
(1994) 11 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 667 of 1994

Mukho Mandal and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-11-1994

Acts Referred:

Citation : (1994) 11 PAT CK 0015

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the petitioners as also learned Counsel for the respondents.

2. Through this writ petition, the petitioners, who stand convicted for the offence punishable u/s 302 read with Section 34 of the Indian Penal Code and are undergoing sentence of imprisonment for life, have sought the following reliefs :

(a) To issue a writ in the nature of Mandamus directing the respondents to release the petitioners forthwith;

(b) To issue a writ in the nature of Habeas corpus directing the respondents to release the petitioners forthwith on personal bond or on bail.

3. learned Counsel for the petitioners has strongly argued, on the basis of the decision of the Apex Court in the well known decision reported in Maru Ram and Others Vs. Union of India (UOI) and Others, , that since these petitioners have already completed 14 years imprisonment including remission which is permissible in view of the provisions contained in Bihar Jail Manual Rule 710 read with Rule 527 which are Annexures-2 and 2/A of the writ petition, the petitioners are entitled for consideration of their premature release.

4. From the counter-affidavit which has been filed in this case it appears that the stand has been taken that these petitioners cannot be released unless they complete 14 years in prison excluding remission. From the counter-affidavit it also appears that the proposal for premature release on consideration of

remission relating to several persons including the petitioners had been sent by the Jail Superintendent in pursuance of the provisions of Rule 710 and Rule 527 of the Bihar Jail Manual by Memo No. 1198 dated 11.5.1993 to the Under Secretary, Law Department, who has returned the proposal of the petitioners among others with some quarries. It also appears that notices have been issued to all the petitioners to submit copy of the judgment of the trial court or the appellate court concerned. Paragraph 10 of the counter-affidavit specifically says that the petitioners have not completed 14 years in jail custody and, therefore, they are not entitled for release. learned Counsel for the respondent has relied on the provisions of Section 433A of the Code of Criminal Procedure and the decision reported in Bhagirath Vs. Delhi Administration, as also the decision of this Court reported in Shatrughan Prasad Vs. The State of Bihar and Others, and contended that the petitioners cannot get release unless they complete 14 years in prison excluding remission which is admissible.

5. From the assertion made in Paragraph 4 of the writ petition it appears that the petitioners were convicted of the offence punishable u/s 302 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life by judgment and order dated 15.1.1981. Undisputedly by that date amended provision contained in Section 433A of the Code had come into force. If we keep in mind the restrictions relating to remission which have been imposed by the provision of Section 433A of the Code with its non-obstante Clause and the ratio of the aforesaid decisions which have been relied upon by the learned Counsel for the respondents, we have no doubt that any person, who has been convicted of the offence for which death sentence has also been prescribed, as punishment or in which death prescribed, as punishment or in which death sentence had been awarded but later commuted to imprisonment for life can only be released after completion of 14 years excluding the period of remission permissible under the aforesaid provisions of the Jail Manual. In our opinion, whatever remission is permissible under the aforesaid rules of the Jail Manual must be considered only subject to the restriction imposed by Section 433A of the Code. So we do not find that the relief sought for by the petitioner in this case can be granted in view of the provision of Section 433A of the Code.

6. We may notice that during the course of argument, learned Counsel for the petitioners has submitted that the power which has been conferred on Governor and the President by the provisions of Article 161 or by Article 72 of the Constitution of India, cannot be in any way deemed to have affected or limited by Section 433A of the Code. As regards this submission we think that there can be no doubt that any legislation cannot curtail any power conferred on any constitutional authority by the Constitution of India. But in our opinion on the basis of that discretionary power given to the President under Article 72 of the Constitution or to the Governor under Article 161 of the Constitution, the petitioner cannot claim any statutory right of remission, We do feel that in certain situation, of course, the President or the Governor may exercise their power independent of the Jail Manual and the provision of Section 433A of the

Code. But the petitioners, in my opinion, cannot get, relief, when they have based their claim of consideration for premature release on the provisions of the Jail Manual which must be subject to the enacted law as contained in the provisions of Section 433A of the Code of Criminal Procedure.

7. In view of what we have stated above we dismiss this writ petition at the admission stage.