

(2008) 07 MAD CK 0102
In the Madras High Court
Case No : H.C.P. No. 794 of 2008

N. Padmini

APPELLANT

Vs

Deputy Inspector General of Prison, Chennai Range and
Others

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 22, 29, 32A, 8(C)

Citation : (2008) CriLJ 4781 : (2008) 2 LW(Cri) 1329

Hon'ble Judges : S. Palanivelu, J;D. Murugesan, J

Bench : Division Bench

Advocate : L. Chandrakumar, for the Appellant; M. Babu Muthu Meeran,
Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner is the wife of the detenu by name M. Nityanandam. The said Nityanandam was convicted for the offence u/s 8(C) read with Sections 22 and 29 of the N.D.P.S. Act by the judgment dated 31-8-1999 passed by the Special Judge, Addl. Special Court under N.D.P.S. Act in C.C. No. 159 of 1998 and was sentenced to undergo rigorous imprisonment for a period of 12 years and also to pay a fine of Rs. 1.50 lakhs. The said judgment was taken on appeal before this Court in C.A. No. 734 of 1999 and by judgment dated 6-6-2002, the conviction was confirmed and the sentence was modified to 10 years rigorous imprisonment and the fine amount was also reduced to Rs. 1 lakh. By virtue of the said order, the detenu is liable to undergo the sentence for a period of 10 years. He was taken into custody on 17-5-1998 and by virtue of the conviction and sentence of ten years rigorous imprisonment, his period of detention should be over on 16-5-2008. The detenu has also paid the fine of Rs. 1 lakh on 16-5-2008.

2. Claiming that even after the expiry of the period of ten years, on and from

17-5-2008, the detenu has not been released and is being detained in Central Prison, Bangalore, the petitioner made an appeal to the Inspector General of Prisons, Bangalore, the Deputy Inspector General of Prisons, Chennai Range, Chennai, the Superintendent, Central Prison, Vellore and the Superintendent, Central Prison, Puzhal, Chennai. In spite of the said appeal, which was acknowledged by all of them, the detenu has not been set at liberty. Hence the petitioner, having no other alternative, effective and efficacious remedy, has approached this Court by way of the present habeas corpus petition on the ground that the detention beyond 16-5-2008 is illegal.

3. Mr. M. Babu Muthu Meeran, learned Additional Public Prosecutor would submit that while the detenu was serving the sentence, he was granted parole for a total period of 222 days, namely, 90 days from 23-3-2002 to 22-6-2002, 90 days from 21-2-2003 to 23-5-2003, 14 days from 14-11-2007 to 29-11-2007, 14 days from 24-12-2007 to 8-1-2008 and 14 days from 29-1-2008 to 13-2-2008. If the said period is excluded from the period of sentence, the detenu should undergo the sentence for a further period of 222 days from 16.5.2008. Hence the petition is misconceived.

4. We have heard Mr. L. Chandrakumar, learned Counsel for the petitioner.

5. From the facts narrated, the only question that arises for consideration is whether the period for which the detenu was granted parole should be counted or not with the period of sentence. In our considered view, the issue is not res integra, as the law has been laid by the Apex Court.

6. A Constitution Bench of the Apex Court in the judgment in Babu Ahmed Khan and Another Vs. State of Rajasthan, , while considering the said question has held in paragraph-30 as follows:

...The detenu is not a free man while out on parole. Even while on parole he continues to serve the sentence or undergo the period of detention in a manner different than from being in custody. Parole does not keep the period of detention in a State of suspended animation. The period of detention keeps ticking during this period of temporary release of a detenu also because a parolee remains in legal custody of the State and under the control of its agents, subject at any time, for breach of condition, to be returned to custody.... The period of detention would not stand automatically extended by any period of parole granted to the detenu unless the order of parole or rules or instructions specifically indicates as a term and condition of parole, to the contrary. The period during which the detenu is on parole, therefore, requires to be counted towards the total period of detention.

7. The judgment of the Constitution Bench was followed by the Apex Court in Dadu @ Tulsidas Vs. State of Maharashtra, , where the Apex Court considered elaborately the scope of "parole" and has held in paragraph-11 as follows:

It is thus clear that parole did not amount to the suspension, remission or

commutation of sentences which could be withheld under the garb of Section 32-A of the Act. Notwithstanding the provisions of the offending section, a convict is entitled to parole, subject however, to the conditions governing the grant of it under the statute, if any, or the jail manual or the government instructions....

However, in *Dadu alias Tulsidas case* (supra), the Apex Court has added a rider that the entitlement of a convict is subject to the conditions governing the grant of it under the statute, if any, or the jail manual or the government instructions.

8. Parole is not a criminal penalty. Parole means the release of a prisoner from the prison before the maximum term has been served. The release of a prisoner on parole whose term has not expired on condition of lawful behaviour that is subject to regular monitoring by officer of the law for the said period of time would mean that the prisoner even during the period of parole undergoes the sentence.

9. In cases where there is no statute or jail manual or government instructions excluding the period of parole in the period of sentence, the convict cannot be made to suffer imprisonment for the period when he was on parole. Though the learned Additional Public Prosecutor has brought to our notice one notification of the Government of Karnataka in their order dated 20-2-2004 relating to the regulation of parole system under Rule 191 (2)(h) and submitted that the period spent on ordinary or emergency parole shall not count towards sentence undergone as it is a temporary suspension of sentence, is unable to produce such a notification issued by the State Government or any statute or jail manual. There is no dispute that the case was registered, the detenu was tried by the Courts within the jurisdiction of the State, found guilty, convicted and sentenced and was lodged in the Central Prison, Bangalore only to undergo the sentence.

10. Under these circumstances, the notification of the Government of Karnataka relied upon by the learned Additional Public Prosecutor would have no application for the present case.

11. In the absence of any such statute, notification or instructions by the Government of Tamil Nadu, we must necessarily hold; following the above judgments of the Apex Court, that the parole is not a suspension of sentence and it is essentially the function of the executive and it cannot be excluded in the period of sentence and therefore the period of sentence should be counted right from the date the detenu was arrested on 17-5-98 till he served the sentence often years rigorous imprisonment on 16-5-2008. As the period of ten years had already been undergone by the detenu and the period of 222 days of parole cannot be excluded to the period of sentence, the detention of the detenu on and from 17.5.2008 would be illegal.

12. In view of the above finding, the habeas corpus petition is allowed and the detenu namely, Mr. Nityanandam, Convict No. 14294, lodged in Central Prison, Bangalore is directed to be set at liberty forthwith, unless he is required in connection with any other case.