

(1998) 01 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1559 of 1997

M. Rajender @ Raju

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 01-01-1998

Acts Referred:

Suspension of Sentence on Parole Rules, 1981 — Rule 22

Citation : (1998) 1 ALD(Cri) 253 : (1998) 2 ALT 264

Hon'ble Judges : N.Y. Hanumanthappa, J;D.H. Nasir, J

Bench : Division Bench

Advocate : K. Ramkrishna Reddi, for B. Mahender Reddi, for the Appellant;
Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

N.Y. Hanumanthappa, J.—Heard both the Counsel at the stage of admission.

2. We are not inclined to say that the learned Government Pleader, Mr. C. Sadasiva Reddy, is not right in opposing the request of the appellant for grant of parole for a period of three months. Suspension of Sentence on Parole Rules, 1981 speak about the power of jail authorities and the Government in considering the request for grant of parole. Rules 15,17 and 22, which are relevant read as under:

"15. Denial of parole for a period of three years:- As parole is only a concession and cannot be claimed by a prisoner as a matter of right its denial for any period will not be a penalty.

17. The period of release on parole shall not ordinarily exceed one month/ and no further extension shall be granted. The Government shall decide the period of such release on the merits of each case in exceptional circumstances.

22. Parole shall not be granted to be a vailed of within the first six months from the date of his admission into jail, after conviction and at least six months period

should elapse from the date of his surrender back to the Jail after availing the parole, before he is again released on parole, except in very exceptional circumstances."

3. The appellant herein was the third accused in Sessions Case No. 42 of 1979 on the file of the I Additional Metropolitan Sessions Judge, Hyderabad and he was tried for the offence u/s 302 read with Section 149 IPC along with other accused. He was acquitted by the Sessions Court. However, on appeal the High Court in CrI. Appeal No. 1244/79 convicted and sentenced him to suffer imprisonment for life. He is now undergoing sentence of imprisonment in Chanchalguda Jail. On the first occasion, the appellant was granted parole for a fortnight and again for a fortnight on the second occasion with police escort. Again, he made an application seeking parole on the ground that his mother, who is aged 80 years, is sick and he has to attend her as she is psychologically depressed. He made a request for grant of parole for a period of three months. The application of the appellant was sent to jail authorities, who submitted the report on 4-9-1996 certifying about the conduct of the appellant in jail and he is entitled for parole. Relevant portion is extracted hereunder;

"The convict has satisfactory antecedents. It is reported that neither any of his family members nor victims side against for his release on parole. It is reported that the convict was not availed furlough or parole earlier. The convict's elder brother M. Krishna and M. Narender expressed that they would stand as sureties for the convict during the period of parole.

In the circumstances mentioned supra, I recommend that the convict may be released on parole for one month."

4. The authorities, instead of considering the request of the appellant, rejected the same on 7-6-1997 and the order reads:

"After careful examination of the above subject, the Government has rejected the application of Shri M. Rajender, Prisoner No. 7319, Central Jail, Hyderabad, for release on parole. This may be intimated to the prisoner."

5. Questioning the order, the appellant filed the writ petition. The learned single Judge by his order dated 19-12-1997 dismissed the writ petition holding that the appellant is not entitled to parole as he had already availed of. The rejection was ordered taking into consideration the rule-position and other circumstances and such is not liable to be questioned, according to the learned single Judge. Aggrieved by the said order, this writ appeal is filed.

6. Sri Ramakrishna Reddy, learned Senior Advocate, has once again brought to our notice the authorities reported in S.N. Mukherjee Vs. Union of India, a , Vishwanath Verma v. Commissioner of Police 1986 CrI.L.J. 1800 Masilamani v. State of Tamilnadu 1987 (1) Crimes 601 Ramakrishnan v. The State of Tamilnadu 1983 CrI.L.J. 1762 Tarachand v. State of Rajasthan and Bhikhabhai Devshi Vs. State of Gujarat and Others, , wherein the scope of grant of parole either by the

authority or by the Government has been dealt with. Basing his support on the above decisions, he urged that parole may be granted at least for two months. He also urged that co-accused be released on parole and there is no ground for rejecting appellant's request.

7. The learned Government Pleader for Home opposed the grant of parole. According to him, when the appellant had already availed of parole twice earlier and as such parole cannot be granted now. He submitted that the order passed by the learned single Judge is correct and proper. Parole cannot be claimed as a matter of right and on the other hand it is just a concession. While passing administrative orders, no reasons need be given if other important orders have been referred to. In the case on hand, the authority while referring to the proceedings mentioned in the preamble, found that the request made by the appellant is not a just one and it was accordingly rejected. As the appellant had already availed parole for one month, he is not entitled to parole for a further period. The reasons given by the appellant that his mother is sick and as such his presence alone is required to attend her is make-believe one as the appellant has got two brothers and a sister who can very well look after the mother of the appellant. There is also no information about the age of the mother of the appellant. If the Court directs the authorities to grant parole, then there will be no meaning for orders of convictions and sentences passed by the competent Courts, whereas, the learned Counsel for the appellant, reiterated his contentions raised before the learned single Judge.

8. A perusal of the relevant rules, authorities and the order passed by the learned single Judge make clear that a convict is entitled to parole, but the restriction prescribed is that a convict cannot seek parole within six months from the date of his surrender to jail authorities or within six months from the date of obtaining the order of parole. All that Rule 22 of the Rules says is that it requires that request for parole shall be made after six months from the date of his surrender after availing parole. Further, the principle laid down in the authorities relied upon by the learned Counsel for the appellant squarely applies to the case on hand. The authorities erred in not taking into consideration the real effect of Rule 22 and the interpretation of the Court. However, the appellant is not entitled to parole for a period of three months. Accepting the bonafides on the part of the appellant and the fact that his mother is sick, which is not disputed by the respondents, we have to hold that the order passed by the learned single Judge refusing to grant the relief was not correct.

9. In the result, the writ appeal is allowed. Parole is granted to the appellant for a period of two weeks immediately within two days on presentation of a copy of this order or on the date which the appellant chooses. After expiry of fifteen days, the appellant shall surrender before the jail authorities. During the period on parole, the appellant shall appear before the Station House Officer concerned every day between 8 a.m., and 9 p.m. As soon as the copy of order is received by the authorities, they shall take action on the request of appellant for grant of

parole.