
(2007) 04 JH CK 0065
In the Jharkhand High Court

Kedar Bhuiyan and Another	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Constitution of India, 1950 — Article 161, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 432
Penal Code, 1860 (IPC) — Section 201, 302, 323, 34

Citation : (2007) 3 JCR 55

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—Heard the parties.

2. This application has been filed on behalf of life convicts, namely, Kedar Bhuiyan and Kail Bhuiyan under Articles 226 and 227 of the Constitution of India for issuance of appropriate writ directing the State authority to consider the case of the petitioners for pre-mature release in terms of provisions as contained in Section 432 of the Code of Criminal Procedure or Article 161 of the Constitution of India as also in terms of letter No. 3676 dated 18.8.2003 issued by the Government of Jharkhand.

3. Learned Counsel appearing for the petitioners submits that petitioners were Court proceeded to decide only one issue as the important issue i.e. whether the plaintiff has acquired valid right, title and possession over the suit property on the basis of registered sale deed dated 12.1.1982. Without appreciating the evidence and without even discussing the evidence both oral and documentary adduced by the parties and also without meeting the reasoning given by the trial Court the first appellate Court reversed the conclusion arrived at by the trial Court and decreed the suit convicted under Sections 302/34, 201/34 and 323/34 of the Indian Penal Code and were sentenced to life imprisonment. The said order got confirmed in Cr. App. (DB) No. 96 of 1996 (R) on 5.9.2002 and that the appellants are presently lodged in Central Jail, Hazaribagh and have remained in

custody for more than 14 years but the authorities never considered the case of the appellants for pre-mature release in terms of Section 432 of the Code of Criminal Procedure as well as letter No. 3676, dated 18.8.2003.

4. A counter-affidavit has been filed on behalf of the State wherein it has been stated that petitioner No. 1 Kedar Bhuiyan and petitioner No. 2 Kail Bhuiyan have not completed 20 years in custody including the period of remissions as they are short of slightly more than six months in completing 20 years in custody including the period of remission.

5. Having heard learned Counsel for the parties, I may say that it has been well settled that life sentence is nothing less than life long imprisonment and by earning remissions a life convict does not acquire a right to be released pre-maturely, but if the Government has framed any rule or made a scheme for early release of such convict then those rules or schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution and if according to Government policy/instructions, life convict has already undergone the sentence for the period mentioned in the policy/instruction,-then the only right which a life convict can be said to have acquired is the right to have his case of pre-mature release be considered by the authorities in exercise of power under Article 161 of the Constitution in accordance with law and the Government policy/instruction prevalent at that time.

6. Government of Jharkhand has framed guidelines in this regard as incorporated in a letter bearing No. 3676 dated 18.8.2003 and as per guideline case of premature release of convict can be considered only in a case when he completes 14 years in custody in actual and 20 years with the period of remission. Further jail authority is required to recommend the cases of those convicts two months before the convicts are likely to complete 20 years in custody including the period of remission with his comments to I.G. (Prison) with the documentary prove of the period of actual custody and the period of remission earned by the convicts. Thereafter I.G. (Prison) would submit the application with his comments before the Home Department and then the competent authority will consider the case of the pre-mature release on getting comments from the concerned D.C. and S.P. on the following points:

- (a) Whether the offence is an individual act of crime without affecting the society at large;
- (b) Whether there is any chance of future recurrence of committing crime;
- (c) Whether the convict has lost his potentiality in committing crime;
- (d) Whether there is any fruitful purpose of confining this convict any more;
- (e) Socio-economic condition of the convict's family.

7. As I have noticed that the convicts have not completed 20 years in custody including the period of remission but some of the convicts are likely to be

completed 20 years soon. Therefore, the Jail authority is expected, that two months before completion of 20 years, will send application with the requisite information before the I.G. (Prison) and the competent authority after receiving all the information required to be furnished will take decision in the matter of premature release of the convicts within four months.

8. With the aforesaid observation, this writ application is disposed of.