

**(2010) 08 AP CK 0038**

**In the Andhra Pradesh High Court**

**Case No :** Writ Petition No. 24612 of 2002 and W.P.M.P. No's. 2341 and 16883 of 2010

Ms. Sabera Begum

APPELLANT

Vs

The Inspector General of Prisons and Director, Correctional Services, Government of A.P., State of A.P.

RESPONDENT

**Date of Decision :** 24-08-2010

**Acts Referred:**

Andhra Pradesh Prisons Rules, 1979 — Rule 319A, 320, 321  
Arms Act, 1959 — Section 27  
Constitution of India, 1950 — Article 161, 72  
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 433A  
Penal Code, 1860 (IPC) — Section 302, 304, 307, 326, 45

**Citation :** (2011) 2 RCR(Criminal) 302 : (2011) 2 RCR(Criminal) 302

**Hon'ble Judges :** K.C. Bhanu, J;A. Gopal Reddy, J

**Bench :** Division Bench

**Advocate :** Ginne Malleswararao, for the Appellant; G.P. for Home, for the Respondent

**Final Decision :** Dismissed

## Judgement

A. Gopal Reddy, J.—Petitioner's husband - Md. Abdul Quadeer, was found guilty in Sessions Case No. 184 of 1991 for the offence punishable u/s 302 of the Indian Penal Code, 1860 (for short, "IPC") and Section 27 of the Arms Act, 1959 (for short, "the Act"), by the IV Additional Metropolitan Sessions Judge, Hyderabad, dated 31.12.1992, and sentenced to undergo imprisonment for life for the offence punishable u/s 302 IPC and to pay a fine of Rs. 1,000/-, in default to suffer imprisonment for two months and also to undergo six months rigorous imprisonment for the offence punishable u/s 27 of the Act and the said judgment has been confirmed by this Court in CrI.A. Nos. 76 and 308 of 1993.

2. It is not in dispute that the detenu was working as a police constable during the outbreak of communal violence in Chatrinaka Division. When the Assistant Commissioner of Police, Public Servant is discharging his duties, the detenu killed

him stating that "I have killed, whatever you want to do, do it". He was charged for the offence punishable u/s 302 IPC and Section 27 of the Act, found guilty and sentenced to imprisonment, which was confirmed by this Court as referred above.

3. Petitioner contends that her husband was arrested on 12.12.1990 and he has been continuously in the prison from the said date. The Petitioner filed the present writ petition stating that her husband completed more than 11 years and 11 months imprisonment and hence, a writ of Mandamus should be issued to declare the action of the Respondents in not releasing her husband even once on furlough or parole during the last 11 years and 11 months of detaining him in Rajahmundry in stead of Hyderabad, as unlawful and further directing the Respondents to consider his release for the period eligible on furlough or parole in accordance with the A.P. Prisons Rules, 1979 (for short, "the Rules").

4. Pending the writ petition, the present applications WP. MP. Nos. 2341 and 16883 of 2010, to release the Petitioner's husband, are filed contending that the husband of the Petitioner is entitled to release on parole as per the Rules and the remission system under Rule 320(a), by extending the benefits on completion of 14 years in view of Section 433A Code of Criminal Procedure

5. A detailed counter affidavit has been filed by the 3rd Respondent stating that the prisoner - Md. Quadeer was transferred from Central Prison, Rajahmundry to Central Prison, Cherlapalli on 19.06.2005, on humanitarian grounds, on the orders of the Director General and Inspector General of Prisons and Correctional Services, Andhra Pradesh, Hyderabad vide Memo No. SB5/345/2005, dated 30.05.2005 and so far the prisoner was released on escort Parole for seven times at Government costs, which are as under:

Date of release No. of days 11.11.2004 to 11.12.2004 30 days 04.11.2005 to 09.11.2005 05 days 24.10.2006 to 27.10.2006 05 days 31.12.2006 to 05.01.2007 06 days 12.10.2007 to 22.10.2007 10 days 26.09.2008 to 10.10.2008 16 days 09.12.2008 to 13.12.2008 03 days

6. It is further submitted that the Government issued guidelines in G.O.Ms. No. 190 Home (Pri-C) Department, dated 07.08.2004, for considering premature release of eligible Life Convict Prisoners on the occasion of Independence Day, 2004. The case of the prisoners, who were sentenced to imprisonment under the following categories, are not eligible to be considered for premature release as per the conditions laid down in G.O. Ms. No. 190, Home (Pri-C) Dept, dated 07.08.2004.

Condition (iii) - Prisoners involved in and convicted for offences related to communal incidents.

Condition (vii) - Prisoners sentenced to death and later commuted to Life sentence.

Condition (xv) - Prisoners convicted of murder of public servants on duty.

7. In view of Condition xv, the case of Petitioner's husband did not come up for consideration for premature release in 2004 and the prisoner was so far awarded ordinary remission of four years, one month, ten days as on 29.07.2010. The prisoner has undergone an actual sentence of 19 years and 19 days and a total sentence of 23 years, one month and 29 days including remand period and ordinary remission. It is further submitted that by G.O. Ms. No. 94, Home (Pri-B.2) Department, dated 24.04.2001, Rule 321 has been amended by which Rule 321 was substituted with Rule 321(a) to (e) of the Rules. Under Rule 321(a) the sentences of all the prisoners sentenced to imprisonment for life or more than 20 years imprisonment in the aggregate (i.e., terms exceeding in the aggregate 20 years) shall, for the purpose of the said rule, be deemed to be sentences of imprisonment for 20 years for calculation purpose only. But there is no provision either in the A.P. Prison Rules or under Code of Criminal Procedure or Constitution of India, that the life convict prisoners should be released after completion of 20 years. The case of the prisoner was not considered as he did not fulfill the conditions laid down in G.O. Ms. No. 190, dated 07.08.2004 i.e., Sub-rule iii of Para 3 of the G.O. As the prisoner completed 14 years actual sentence as on 16.05.2005 the Superintendent, Central Prison, Rajahmundry addressed the Commissioner of Police, Hyderabad and other District Officials for their reports for considering the release of the prisoner by the A.P. State Sentence Review Board vide G.O. Ms. No. 93 Home (Pri-B2) Dept, dated 24.04.2001. The Commissioner of Police while sending his report on 24.08.2007 did not recommend the release of the prisoner, as the term "life imprisonment" does not specify any specific term and it is the discretion of the Government to release a life convict prisoner and accordingly prayed for dismissal of the writ petition.

8. Learned Counsel for the Petitioner contends that the prisoner is a life convict and has served more than 14 years of sentence. He is entitled to be released by granting remission in view of G.O. Ms. No. 93, dated 24.04.2001 and also the remission system provided under Rule 320 of the Rules. Even otherwise by earning the remission, he completed 23 years of imprisonment. Therefore, he is entitled to be released.

9. By G.O. Ms. No. 93, dated 24.04.2001, the A.P. State Sentence Review Board has been constituted under Rule 319-A(a) to the A.P. Prisons Rules, 1979 by providing guidelines for recommending the review of sentence to be considered for premature release of the prisoners. Under Rule 319-A(c), Clause (i) Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433-A of the Code of Criminal Procedure, 1973 shall be eligible to be considered for premature release from the prison immediately after surviving the sentence of fourteen (14) years of the actual imprisonment i.e., without the remissions. Under Clause (ii) All other (i.e., those not covered by the provisions of Section 433-A of the code of Criminal Procedure, 1973) convicted male prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have

served at least fourteen years of imprisonment inclusive of remissions and after completion of ten years actual imprisonment i.e., without remissions. Rule 319-A(d) Clause (iv) the Convicts, who commit murder while involved in smuggling operations or having committed the murder of public servants on duty, are ineligible for premature release.

10. Admittedly, in the case on hand, the husband of the Petitioner was sentenced to imprisonment for life, for committing the murder of his superior officer on duty.

11. Section 45 IPC defines the word "Life", which denotes the life of a human being, unless the contrary appears from the context. Section 55 IPC deals with "Commutation of sentence of imprisonment for life"? In every case in which sentence of imprisonment for life shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

12. Section 433 Code of Criminal Procedure deals with power to commute the sentence, where the appropriate Government may, without the consent of the person sentenced, commute, b) a sentence of imprisonment of life, for imprisonment for a term not exceeding fourteen years or for fine. Whereas Section 433A Code of Criminal Procedure places restriction on powers of remission or commutation in certain cases, which reads as under:

Section. 433A:- Restriction on powers of remission or Commutation in certain cases. Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted u/s 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

13. The Hon'ble Supreme Court in State of Andhra Pradesh and Others Vs. G.M. Morey, while explaining the object of Section 433A Code of Criminal Procedure held as under:

The object of Section 433A Code of Criminal Procedure is that those governed by it shall not be released unless they have served a sentence of at least 14 years imprisonment. Section 433A does not govern all life convicts. It does not apply to those convicted and sentenced to life imprisonment before its commencement. It does not apply to those convicted and sentenced to life imprisonment for offences not punishable with death, such as, Sections 304, 307, 326 I.P.C. etc. Those governed by Section 433A are excepted from the benefit of G.O. M.S. No. 557, dt. 30-10-80 issued by the Government of Andhra Pradesh for the obvious reason that they have to serve the statutory minimum period of 14 years in jail prescribed by Section 433A.

14. In Naib Singh Vs. State of Punjab and Others, the Hon'ble Supreme Court held that no prisoner will have a right to be released at the end of 14 years,

unless in the absence of any order of commutation having been passed either u/s 55. I.P.C. or Section 433(b) of Code of Criminal Procedure.

15. The Hon'ble Supreme Court recently in *Ramraj @ Nanhoo @ Bindu v. State of Chattisgarh* 2009 (8) Supreme 456 after referring to various judgments, summarized the law that a convict awarded life sentence has to undergo imprisonment for at least 14 years. While Sections 432 and 433 empowers the appropriate Government to suspend, remit or commute sentences, including a sentence of death and life Imprisonment, a fetter has been imposed by the legislature on such powers by the introduction of Section 433A into the Code of Criminal Procedure by the Amending Act of 1978, Which came into effect on and from 18th December, 1978. By virtue of the non-obstante clause used in Section 433A, the minimum term of imprisonment in respect of an offence where death is one of the punishments provided by laws or where a death sentence has been commuted to life sentence, has been prescribed as 14 years. In the various decisions rendered after the decision in *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, "imprisonment for life" has been repeatedly held to mean imprisonment for the natural life term of a convict, though the actual period of imprisonment may stand reduced on account of remissions earned. But in no case, with the possible exception of the powers vested in the President under Article 72 of the Constitution and the power vested in the Governor under Article 161 of the Constitution, even with remissions earned, can a sentence of imprisonment for life be reduced discretion of the concerned authorities to below 14 years. It is thereafter left to determine the actual length of imprisonment having regard to the gravity and intensity of the offence.

16. Indisputably, the prisoner who was working in a disciplined force as a constable committed the murder of his superior officer while on duty and he is not entitled to remission unless the remission system provides for such release. G.O. Ms. No. 93, dated 24.04.2001 specifically envisages placing the cases of all the prisoners sentenced to life imprisonment before the state sentence review board for review of the sentence awarded to a prisoner and for recommending his premature release. Under Rule 319-A(d) Clause (iv) the convicts, who commit murder while involved in smuggling operations or having committed the murder. of public servants on duty undergoing sentence of imprisonment for life, are not entitled to be considered eligible for premature release. In the absence of any right conferred on the Petitioner to seek release on completion of 14 years, he has to undergo the life sentence, but not entitled to remission as a matter of right. Therefore, we do not see any merit in any of the contentions advanced by the learned Counsel for the Petitioner.

17. Accordingly, the Writ Petition is dismissed. Consequent to the dismissal of the writ petition, WP.MP. Nos. 2341 and 16883 of 2010 are also dismissed. No costs.