

(1997) 12 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 30747 of 1997

M. Rajender alias Raju

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Constitution of India, 1950 — Article 16, 226
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1998) CriLJ 3137

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

Advocate : K. Ramakrishna Reddy, for the Appellant; Govt. Pleader for Home, for the Respondent

Judgement

1. The petitioner is aggrieved for not releasing him on parole by the State Government, 1st respondent herein. He filed the writ petition seeking a direction to release him on parole for 90 days.

2. The petitioner was the 3rd accused in S.C. No. 42/79 on the file of the 1st Addl. Metropolitan Sessions Judge, Hyderabad. He was tried for the offences u/ Ss. 302 read with 149, IPC, along with other accused. He was acquitted by the Sessions Court by its judgment dt. 10-8-1979. However, on appeal the High Court, in Cri. Appeal No. 1244/79, convicted and sentenced him for life imprisonment. The said conviction and sentence have become final and the petitioner has been undergoing imprisonment in Chenchalaguda Central Prison, Hyderabad.

3. The petitioner states that his mother, aged 90 years, is seriously ill and virtually on death bed. He is the only earning member being the father of three school going children. To provide medical facility to his mother and to solve financial problems, the petitioner requested to be released on parole. He made an application on 20-5-1997 to the State Government for release on parole. However, it was rejected by an order dt. 7-6-97. Subsequently also several

applications were made to the 1st respondent for release on bail, but no action has been taken. He was earlier released on parole for some time and he surrendered to the Government without any complaint. It is his further grievance that though his co-convict has been released on parole from 12-8-96, his case was not favourably considered. For the above reasons the petitioner prayed for his release on parole for a period of 90 days.

4. The true extract of the order dt. 7-6-97 rejecting parole runs as follows :

"With reference to the above reference cited the Government after careful examination of the representation of Sri M. Rajender, Prisoner No. 7319 has rejected of his application for the release. Hence same was informed to the application."

5. It is the contention of the learned Senior Counsel for the petitioner that the Government rejected the application for parole without giving reasons. Thus the non-application of mind is writ large on the face of the order. As per the Suspension of Sentence on Parole Rules 1981 (for short, "the Rules"), the Government was required to consider the grounds on which the parole was sought and dispose of the application. Since no reasons were given, the order is vitiated as offending Articles 14 and 21 of the Constitution and the Rules.

6. The Government filed counter-affidavit stating that the application dt. 20-5-97 has been examined and after careful examination the same was rejected as the Deputy Commissioner of Police, D.D. Hyderabad has reported that it was dangerous to the life of the petitioner to come out on parole and it would also cause law and order problem and as such release of the convict (petitioner) was not advised. His subsequent applications for parole were also rejected in view of the adverse report submitted by the Deputy Commissioner of Police, D.D. Hyderabad.

7. It is true that the Government has not given elaborate reasons in its order dt. 7-6-1997. Law is well settled that the requirement to record reasons by an administrative authority exercising quasi judicial functions, can be regarded as one of the principle of natural justice. Such requirement serves a salutary purpose in excluding arbitrary actions and assuring fairness in the decision making, vide the decision in S.N. Mukherjee Vs. Union of India, a . The proposition which cannot also be disputed is, when the order is silent as to the reasons for its conclusions it is permissible for the Courts to call for the records and look into them to see whether such reasons can be discernable. Learned Senior counsel for the petitioner also has looked into the records. From a perusal of the record it is evident that considering the representation made by the petitioner's wife dt. 20-7-96 requesting for release of her husband on parole and also considering the subsequent telegrams given by her, the Government in August, 1996 asked the Superintendent, Central Prison, Hyderabad, to send immediate recommendations with regard to grant of parole to the petitioner's husband. Accordingly, the Superintendent sent the information to the

Government and further stated, that the convict was released earlier thrice in 1994 and in 1995. In September, 1996, the Deputy Commissioner of Police has also sent his remarks stating that the convict's mother was taking treatment as outpatient in the Government Hospital and he has two elder brothers to look after her. There was a danger to his life if he was released on parole and it would also create law and order problem and hence it was not advisable to release him on parole. On the basis of the said information, the Government, however granted a week's parole in October, 1996. Again in November, 1996 the petitioner was released on 15 days escort parole. The Commissioner of Police, Hyderabad, has also not recommended for the release of convict on parole as he has not completed the minimum period of 3 years. The Government, taking into consideration the recommendations of the officers as stated above, rejected the petitioner's request, by order dt. 30-9-96. Now the petitioner again renewed, by a letter through his wife, the request for releasing him on parole, in his representation dt. 20-5-97 on the same grounds. The Government, considering the record with regard to the petitioner's earlier request for parole and the reasons for rejecting the said representations, rejected the present request. Thus, it is apparent that the rejection order is based upon consideration of the entire record of the petitioner with regard to his earlier applications and the recommendations of the concerned officers as to his request for release on parole. It cannot therefore, be said that the Government has not applied its mind and that the order was passed arbitrarily. The petitioner's request was thoroughly examined on the earlier occasions and for the same reasons the order dt. 7-6-1997 was passed. It is significant to notice that the order dt. 7-6-1997 was not questioned by the petitioner. The petitioner has been going on making representations one after the other for release on parole hoping that he might be released one day or the other. The Government is not expected to make an enquiry and consider each subsequent representation for release on parole made on the same grounds and to pass elaborate orders. The reasons that weighed with the Government earlier would have equally applied to the subsequent orders passed, since the petitioner has not come forward with any other fresh material. It is, therefore, wholly untenable to contend that the Government is guilty of inaction in not considering the application of the petitioner.

8. Learned Senior Counsel for the petitioner relied upon several decisions in support of his contention. In *Vishwa Nath Verma Vs. Commissioner of Police and Another*, , the Court held that the power u/s 482, Cr.P.C. could be exercised to secure ends of justice in granting parole. It was further held that in extreme and deserving cases and to meet the ends of justice, it would be lawful for the Court to interfere with the power of the Government in respect of grant of parole. Holding thus, the Court exercised its jurisdiction u/s 482, Cr.P.C. and granted parole to the petitioner for a certain period. The Madras High Court in *Masilamani v. State of Tamil Nadu* (1987) 1 Crimes 601 , relied upon by the petitioner, held that the High Court has power to give directions to release a life convict on parole in an extraordinary situation, though normally the convict has to approach

the Jail Authority and the State Government for that purpose. Again, in Ramakrishnan Vs. The State of Tamil Nadu and Another, : the Madras High Court, in exercise of powers u/Section 482, Cr.P.C. granted parole for two weeks to meet the ends of justice, holding :

"In extraordinary situations, the Courts should relegate technical and procedural matters to the background and take human factors into consideration and give relief to the parties within the bounds of law. Otherwise, the functioning of Courts would be only as Court of law and not as Courts of justice. The words "to secure the ends of justice," occurring in S. 482, Cr.P.C., have real meaning and content in them and hence the High Court is bound to exercise its inherent powers on all such occasions when it deems it its duty to do so. In this case, except the opinion given by the Probation Officer in his report, that the grant of leave to the petitioner may prove a hazard to public peace and safety and that his return to the village, even on short leave, will not be welcomed by the villagers, there is no tangible material on the basis of which it can be positively held that the suspension of sentence and grant of parole to the petitioner for a short period, is fraught with danger to the peace and tranquility of the village where the petitioner hails from."

In Tarachand v. State of Rajasthan , another decision cited by the learned counsel for the petitioner, the Supreme Court granted parole to a life convict to enable him to appear in the Bhikhabhai Devshi Vs. State of Gujarat and Others, , construing the Prisons (Bombay Furlough and Parole) Rules, 1959, it has been held that a person was not totally ineligible for being released on furlough only on the ground that during the earlier release he surrendered late.

9. In my considered opinion none of the above propositions of law are doubted in the instant case. This Court's jurisdiction either u/Section 482, Cr.P.C. or judicial review jurisdiction u/Art. 226 of the Constitution, can be exercised in the interest of justice to pass any order and to grant parole and for such purpose this Court has power to see whether the Government has exercised its jurisdiction under the Rules in accordance with law and in a fair and reasonable manner. In the instant case, as held supra, as the Government has considered all aspects of matter and considered the reports given by the authorities in respect of release of the petitioner on parole and that the action has already been taken in accordance with the Rules, I am not inclined to interfere with the said order passed by the Government or to direct the Government to consider the request renewed by the petitioner for release on parole.

10. In the circumstances, the writ petition fails and is accordingly dismissed.

11. Petition dismissed.