

(2001) 10 BOM CK 0003
In the Bombay High Court
Case No : Criminal W. P. No. 339 of 2000

Niranjan Dadarao Punwatkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-10-2001

Acts Referred:

Constitution of India, 1950 — Article 161, 32, 72
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 433(A)
Penal Code, 1860 (IPC) — Section 302, 55

Citation : (2001) 10 BOM CK 0003

Hon'ble Judges : S. K. Shah, J; J. N. Patel, J

Bench : Division Bench

Advocate : Maldhure appointed, for the Appellant; Sudhir Loney, Assistant Public Prosecutor, for the Respondent

Judgement

J. N. Patel, J.—Heard the learned counsel for the petitioner and the learned A.P.P. for the State.

2. The petitioner was tried in Sessions trial No. 422/1988 by the Sessions Judge, Nagpur for the charge of having committed an offence punishable u/s 302 and was sentenced to suffer rigorous imprisonment for life on 8-9-1989 and since then the petitioner is in prison. Against his conviction and sentence the petitioner presented Criminal Appeal No. 284/89 before the High Court which came to be dismissed on 5-4-1999.

3. The petitioner addressed a petition under Article 32 of the Constitution of India to the Registrar of the Supreme Court of India, which has been placed before this Court for consideration and came to be registered as Criminal Writ Petition No. 339/2000. The relief which the petitioner/prisoner is seeking is that his case should be considered for premature release by the respondent State. In the course of hearing of the petition, this Court on 22-2-2001, passed an order that the Competent Authority should take steps to refer the case of the prisoner to the Advisory Board which is also sought to be modified by the respondent

State, relying upon the letter dated 11th May, 1992 of the Home Department, Mantralaya, Mumbai in respect of the guidelines for premature release under the "14 Year Rule" of prisoners serving life sentence after 18th December, 1978. Under the said letter, it has been made clear to the authorities under the Prison's Act, that while submitting cases of prisoners to the Government for review under the "14 year Rule" on completion of 12 years of actual imprisonment the recommendations of the Advisory Board in such case, based on the guiding principles and the recommendations of the Inspector General of Prisons should invariably be submitted to the Government so that the case of the petitioner can be proposed for premature release in terms of the guidelines and, therefore, it is submitted that unless the prisoner undergoes actual imprisonment for a period of 12 years, his case cannot be proposed for consideration for the purpose of premature release and therefore, the Court's direction under its order dated 22-2-2001, will be a premature step.

4. There is no quarrel over the matter as to applicability of section 433(A) of Criminal Procedure Code is concerned, as the petitioner/prisoner is undergoing sentence of life imprisonment passed after 8-12-1978 and, therefore, he is not entitled to be considered for release unless he has actually been in prison for 14 years.

5. Mrs. Maldhure, the learned counsel for the petitioner submits that the question which is required to be examined appears to be that which guidelines for premature release of prisoners sentenced to life imprisonment or to death penalty and committed to life imprisonment after 18-12-1978 would be applicable. According to the learned counsel, the guidelines which were prevalent and governed the field on the date, the prisoner came to be convicted, should be made applicable and not the guidelines which are in force, when the case of the prisoner matures for consideration of his premature release. According to her, if the guidelines which were prevalent at the time when the prisoner was sentenced to life imprisonment i.e. 8-9-1989 has to be taken into consideration, then the prisoner would be benefited as his" case for premature release can be considered after completing 16 years of imprisonment which includes remission. To put it in other words, the period of imprisonment to be undergone including remission subject to minimum of 14 years of actual imprisonment including set-off period will be 16 years, whereas the guidelines which are now in force, make it obligatory for the prisoner to undergo imprisonment for a period of 22 years and, therefore, this Court should issue a writ of mandamus to the respondent State to consider the case of the prisoner in accordance with the guidelines which were prevalent on the date the prisoner came to be convicted and sentenced to imprisonment for life.

6. Mrs. Maldhure has placed reliance on the case of Maru Ram and Others Vs. Union of India (UOI) and Others, and State of Haryana and another Vs. Ram Diya, .

7. Mr. Loney, the learned A.P.P. for the State submits that the case of the

prisoner can be considered for premature release if the same is recommended to the Advisory Board by the Prison Authorities on the basis of his good behaviour in the prison and which can be done on completion of 12 years of actual imprisonment and in other cases, the same can be forwarded directly to the Government after completion of 13 years of actual imprisonment.

8. Mr. Loney submits that the case of prisoner has been forwarded to the Advisory Board for its recommendations and that the Advisory Board has already recommended the case of the petitioner/prisoner on 7-4-2001 and that the Government would take necessary decision in the matter.

9. It is submitted by the learned A.P.P. that the case of the petitioner would be governed by the guidelines for premature release of prisoners which are in operation at the time, the prisoner becomes eligible and qualified for being considered for premature release and therefore, the contention of the learned counsel for the petitioner/prisoner that the guidelines for premature release prevalent at the time of his conviction and sentence would govern the case of the prisoner/petitioner, is not proper. It is submitted that the authorities on which the learned counsel for the petitioner has placed reliance are in respect of the application of sections 432 and 433 of Criminal Procedure Code and therefore, the ratio of the 2 decisions does not come to the rescue of the petitioner/prisoner and therefore, the petition deserves to be dismissed.

10. In "Maruram vs. Union of India", so also in "State of Haryana vs. Ram" (cited supra) the Supreme Court has held that in case prisoner undergoing sentence of life imprisonment passed after 14-12-1978 he is not entitled to be considered unless he has actually been in prison for 14 years. The relief which the petitioner/prisoner is trying to seek from this Court, is that, his case should be considered in reference to sections 432 and 433 of Criminal Procedure Code read with section 55 of Indian Penal Code. "Imprisonment of life" is always for the remainder of the natural life of the convict. Premature release is governed by section 55 of the Indian Penal Code and Section 433(B) of Criminal Procedure Code, but subject to section 433(A) of Criminal Procedure Code. Well, the relief that the prisoner is trying to seek is not available to him in the sense that the "14 years Rule" introduced by amending Criminal Procedure Code and enacting section 433(A) does not leave any choice with the State. State can consider premature release of prisoner only if he has actually been in prison for 14 years.

11. As regards the other limb of the argument, that the guidelines for premature release of the prisoner which were prevalent at the time the prisoner was convicted and sentenced should be made applicable, also cannot be accepted. As that is not the stage, when the State Government is under any obligation to consider premature release of the petitioner. It is only when a prisoner qualifies and becomes eligible for such consideration i.e. after undergoing 14 years of actual imprisonment that he has a right to be considered for premature release on the terms of the prevailing Rules or Scheme as guidelines. In "Maruram vs. Union of India" (supra) cited by the learned counsel for the petitioner, it has been

clearly laid down that executive or statutory provisions under which a prisoner earn remission are not, by themselves, binding on the Government, but until the Government makes fresh Rules to serve as guidelines for the exercise of the power under Article 72 or 161 of the Constitution of India, there is nothing to prevent the Government to follow the existing Rules or Scheme as guidelines. Therefore, the case of the petitioner/prisoner will have to be considered in accordance with the guidelines for premature release of the prisoner, prevalent on the date the prisoner qualifies after undergoing the mandatory period of actual imprisonment; the Government having made fresh rules to be followed as guidelines for premature release of prisoners.

12. We, therefore, direct the respondent State to consider the case of prisoner for premature release in accordance with the guidelines for premature release or prisoners prevalent and in force on the date, he is actually been in prison for 14 years.

13. Rule made absolute accordingly with no order as to costs.

14. Before we conclude, we appreciate the assistance extended to this Court by Mrs. Maldhure, Advocate, (appointed) and Mr. Loney, the learned A.P.P. for the State.