
(2002) 07 PAT CK 0131
In the Patna High Court
Case No : Cr.W.J.C. No. 153 of 2002

Kameshwar Beldar and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Citation : (2002) 07 PAT CK 0131

Final Decision : Dismissed

Judgement

S.N. Jha and T.P. Singh, JJ.—This writ petition on behalf of four Petitioners has been filed for their premature release on the ground that they have served actual incarceration for more than 14 years.

2. In the counter affidavit due dates of Petitioners release have been indicated as under.

Petitioner No. 1 - 17.7.2002

Petitioner No. 2 - 3.12.2002

Petitioner No. 3 - 31.1.2004

Petitioner No. 4 - 25.10.2006

In view of the above stand of the Respondents the case of Petitioner No. 4 alone was seriously pressed by the counsel for the Petitioners. It has been submitted that the authorities have acted arbitrarily in not allowing remission during his incarceration at Gaya Central Jail. In any view, having completed 14 years of incarceration the Petitioner is entitled to have his case considered by the Government for his premature release. Reliance was placed on State of Punjab and others Vs. Joginder Singh and others,

3. Before adverting to the legal position regarding premature release of the convicts serving sentence of imprisonment for life it may be appropriate to state a few facts about Petitioner No. 4 as stated in the supplementary counter

affidavit. It has been stated that his conduct in the jails has been quite unsatisfactory. He was found to be aggressive in nature, instigating the prisoners against the jail administration, encouraging them to go on hunger strike. He also did not work in the jails and in the circumstances he was transferred from one Jail to another on administrative ground. In fact, he destroyed his history ticket which is kept with the prisoner himself. The Respondents have also given particulars of the remissions allowed to the Petitioner. In view of the submissions made at the Bar it is not necessary to go into the quantum of remissions allowed though we would like to observe that from perusal of the relevant provisions of the Bihar Jail Manual it is clear that while certain remissions are allowed as of right, certain remissions are discretionary in nature depending on the conduct of the convict etc.

4. The question whether a convict sentenced for imprisonment for life is entitled to release on completing period of 14 years is not *res Integra*. Section 57 of the Indian Penal Code provides that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. In *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, a Constitution Bench of the Supreme Court while dwelling upon the scope of the provisions of Section 57 observed that it has no real bearing on the question of release. For calculating fractions of terms of punishment the section provides that transportation for life (read, imprisonment for life) shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life (I.e. imprisonment of life) shall be deemed to be transportation (I.e. imprisonment) for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all-embracing fiction. 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.

If so, the next question is whether there is any provision of law where under 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.

5. The provisions as contained in Sections 432, 433 and 433A of the Code of Criminal Procedure may also be referred to Section 432, which corresponds to Section 401 of the Old, Code of Criminal Procedure 1898, provides that when any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any condition 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. Section 433(b) of the Code empowers the appropriate Government to commute, without the consent of the person sentenced, the sentence of imprisonment for

life or imprisonment for a term not exceeding fourteen years or for fine. However, an embargo on the power of the Government was imposed by incorporating Section 433A by Code of Criminal Procedure (Amendment) Act, 1978. That section provides that notwithstanding anything contained in Section 432, 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 by law, or where a sentence of death imposed on a person has been commuted u/s 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment. In other words, in case where the person has been convicted for an offence for which death sentence is awardable or where the sentence of death has been commuted for imprisonment for life, he is required to serve actual imprisonment for fourteen years before the appropriate government can exercise its power u/s 432 or 433(b), as the case may be. This apparently has given rise to an impression that after serving actual incarceration of fourteen years the convict is entitled to release. Such an impression has no foundation whatsoever. The only significance of actual incarceration of fourteen years is that unless the convict has served at least that period of incarceration, his case cannot be considered for the purpose of remission or commutation of sentence u/s 432 or 433(b) of the Code.

6. In *Maru Ram and Others Vs. Union of India (UOI) and Others*, another Constitution Bench of the Apex Court while upholding the validity of the provisions of Section 433A of the Code observed that Section 433A deals only with life sentence and remissions lead nowhere and does not entitle the Petitioner to be released. In *Life Convict Laxman Laskar Vs. State of West Bengal and Another*, the Court while reiterating that the sentence of imprisonment for life ordinarily means the whole of the remaining period of the convict's natural life, observed that a convict undergoing such sentence may earn remissions of part of his sentence under the Prison Rules or any law, but such remissions in the absence of an order of the appropriate government, remitting the entire balance of the sentence, does not entitle the convict to be released automatically before serving the full life term. Though under the relevant rules, a sentence of imprisonment for life is equated with the definite period of 20 years, the prisoner has no indefeasible right to be unconditionally released on the expiry of such period, including remissions. It is only for the purpose of working out the remissions that the said sentence is equated with a definite period and not for any other purpose.

7. In view of the above enunciation of law by the Apex Court it is clear that solely on the ground that the Petitioner has served actual incarceration of fourteen years he is not entitled for premature release. This only makes him eligible to earn remission of the balance period of sentence by the appropriate government i.e. the Government of Bihar in terms of Section 432 of the Code of Criminal Procedure. In the decision relied upon by the counsel for the Petitioner, AIR 1990 S.C. 1396, which was rendered on interpretation of the relevant rules of the Punjab Jail Manual, the Court observed that the case of the Petitioner who has

completed 14 years" of custody may be referred to the State Government for consideration.

8. It is relevant to mention here that the Government of Bihar has issued a general order vide letter No. 550 dated 21.1.84 of the Law Department to the effect that a person undergoing sentence for life should be released from jail only when he has completed fourteen years of actual incarceration and earned remissions and his total imprisonment is 20 years. It is on this basis that due dates of the Petitioners' release have been worked out, as indicated above.

9. In the above premises, we find no merit in the case of the Petitioners. The petition is dismissed. This order, however, will in no way stand in the way of the State Government to consider the case of the Petitioner for his release in accordance with law.