

(1992) 06 BOM CK 0007

In the Bombay High Court

Case No : Criminal W.P. No. 213 of 1992

Kashinath Barku Bhagat

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 20-06-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 433A
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (1993) MhLj 1294

Hon'ble Judges : W.M. Sambre, J;S.P. Kurdukar, J

Bench : Division Bench

Advocate : N.N. Gawankar, for the Appellant; N.M. Kachare, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S.P. Kurdukar, J.—This writ petition under Article 226 of the Constitution of India is filed by the petitioner who is a life convict undergoing sentence of life imprisonment at Yeravada Central Prison, Pune seeking a writ or order or proper direction to the respondents directing them to release him since he has completed the period of sentence in accordance with law. In order to appreciate the controversy raised before us it would be appropriate to set out some facts.

2. In Sessions Case No. 10 of 1978 the petitioner along with some other accused was charge-sheeted for offences punishable u/s 302 read with sections 147, 148 and 149 of the Indian Penal Code in respect of murder of one Devchand; u/s 302 read with section 149 of Indian Penal Code in respect of murder of Dama and also u/s 307 read with section 149 of Indian Penal Code for causing grievous hurt to one Kashinath. In all 24 persons were tried in that case. It is no more in dispute that the Sessions Court at Kolaba vide its judgment and order dated 26th September, 1979 convicted the petitioner and other accused for the offences for which they were tried. As far as the murder of Devchand was concerned the

petitioner and other accused were sentenced to suffer rigorous imprisonment for life. As regards the murder of Dama the petitioner and other accused were also found guilty and ordered to suffer rigorous imprisonment for life. As regards offence relating to causing grievous hurt to Kashinath the petitioner and other accused were convicted for the said offence and sentenced to undergo rigorous imprisonment for seven years. All the sentences were directed to run concurrently. It is also common premise that the petitioner was arrested on 12th October, 1977 and the learned Sessions Judge in his order granted set off in respect of sentence u/s 428A of the Criminal Procedure Code. The petitioner and other convicted accused preferred criminal Appeal No. 1312 of 1979 to this Court and this Court vide its judgment and order dated 8th September, 1981 allowed the appeal partly. This Court acquitted the petitioner and others as regards charge relating to the murder of Devchand but however confirmed the order of conviction and sentence against the petitioner and other accused persons in respect of charge of murder of Dama and for causing grievous hurt to Kashinath. We are told that the petitioner and other accused preferred SLP to the Supreme Court of India but the same was dismissed. The net result therefore, as far as the petitioner is concerned, is that he has been in jail since the date of arrest i.e. 12th October, 1977 till today.

3. This petition was filed by the petitioner on 13th February, 1992 and on the basis of this date the petitioner in para 4 has set out the total period of imprisonment which includes the period of actual sentence of imprisonment which he has undergone. It has been stated by the petitioner that till 11th October, 1991 he has undergone 11 years, 3 months and three days of actual imprisonment. In addition to this period if the period as an under trial prisoner and parole period is computed according to the petitioner the total period of imprisonment comes to 14 years. In para 4 the petitioner has set out the period of ordinary remission and State remission which he has earned. On the basis of this computation contained therein it is claimed by the petitioner that his total imprisonment comes to about 19 years, one month and 23 days. As far as these calculations are concerned there is no denial in the return filed on behalf of the respondents by Shri Ramchandra Damodar Sankhe, Under Secretary (Law), Home Department, Government of Maharashtra.

4. The petitioner in this petition has prayed for premature release on the basis of the guidelines framed by the State Government in 1978. Guidelines are annexed to this petition as annexure "A". The Home Department, Mantralaya, vide its letter dated 16th November, 1978 addressed to the Inspector General of Prisons, State of Maharashtra, Pune directed that these guidelines would be made applicable to the convicts who are undergoing sentences and in terms of guidelines cases of each convict be considered and accordingly report be made to the Government for consideration.

5. Mr. N. N. Gawankar, learned counsel appearing in support of this petition, urged that the guidelines annexure "A" to the petition framed by the State

Government would apply to the petitioner's case and his case will fall in category 2(b) of the said guidelines. According to the respondents guidelines annexure "A" do not hold the field because these guidelines were superseded by the new guidelines on and from 11th May, 1992. The new guidelines are annexed to the affidavit in reply as annexure "AT. It is also asserted in the affidavit in reply filed on behalf of the respondents that these new guidelines are framed and brought into force in view of section 433A of Criminal Procedure Code, this provision is added by Amendment Act, 1978 to the Criminal Procedure Code, 1973. Section 433A imposes restrictions on the power of appropriate State Government to remit the sentence of a prisoner convicted after 18th December, 1978. In view of these new guidelines old guidelines annexure "A" to the petition will have no application to the case of the petitioner and his premature release is required to be considered in terms of new guidelines as per annexure "A-1" to the affidavit in reply.

6. It is needless to state that the new guidelines which are brought into force pursuant to the letter dated 11th May, 1992 has made a substantial change as regards total period of sentence. It is also clear from these guidelines that the categories of crimes have by and large remained the same. Since we are not concerned with the categorisation in this case, we do not deal with that issue in extenso in this judgment.

7. The crucial question that requires to be considered by us is as to whether the case of the petitioner is covered by the old guidelines of 1978 or new guidelines framed by the Government of Maharashtra, 1992 relating to the premature release. Section 433A has been introduced by Amendment Act, 1978 to the Criminal Procedure Code and under this provision the convict who has been awarded sentence of life imprisonment shall not be released unless he had served at least 14 years of actual imprisonment. Mr. Gawankar, learned counsel urged that the petitioner has completed his period of 14 years of actual imprisonment at the end of September, 1991. In view of this completion of 14 years of actual imprisonment by the petitioner his case for premature release is covered by the old guidelines since the new guidelines have come into operation on and from 11th May, 1992. Mr. Gawankar also urged that if the petitioner has earned ordinary remission and other State remissions and if the period of remission is added to the actual imprisonment of 14 years which the petitioner has already undergone then on 11th October, 1991 the total period of imprisonment which the petitioner has undergone including the ordinary and State remissions comes to about 19 days, one month and 23 years, including the period of set off of one year 11, months and 15 days (see para 4 of the petition). If this is the factual position on 11th October, 1991, is taken into account then, urged counsel that the detention of the petitioner in prison after 11th October, 1991 cannot be justified and sustained. Mere detention of the petitioner in jail after 11th October, 1991 would not attract the application of new guidelines. Petitioner's detention is thus unsustainable and unconstitutional. Mr. Gawankar further urged that under 2(b) of the old guidelines of 1978 the petitioner was

required to undergo total period of imprisonment of 18 years including remissions etc. and since the petitioner has already undergone the said period of 18 years on 11th October, 1991, the petitioner ought to have been released forthwith.

8, Mr. Kachare, learned Additional Public Prosecutor however vehemently urged that since the petitioner was in jail and undergoing imprisonment on 11th May, 1992 when new guidelines were brought into force, the petitioner's case will fall under the new guidelines and unless the petitioner completes the sentence of imprisonment in terms of new guidelines the petitioner is not entitled for premature release nor it can be said that the petitioner was detained contrary to law on and from 11th October, 1991. Petitioner's claim is totally untenable and must be rejected.

9. In order to supplement his submission Mr. Gawankar drew our attention to the decision of this Court in the case of Smt. Suman Kanji Hodar Vs. State of Maharashtra and others, . This decision clearly supports him on the proposition that if the prisoner had completed the period of imprisonment in terms of the guidelines and if he was not released by the State Government in terms of the guidelines then the imprisonment subsequent to the said period is illegal. Coming to the main contest as to whether old guidelines relating to the premature release would apply to the petitioner's case or new guidelines, it may be stated that after hearing both sides in our opinion, as far as the petitioner's case is concerned it will squarely fall under the old guidelines of 1978 and the guidelines brought into force on and from 11th May, 1992 annexure A-1 to the affidavit in reply will have no application to the facts of the present case. In the present case, as indicated earlier the respondents did not dispute that if at all 1978 guidelines apply the petitioner's case will fall in a category 2(b) thereof. We hold that old guidelines of 1978 apply to this case because on the basis of computation of imprisonment undergone by the petitioner as set out in para 4 of this petition which is not disputed on behalf of the respondents. It is thus clear that the petitioner sometime in October 1991 completed above period of 18 years of imprisonment which includes actual imprisonment of 14 years in terms of section 433A of Criminal Procedure Code. Under clause 2(b) of the old guidelines the petitioner was required to undergo the total imprisonment of 18 years. The petitioner has already completed the total period of imprisonment of 18 years as provided under clause 2(b) of the old guidelines latest by October, 1991. If this be so, then the detention of the petitioner after October, 1991 cannot be justified by taking recourse to the new guidelines. The fact remains that the petitioner ought to have been released by the end of October, 1991. Mr. Kachare urged that there was some apprehension and misunderstanding as to whether old guidelines apply to the petitioner's case or new guidelines and because of this bona fide belief the State Government could not release the petitioner in October, 1991. Be that as it may, it appears to us that the detention of the petitioner in jail after October, 1991 was not justified.

10. It is however necessary to clarify the legal position as regards the application of new guidelines to the convicts who are covered by such guidelines. In terms of section 433A of the Criminal Procedure Code every life convict is required to undergo actual imprisonment of 14 years. If a life convict completes his actual 14 years of imprisonment (prior to the enforcement of the new guidelines) and also satisfies the requirement of total imprisonment prescribed under guidelines of 1978 including ordinary and State remissions as prescribed in the old guidelines on or before the date of enforcement of new guidelines of 1992, then his premature release will be covered by old guidelines of 1978. In case where a convict does not fulfill the prescribed period of imprisonment under the old guidelines notwithstanding that he has actually undergone a sentence of 14 years as life convict in terms of section 433A of the Criminal Procedure Code on or before date of enforcement of new guidelines, 1992 then such convict will be covered by the new guidelines and he will have to undergo the total imprisonment provided under the new guidelines.

11. In view of this legal position we hold that the State Government will review the case of all the convicts and find out as to whether they are covered by old guidelines or new guidelines and applying this judgment appropriate orders will be issued to avoid a finding of illegal detention by the High Court.

12. In the result the petition succeeds. Rule is made absolute in terms of prayer (b).