 386 : (2002) 1 MPLJ 347 : (2002) 2 RCR(Criminal) 123

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R. Menon, as appeared Amicus Curiae, R.D. Ahirwar, for the Appellant; P.D. Gupta, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the petitioner, the father of the convict, Jitendra, has prayed for issuance of an appropriate direction commanding the respondents to release his son as per the provisions of the Prisoners Act, 1900 (hereinafter referred to as "the Act") for a period of one month.

The facts as have been uncurtained are that the petitioner's son has been convicted of an offence u/s 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "the NDPS Act") and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs. 40,000/-.

After serving the substantive sentence for a period of two years the petitioner applied for temporary release on the ground of his mother's illness u/s 31A of the Act but the same has been rejected by the respondent No. 2, the District

Magistrate, Narsinghpur, on the ground that there is possibility of the petitioner getting involved in the crimes of similar nature. It is urged in the petition that the respondent No. 2 has passed the impugned order on the basis of the report obtained from the Superintendent of Police, Narsinghpur, without verifying the antecedents of the petitioner and applying his mind.

The matter was listed for admission on certain dates and the learned Panel Lawyer for the State took time to obtain instructions in the matter. The matter was heard on 10-5-2001 and on that day considering the importance of the matter Mr. R. Menon was appointed as Amicus Curiae to address the Court. On the adjourned date Mr. R.D. Ahirwar, learned counsel for the petitioner, Mr. P.D. Gupta, learned Deputy Advocate General for the State and Mr. R. Menon, friend of the Court were heard in the matter. It is submitted by Mr. Menon as well as by Mr. Ahirwar that the petitioner is entitled to parole, as he is entitled to the same as per law. It is further submitted by them that the order impugned is not based on the any material to establish that the petitioner would get himself involved in the similar activities and in absence of such material the order passed vide Annexure P-1 is susceptible.

Mr. Gupta, learned Deputy Advocate General for the State, on the contrary, has contended that when the petitioner has been convicted under the NDPS Act, he is not entitled to the benefit of parole and further the order passed by the District Magistrate, Narsinghpur, is based on the report submitted by the Superintendent of Police and hence, no fault can be found with the said order.

To appreciate the rival submissions raised at the Bar, it is apposite to refer to certain provisions of the Act. Sections 31-A to 31-E of the Act have been inserted by way of amendment in the State of M.P. They read as under :

"31-A. Grant of leave to Prisoners.-- (1) Subject to the provisions to this part and to such conditions as may be prescribed, the State Government or any authority to which the State Government may delegate its powers in this behalf may grant leave to any prisoner who has been sentenced to a term of imprisonment of not less than three years, for a period not exceeding twenty one days in a year, excluding the time required for journeys to the first place of his visit immediately after departure from the prison and from the place of last visit to the person back.

(2) The provisions of Sub-section (1) shall not apply to a prisoner who has been classified as a habitual criminal for the purpose of the rules for the time being in force made under the Prisons Act, 1894 (IX of 1894) and who has more than three previous convictions.

(3) Leave shall not be admissible to a prisoner during a year under Sub-section (1):--

(i) for more than two occasions;

(ii) for a period of less than ten days; and

(iii) unless a period of three months has elapsed since the expiration of leave last availed of during the year and the commencement of the leave applied for.

(4) No prisoner shall be granted leave under Sub-section (1), unless,--

(a) he has at the time of grant of leave served one-half of his sentence including remission, or a period of not less than two years of his sentence, including remission, whichever is less;

(b) he has not been punished for a prison offence u/s 46 of the Prisons Act, 1894 (IX of 1894) during twelve months preceding the date of commencement of the leave applied for.

(5) The period of leave of a prisoner under Sub-section (1) shall count towards the total period of his sentence.

(6) The authority directing the grant of leave to any prisoner under Sub-section (1) may require him to enter into a bond with or without sureties for due observance of conditions specified in the direction.

(7) If any prisoner granted leave under Sub-section (1) fails to fulfill any of the conditions imposed upon him under the said Sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to penalty thereof.

(8) If a prisoner has violated the conditions of leave or bond, he shall not be entitled to leave under Sub-section (1) during the remaining period of his sentence.

31-B. Power to grant leave to prisoners on grounds of emergency.--

(1) Notwithstanding anything to the contrary contained in Section 31A or in any other law for the time being in force, the State Government or any authority to which the State Government may delegate its powers in this behalf, may sanction emergency leave to a prisoner who is entitled to grant of leave u/s 31A for a period not exceeding fifteen days, excluding the time required for journey to the first place of his visit immediately after departure from the prison and from the place of last visit to the prison back, subject to such conditions as may be prescribed and may, at any time cancel the leave.

(2) Emergency leave under Sub-section (1) may be granted to a prisoner in case of death of his or her spouse, son, daughter, father, mother, brother, sister, paternal or maternal grand father or grand mother or in case of his or her own marriage or the marriage of his or her son, daughter, brother and sister.

(3) The authority directing the grant of emergency leave to any prisoner under Sub-section (1) may require him to enter into a bond with or without sureties for due observance of conditions specified in the direction.

(4) If any prisoner granted emergency leave under Sub-section (1) fails to fulfill any of the conditions imposed upon him under the said Sub-section or in the

bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to penalty thereof.

(5) No prisoner shall be granted emergency leave under Sub-section (1) if he has been punished for a prison offence u/s 46 of the Prisons Act, 1894 (IX of 1894), during twelve months proceeding the date of commencement of the leave applied for.

(6) The leave under Sub-section (1) cannot be claimed as a matter of right.

(7) The period of leave under Sub-section (1) shall not count towards the total period of his sentence.

31-C. Surrender by prisoner after the leave period.--

(1) On the expiry of the period for which a prisoner was released on leave under Sub-section (1) of Section 31A or an emergency leave under Sub-section (1) of Section 31-B, he shall surrender himself to the officer-in-charge of the prison from which he was released.

(2) If a prisoner does not surrender himself as required by Sub-section (1), he may be arrested by any police officer without a warrant and shall be remanded to undergo the unexpired portion of his sentence.

31-D. Penalty:-- Any prisoner who does not surrender himself as required by Sub-section (1) of Section 31-C shall be liable upon conviction to be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

31-E. Power to make rule :-- (1) The State Government may make rules for carrying out the purposes of this part.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) procedure to be followed in respect of the proceedings for grant of leave of emergency leave to prisoners;

(b) the conditions for grant of leave or emergency leave to prisoners under Sub-section (1) of Section 31A, or under Sub-section (1) of Section 31-B, respectively, including conditions for the supervision during the period of such leave;

(c) travelling allowances for prisoners during the period of leave;

(d) restrictions on the movement of prisoners during the period of leave; and

(e) cancellation of leave any emergency leave or forfeiture of bond in case of violation of conditions of leave."

On a bare reading of the aforesaid provisions it is quite apparent that the petitioner is eligible to be considered for grant of temporary release. Mr. Gupta,

learned Deputy Advocate General for the State urged with vehemence that the petitioner having been convicted u/s 20(b)(i) of the NDPS Act is not entitled to temporary release. In this context it is apposite to refer to the decision rendered in the case of Dadu @ Tulsidas Vs. State of Maharashtra, wherein a three Judge Bench of the Apex Court while dwelling on the constitutional validity of Section 32A of the NDPS Act, dealt with the concept of parole and held as under:

"6. Parole is not a suspension of sentence. The conviction continues to be serving the sentence despite granting of parole under the statute, rules, jail manual or the Government Orders. "Parole" means the release of a prisoner temporarily for a special purpose before the expiry of a sentence, on the promise of good behaviour and return to jail. It is a release from jail, prison or other internment after actually being in jail serving part of sentence."

Their Lordships referred to the decisions rendered in the cases of Poonam Lata Vs. M.L. Wadhawan and Others, , State of Haryana and Others Vs. Mohinder Singh, , Sunil Fulchand Shah Vs. Union of India and Others, and State of Haryana Vs. Nauratta Singh and Others, and ultimately expressed the view that the parole does not amount to the suspension, remission or commutation of sentences which could be withheld under the garb of Section 32A of the NDPS Act and notwithstanding the provisions of the offending section, a convict is entitled to parole, subject however, to the conditions governing the grant of it under the statute, if any, or the jail manual or the government instructions.

In view of the aforesaid enunciation of law, the submission of Mr. Gupta, learned State counsel has no legs to stand and it has to be repelled.

Now the question that falls for consideration is whether the petitioner should be granted the benefit of parole or temporary release. In this context I may profitably refer to the decision rendered in the case of Inder Singh and Anr. v. The State (Delhi Administration) 1978 SCC 564 wherein their Lordships emphasized on rehabilitation and quoted a passage from Lewis More with approval. The said passage reads as under :

"You cannot rehabilitate a man through brutality and disrespect. Regardless of the crime a man may commit, he still is a human being and has feelings. And the main reason most inmates in prison today disrespect their keepers, is because they themselves (the inmates) are disrespected and are not treated like human beings. I myself have witnessed brutal attacks upon inmates and have suffered a few myself, if he becomes violent. But many a time this restraining has turned into a brutal beating. Does this type of treatment bring about respect and rehabilitation? No. It only instills hostility and causes alienation toward the prison officials from the inmate or inmates involved.

If you treat a man like an animal, then you must expect him to act like one. For every action, there is reaction. This is only human nature. And in order for an inmate to act like a human being, you must treat him as such. Treating him like an animal will only get negative results from him."

In the aforesaid case the Apex Court laid emphasis on the concept of "Karuna" and directed that parole should be allowed to the convicts if they show responsibility and trustworthiness. To quote

"parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up."

Thus parole has been treated as a curative strategy keeping in view the human dignity which is the quintessence of Article 21 of the Constitution.

The facts of the present case have to be judged on the basis of aforesaid enunciation of law. By the impugned order the District Magistrate has concurred with the opinion of the Superintendent of Police and rejected the prayer for temporary release. The reason ascribed is that the petitioner is likely to commit similar nature of offence. It is not shown on what foundation such an opinion has been expressed. It is not reflected in the impugned order that the convict has any criminal antecedent or has been a drug peddler. The order does not indicate that the convict was a member of any organized group involved in the transaction. The convict is the only son and his mother is ill. In support of the illness of the mother Annexure P-2 has been brought on record. Refusal to grant parole or temporary release on a spacious plea that he will get himself involved in similar nature of crime, without indicating any kind of antecedent or any other essential facts is likely to cause trauma in a prisoner which is against the curative measure. Thus I am of the considered opinion that the order passed vide Annexure P-1 is vulnerable and deserves to be lanced in exercise of extraordinary jurisdiction of this Court and I so do. Consequently it is directed that the respondents shall extend the privilege of temporary release/parole as per law to the son of the petitioner.

Resultantly, the writ petition is allowed. However, there shall be no order as to costs.