

(2013) 10 RAJ CK 0046
In the Rajasthan High Court
Case No : Writ Petition No. 14523 of 2013

Makhan Lal @ Makhaniya

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 17-10-2013

Acts Referred:

Citation : (2014) 2 WLN 205

Hon'ble Judges : Jainendra Kumar Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Lakhan Singh Tomar, for the Appellant; Ghanshyam Singh Rathore, Government Advocate, Mr. G.S. Faauzdar, Addl. G.C. and Mr. Omendra Bhardwaj, DGP, Jail, for the Respondent

Final Decision : Allowed

Judgement

1. Instant petition has been filed by the petitioner who is serving life sentence in Central Jail, Jaipur. He was convicted and sentenced by the Ld. Additional Sessions Judge (Fast Track) No. 1, Tonk vide judgment dt. 12.8.2004 in Sessions Case No. 3/2003 u/Sec. 302, 396 IPC, against which the petitioner preferred DB Cr. Appeal No. 251/2005 which has been dismissed vide order dt. 29.4.2011 and no special leave to appeal was filed by him against the impugned judgment. As alleged in the petition and also corroborated from the nominal roll placed by the Superintendent, Central Jail, Jaipur dt. 28.8.2013 on record as Ann. R/2, the petitioner has undergone sentence of 17 years 4 months 8 days and his conduct also found to be satisfactory.

2. The petitioner submitted an application on 15.2.2013 to the concerned jail authorities for his admission to open air camp under the Rajasthan Prisoners Open Air Camp Rules, 1972 (Rules 1972), however when no action was taken on his application for admission to Open Air Camp, DB Writ Petition-7152/2013 was filed and that came to be disposed of vide order dt. 9.5.2013 holding that the respondent cannot refuse to consider the application of the inmate only on the premise that he has been convicted for the offence u/s. 396 /397 IPC and

directed the authorities to consider his application for admission to Open Air Camp in accordance with law. Pursuant to the order dt. 9.5.2013, the committee in its meeting held on 13.7.2013 considered his application and observed that ordinarily convicts u/s. 395 /396 IPC are ineligible for admission to open air camp under R. 3(d) of Rules 1972 and the petitioner has also not earned Anukarniya Aachran (exemplary conduct) and also not earned special attribute and taking note thereof the committee did not find him eligible for admission to the open air camp and that is the subject matter of challenge in the instant petition.

3. Counsel for petitioner submits that the respondent could not be held justified in rejecting his application solitary on the ground that he has been convicted for offence u/s. 396 /397 IPC and further submits that his jail conduct being satisfactory and fulfilled all the conditions of eligibility for admission to open air camp as contemplated under R. 4 of the Rules 1972, the decision of the Committee in rejecting his application by a non speaking order is arbitrary and deserves to be quashed and the respondent may be directed to send him to open air camp under the Scheme of Rules 1972.

4. Counsel for respondent, on the other hand, submits that apart from his conviction u/s. 396 IPC which ordinarily may not consider him ineligible after the judgment of this Court but certain additional factors are always to be kept in mind while taking decision. In the instant case the Committee primarily was of the view that nothing additional has been attributed in his performance which may consider his case for admission to open air camp and further submits that transfer of convict prisoner from jail to open air camp is discretionary which lies with the respondent and can consider the convict for admission if sufficient accommodation is available in open air camp.

5. We have considered the submissions made by the parties and with their assistance examined the material on record.

6. The Govt. of Rajasthan in exercise of powers conferred by Clause (18) of Sec. 59 of the Prisons Act, 1894 (Central Act 9 of 1894) framed the Rajasthan Prisoners Open Air Camp Rules, 1972 primarily with the object for sending convicts to open air camps with a view to encourage good conduct, satisfactory performance of work and a life of self-discipline among the convicts of Rajasthan and to provide these convicts with a pre-release opportunity to learn social adjustment and economic self dependence. The open air camp are basically established with the object to introduce reformatory theory of punishment and not merely to lock up the prisoners but more importantly to reform them and to bring them into the main stream of the society as law abiding citizen.

7. It is true that no prisoner could claim admission to open air camp as a matter of right but at the same time jail inmates covered under the Scheme of Rules 1972 are to be considered for admission to open air camp under the given parameters on the recommendations made by the Superintendent or the Dy.

Superintendent of Jail in his nominal roll, may send the application to the Inspector General of Prisons to be considered by the Committee subject to availability of accommodation and while deciding such applicants it has to be kept in mind that convicts having served longer term of imprisonment be given preference over the prisoner who have served lesser sentence.

8. As regards the conviction of the petitioner u/s. 396 IPC is concerned u/r. 3 of Rules 1972, following classes of prisoners shall ordinarily be not eligible for being sent to Open Air Camp-

(d) Prisoners who have been convicted of an offence or offences under sections 121 to 130, 216A, 224, 225, 231, 232, 303, 311, 328, 333, 376, 377, 383, 392 to 402, 435 to 440 and 460 of the Indian Penal Code (Act SLV of 1860)

(g) prisoners whose conduct in the jail is not good provided that a prisoner who would have not received any jail punishment for two years preceding the date of the recommendations of his name for admission to the Open Camp may be considered eligible. R. 4 Eligibility for admission to Open Camps- A prisoner shall be eligible for admission to an Open Air Camp-

(a) He does not fall within any of the categories specified in rule 3 above;

(b) he has been regularly performing his scheduled task in the Jail Factory or in Jail Service;

(c) he has served one third term of his substantive sentence including remission.

9. The Division Bench of this Court in Krishna & Anr. v. State of Raj. & Ors. reported in 2004 (4) WLC 582 while interpreting the scheme of Rules 1972 and rule 3 in particular observed that it is directory in nature and para 11 of the judgment relevant for the purpose reads ad infra:

Coming to the scheme of 1972 Rules it may be noticed that eligibility incorporated in R. 3 is directory in nature. The persons mentioned in the said rule are although normally not eligible for being sent to Open Camp, they may however be sent when special circumstances exists. In view of the Rules 7, 8, 9 and 10, the prisoners can keep their families with them in Open Camp. Suitable accommodation for this purpose shall be allotted to the prisoners for this purpose and they shall have to make their own cooking arrangement for their food from their own cooking arrangement for their food from their own earning from the work distributed to them".

10. The Division Bench of this Court in latter judgment reported in Mahendra Kumar Vs. Director General Prisons and Others, . considered the word "ordinarily" under R. 14 of the Rajasthan Prisoners (Release on Parole) Rules, 1958 (Parole Rules 1958) and taking note of the earlier judgment of Division Bench of this Court in Mohan Lal v. State of Raj. 2002 (2) WLC (Raj.) 484 held that the word "ordinarily" does not mean "necessarily" and para 4 of the judgment which is relevant for the purpose reads ad infra-

A perusal of Rule 14 of the Rules of 1958 would clearly manifest that it is ordinarily that a convict shall not be allowed parole on the ground stipulated in sub-clause (a) to (d). The word "Ordinarily" does not mean "Necessarily". The language provided in the Rules of 1958 is not mandatory and it is still in the discretion of the concerned authorities to grant parole (even though the case of convict may be covered in any of the sub-clauses mentioned above. That apart, the vigor of rule is set-off if a person has already undergone one fourth of the sentence including remission and the Superintendent of Jail recommends the case with the consultation of the District Magistrate with special reasons therefor. The petitioner admittedly has undergone one fourth sentence including remissions and the Superintendent of Police has given reasons which are not at all relevant nor reasonable for rejecting the prayer of parole. No report from the Superintendent of Police has given reasons which are not at all relevant nor reasonable for rejecting the prayer of parole. No report from the Superintendent of Jail has been obtained. A Division Bench of this Court in the case of Mohan Lal and Others Vs. Bhawani Shanker and Another, has held that, the fact that a prisoner is residing in another State would not be an absolute bar for grant of parole in the case aforesaid, Clause (a) of Rule 14 of the Rules of 1958 was pressed into service in denying the parole to the petitioner

11. Thus, it is clear that R. 3 of the Rules 1972 is not mandatory and the word "ordinarily" does not mean "necessarily" and each case has to be examined on its own facts and the prisoner carrying any of the ineligibilities, referred to u/r. 3, may not oust him outrightly from consideration for admission to open air camp.

12. In the instant case the application was submitted by the petitioner in terms of order in the DBCWP No. 7152/2013 but still the authorities rejected his application primarily on the basis of his conviction under S. 395, 396 IPC treating it as an ineligibility u/r. 3 of the Rules 1972. At the same time, there is no special reasons required for the prisoner from being considered for admission to open air camp and as per nominal roll of the petitioner he has rendered 17 years 4 months 8 days as on 28.8.2013 and his jail conduct was found to be satisfactory. It is also not the case of the respondent that the petitioner is not entitled to be given preference looking to his term of imprisonment. In the considered view of this Court no reason is forthcoming which disentitle the petitioner for being admitted to open air camp under the Scheme of Rules 1972.

13. Before parting with the judgment, we would like to observe that the cases after cases are coming to this Court either for admission to open air camp under the Scheme of Rules 1972 or for grant of parole under the Rajasthan Prisoners (Release on Parole) Rules, 1958 and cases have been decided by this Court one after other but the committees constituted either for admission to open air camp or for grant of parole still are deciding applications at their own discretion without resorting to the law laid down by this court and there appears a necessity for the State Government to issue guidelines in the form of a written code for the Committees to consider such application for grant of parole under the Parole

Rules 1958 & for admission to open air camp under the Scheme of Rules 1972. Consequently, the writ petition succeeds & stands allowed. The rejection of the petitioner's candidature by the Committee dt. 3.7.2013 is quashed and set aside. The respondents are directed to consider the case of the petitioner for admission to open air camp under the Scheme of Rules 1972 and necessary orders may be passed within a period of one month.