

(1993) 05 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Criminal W.P. No. 6 of 1993

Life Convict Karam Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 05-05-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 433A

Citation : (1993) CriLJ 3751 : (1994) 2 RCR(Criminal) 28

Hon'ble Judges : Bhawani Singh, Acting C.J.; D.P. Sood, J

Bench : Division Bench

Advocate : Bhupender Bharadwaj, for the Appellant; M.S. Guleria, Dy. A.G., for the Respondent

Judgement

Bhawani Singh, A.C.J.

1. The petitioner has approached this Court for release since he has completed 15 years 9 months as on 29-3-1993. This fact has been admitted in the reply-affidavit filed by Shri T. R. Mahajan, I.P.S. Inspector General of Prisons, Himachal Pradesh. According to respondent No. 2, the petitioner has not completed 14 years actual imprisonment as laid down u/s 433-A of Code of Criminal Procedure, his case cannot be taken for pre-mature release and sent to the Government for consideration and decision. The parole period cannot be counted for calculating 14 years jail sentence u/s 433-A of the Code of Criminal Procedure.

2. In order to substantiate the submission that parole period is to be counted, Shri Bhupender Bhardwaj, learned counsel appearing for the petitioner has placed reliance on Supreme Court decision in Maru Ram and Others Vs. Union of India (UOI) and Others, wherein it has been held (at page 1467 of Cri LJ):

".....the expression "prison" and "imprisonment" must receive a wider connotation and include any place notified as such for detention purposes. "Stone walls and iron bars do not (sic) make a prison"; nor are "stone walls and iron bars" a sine qua non to make a jail. Open jails are capital instances. Any life

under the control of the State whether within the high-walled world or not, may be a prison if the law regards it as such. House detentions, for example, Palaces, where Gandhiji was detained, were prisons. Restraint on freedom under the prison law is the test. Licensed releases where instant recapture is sanctioned by the law, and, likewise, parole, where the parole is no free agent, and other categories under the invisible fetters of the prison law may legitimately be regarded as imprisonment. This point is necessary to be cleared even for computation of 14 years u/s 433-A".....

3. Then, while summarising the findings, two items may be noticed :

"(11) The U.P. Prisoners' Release on Probation Act, 1938, enabling limited enlargement under licence will be effective as legislatively sanctioned imprisonment of a loose and liberal type and such licensed enlargement will be reckoned for the purpose of the 14-year duration. Similar other statutes and rules will enjoy similar efficacy.

(14) Section 433-A does not forbid parole or other release within the 14 years span. So to interpret the section as to intensify inner tension and intermissions of freedom is to do violence to language and liberty."

4. These observations were quoted with approval by the latter judgment of the same Court in Ashok Kumar alias Golu Vs. Union of India and others, (See paras 12, 13 and 16).

5. Madhya Pradesh High Court has also occasion to deal with this question in Babupahalwan Vs. State of Madhya Pradesh and Others, The Court has held that:

"14. Thus a package reading of all the relevant provisions would show that release under the Prison Rules 358 and 359 as well as under 1954 Act and the Rules framed thereunder is not an absolute release but conditional except in the case of a release under Prison Rule 359 where it could be a release with or even without condition. But a critical and close examination of 1954 Act and the Rules framed thereunder make it crystal clear that the release of a prisoner under the said Act and the Rules is not an absolute release at all but subject to various conditions as discussed above, on breach of which his licensee is liable to be revoked and he would be recommitted to prison again to serve out his remaining sentence in accordance with law. The net result of this discussion is that if the release is subject to certain conditions on the breach of which the prisoner can again be committed to prison it would be accepted by the application of the provisions contained in Section 433-A of the Code; but if the release is absolute and without any conditions it would fall within the mischief of mandatory rule of 14 years and hit by the provisions of Section 433-A of the Code. In view of the aforesaid discussion the release of a prisoner on licence under the provisions of 1954 Act or the Rules framed thereunder or premature release on certain conditions under Prison Rules 358 and 359 will not be covered or hit by the provisions of Section 433-A of the Code because they are not absolute release with full freedom, but the prisoner so released, though he does not remain within

the stone walls and iron bars of a prison, he still remains within the legal custody and under the control of the State. Such an interpretation would be in consonance with the language of Section 433-A of the Code itself for the reason that if it was intended by the Parliament to bring such laws and Prison Rules also within the fold of Section 433-A of the Code, then the non obstante clause in Section 433-A would have been more comprehensive including all local statutes, in this behalf. In this view of the matter, we are supported by the decision in State of Andhra Pradesh Vs. Vallabhapuram Ravi, .

16. Their Lordships of the Supreme Court also in Maru Ram and Others Vs. Union of India (UOI) and Others, saved the provisions of U.P. Prisoners Release on Probation Act, 1938 from the application of Section 433-A of the Code on the reasonings contained in paragraph 71 of the said report. In paragraph 71 of the report, the Supreme Court clearly observed, that the expression "person" and "imprisonment" must receive a wider connotation and include any place notified as such for detention purposes. Stone walls and iron bars do not make a prison, nor are they a sine qua non to make a jail, open jails are capital instances. It has been further observed that any life under the control of the State, whether within the high walled world or not may be a prison if the law regards it as such. House detentions, for example, Palaces, where Gandhiji was detained were prisons. Restraint on the freedom under the prisons law is the test. Licensed release where instant recapture is sanctioned by the law, and, likewise parole, where the parole is no free agent and other categories under the inevitable fetters of the prison law may legitimately be regarded as imprisonment even for computation of 14 years u/s 433-A of the Code. On parity of the aforesaid reasoning, it has to be held, that even Maru Ram and Others Vs. Union of India (UOI) and Others, , saved the provisions of the M.P. Prisoners Release on Probation Act 1954 from the application of Section 433-A of the Code and on the same reasoning if the premature release under Prison Rules 358 and 359 is made on conditions a breach of which would make the prisoner liable for re arrest and commitment to prison again to serve out his remaining sentence, then also such release would not be hit by the provisions of Section 433-A of the Code because in that case also the person so released is deemed to be in custody of the State and is not released with full freedom. It appears that this aspect of the matter and the distinction discussed above was not placed before the Division Bench of this Court which decided the case of Rajendra Sharma (M.P. No. 140 of 1987, D/-17-10-1988) (supra).

21. In the light of foregoing discussion it is hereby held, that the provisions of Madhya Pradesh Prisoners' Release on Probation Act, 1954 and the Rules framed thereunder are not conflicting with the provisions of Section 433-A of the Code and therefore, they are not hit by Section 433-A and as such the conditional enlargement of a prisoners/convict under licence would be permissible and effective, and such licensed enlargement will be reckoned for purposes of 14 years duration. Similarly, premature release under Prison Rules 358 and 359 or similar other Statutes and Rules will also enjoy similar efficacy provided such

premature release is made subject to condition(s)."

6. It is undeniable that while a person is released on parole certain conditions are to be on him. He is not a free bird. He is to abide by these conditions or else face the consequences of the parole licence being cancelled. It cannot, therefore, be said that the parole period is not to be counted for the actual period of 14 years imprisonment to be served by a prisoner u/s 433-A of the Code of Criminal Procedure. As already noticed, the question of inclusion of parole period for the purpose of counting total period of imprisonment suffered by the prisoner is no longer controversial or of doubtful nature. The benefit of this period has to be given.

7. Thus counted, the petitioner has already suffered more than 14 years actual imprisonment as of today. Accordingly, we direct the respondent to consider the case of the petitioner and count the parole period for the purpose of Section 433-A of the Code of Criminal Procedure and pass appropriate orders within a month.