
(2005) 08 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1491 of 2000

NK Shinder Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2005) 4 RCR(Criminal) 154

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Advocate : Sandeep Bansal, for the Appellant; Kamal Sehgal, for the Respondent

Final Decision : Allowed

Judgement

Surya Kant, J.—The prayer in this application is to stay suspension of sentence of imprisonment awarded to the applicant-Petitioner by Summary General Court Martial vide order dated 10th June, 1998 whereby he was held guilty of committing offence u/s 302 IPC and has been awarded imprisonment for life, apart from dismissal from service.

2. In support of the prayer in this application, Learned Counsel for the applicant-Petitioner submits that: (i) the Petitioner has already undergone actual sentence of more than eight years and eight months; (ii) the writ petition challenging the proceedings of Summary General Court Martial is not likely to be taken up for hearing as per its turn in near future; (iii) it might be that by that time the applicant-Petitioner undergoes the entire sentence period which would cause extreme prejudice to him, apart from rendering the writ petition as infructuous; (iv) the Petitioner's case for suspension of sentence and consequential release on bail is squarely covered by a Division Bench judgment of this Court in Dharam Pal v. State of Haryana, 1999 (4) RCR (Crl.) 600; (v) there is every likelihood of the acceptance of the Petitioner's writ petition as he has been held guilty by returning perverse finding on the basis of inadmissible circumstantial evidence by the Court Martial.

3. Shri Kamal Sehgal, learned Standing Counsel for UOI contends that the Petitioner was tried by the General Court Martial under the Army Act, 1950 and Rules framed thereunder which is a Special Statute for conducting trials of army personnel and there being no provision corresponding to Section 389 Code of Criminal Procedure in the Army Act and/or Rules framed thereunder, the sentence awarded by the General Court Martial cannot be suspended. According to the learned Counsel, in terms of Section 5 of the Code of Criminal Procedure, the said Code is inapplicable in the General Court Martial proceedings. He has further referred to Section 182 of the Army Act which prescribes Chief of the Army Staff as the sole competent authority to suspend the sentence awarded by the General Court Martial and in the present case since the said authority has already declined to suspend the sentence, it is argued that no such relief can be granted by this Court. Reliance has also been placed upon the judgments of the Apex Court in *Ajmer Singh and Others Vs. Union of India (UOI) and Others*, and *Ajit Kumar Vs. Union of India (UOI) and Others*, and on a Single Bench judgment of Andhra Pradesh High Court in *Dhirender Kumar Singh v. State of A.P.*, 2000 (1) RCR (Crl.) 110.

4. On the other hand, Learned Counsel for the applicant-Petitioner, in order to show that this Court in the exercise of its writ jurisdiction, is competent to pass interim directions regarding suspension of the Petitioner's sentence, has placed reliance upon two orders passed by Delhi High Court in the case of *Col. Harish Chandra Goswamy v. Union of India and Ors.*, 1990 (1) RCR (Crl.) 308 Del : 1991 (1) CLR 433 and dated May 28, 1992 passed in Crl. Writ No. 206 of 1992 (*Sukhwant Singh v. Union of India*) as well as an interlocutory order dated August 28, 1995 passed by a learned Single Judge of this Court in C.M. No. 7209 of 1995 in CWP No. 908 of 1995 (*Lance Naik Manjit Singh v. Union of India*) wherein in somewhat similar circumstances the sentence awarded by the General Court Martial was suspended in writ proceedings. Reference to Regulation 365(g) of Defence Services Regulation, Vol. 1 has also been made to contend that once the Chief of the Army Staff has declined the Petitioner's request for suspension of sentence, the said order is final and amounts to exhausting of all the legal rights by the Petitioner for redressal of his grievances under the Army Act, therefore, reliance placed upon certain provisions of the said Act on behalf of the Respondents to contend as if the Petitioner cannot seek suspension of sentence even in the exercise of writ jurisdiction by this Court, is misconceived.

5. Remindful of the dictum laid down by their Lordships of the Supreme Court in *Amina Ahmed Dossa and Ors. v. State of Maharashtra*, 2001 (1) RCR (Crl.) 486 (SC) : 2001 (1) SCC 675 that lengthy judgments are not desirable while deciding interlocutory applications, suffice to say that the parameters within which judicial review by a writ Court of the orders passed by quasi judicial authorities is permissible, are by now well settled. One of the contentions raised by the Petitioner that the impugned proceedings held against him by the General Court Martial are illegal and void, was taken notice by this Court while issuing notice of motion to the Respondents and it was after hearing both the parties that the writ

petition was admitted on May 10, 2001. Thus, this Court has found a prima facie case in favour of the Petitioner.

6. In Dharam Pal's case (supra), a Division Bench of this Court, having regard to the pendency of Criminal Appeals and the approximate time taken in final adjudication thereof, had an occasion to lay down guidelines for suspension of sentence and release on bail to the life convicts during the pendency of their appeals. The Division Bench took the view that unless the offence committed fell in the category of "heinous crimes", a life convict on completion of five years of actual sentence, out of which three years should be after conviction, is entitled for suspension of sentence and bail during pendency of his appeal. In para 13 of the judgment, the Division Bench also took notice of the following facts:

13. Mr. Tulsi, the learned Counsel in Crl. Writ Petition No. 1650 of 1996 and Crl. Writ Petition No. 1739 of 1997, has pointed out that the Petitioners in these two cases, who had been convicted by Courts Martial, had completed almost 9 and 6 years of their life sentence and they ought to be treated in the manner as those, who have been convicted by the normal hierarchy of Criminal Courts.

7. The general directions issued by the Division Bench are contained in para 18 which reads as follows:

18. We refrain from issuing any general guidelines for prisoners, who stand convicted of offences, which find mention in category B and direct that their matters should be left to the decision of the Judges to whom an application for bail is made. We, however, order that the appeals filed by such prisoners in which bail is denied should be accorded priority in hearing. Our experience, however, tells us that the largest number of appeals are covered by categories C, D and E and it is these categories, which are our primary concern. We are firmly of the view that these prisoners are entitled to some consideration. We do appreciate that category 'D' also deals with heinous crimes pertaining to a great social evil but in the light of the fact that in prosecutions u/s 304-B, the net is often cast far and wide by the complainant (and very often unjustifiably so), this category must also be included in our decision. We, therefore, direct that life convicts, who have undergone at least five years of imprisonment of which at least three years should be after conviction, should be released on bail pending the hearing of their appeals should they make an application for this purpose. We are also of the opinion that the same principles ought to apply to those convicted by the Courts Martial and such prisoners should also be entitled to release after seeking a suspension of their sentences. We further direct that the period of five years would be reduced to four for females and minors, with atleast 2 years imprisonment after conviction. We, however, clarify that these directions shall not be applicable in cases where the very grant of bail is forbidden by law. We are cognizant of the fact that the time frame looked at in isolation can have no obvious rationale but it stems from an attempt to balance the interest of the prisoners with the interest of the State and the complainant. We also find precedent for our view from the observations of the Supreme Court in Kashmir

Singh's case, wherein it was observed that if an appeal could not be heard for five or six years, the prisoners could well be entitled to release on bail.

(emphasis applied)

8. It, thus, emerges in unequivocal terms that the Division Bench in Dharam Pal's case (supra) was conscious of the category of those life convicts to whom sentence has been awarded by the Courts Martial and who have no remedy except to invoke the writ jurisdiction and accordingly issued directions for suspension of their sentences as well, if falls within the laid down parameters.

9. In Col. Harish Chandra Goswamy's case (supra), a learned Single Judge of the Delhi High Court held as follows:

5. The learned Counsel for the Petitioner has cited State of Bihar v. Ram Balak Singh `Balak' and others, AIR 1966 SC 141, in which it has been laid down in dealing with habeas corpus petition under Article 226 of the Constitution of India where orders of detention passed under Rule 30 of the Defence of India Rules are challenged, the High Court has jurisdiction to grant bail but the exercise of said jurisdiction is inevitably circumscribed by the considerations which are special to such proceedings and which have relevance to the object which is intended to be served by orders of detention properly and validly passed under the said Rules. So, in view of the above, I hold that the High Court has power to grant interim relief during the pendency of the main writ petition on merit.

6. So, keeping in view the facts and circumstances of the case, I direct that the Petitioner be released on bail on furnishing bail bond in the sum of Rs. 10,000/- (ten thousand only) with one surety in the like amount to the satisfaction of the Registrar of this Court during the pendency of this writ petition and I also direct that the Petitioner be not evicted from the premises allotted to him till April 30, 1999. The Petitioner, in my opinion, is not entitled to have any other interim relief.

(emphasis applied)

10. The aforementioned view taken in Col. Harish Chandra Goswamy's case (supra) was also followed by another Single Judge of the Delhi High Court in Sukhwant Singh's case (supra) where also the sentence of life imprisonment awarded by the Court Martial was suspended and the Petitioner was directed to be released on bail on certain conditions.

11. The view taken by the Delhi High Court in Col. Harish Chandra Goswamy's case was relied upon by a learned Single Judge of this Court in C.M. No. 7209 of 1995 in CWP No. 908 of 1995 (Lance Naik Manjit Singh v. Union of India) holding that:

Delhi High Court has considered this proposition in the aforesaid case and has held that despite orders of General Court Martial imposing sentence upon the Petitioner, if the Petitioner filed Criminal Writ Petition under Article 226 of the

Constitution challenging that sentence, the Court has jurisdiction to grant interim relief by way of suspending the sentence of imprisonment. The provisions of Sections 123(3) and 179 of the Army Act cannot be invoked when the writ petition is pending in this Court under Articles 226/227 of the Constitution. Once this writ petition is admitted for arguments, this Court has jurisdiction to suspend the imprisonment awarded to the Petitioner by the orders of the General Court Martial.

(emphasis applied)

12. In Ajmer Singh and Ajit Kumar's cases (supra), their Lordships of the Supreme Court while considering the applicability of Section 428 Code of Criminal Procedure which provides for set-off in sentence, held that the Army Act, Navy Act and Air Force Act constitute Special Laws, therefore, the benefit of set-off in sentence is not available to persons convicted and sentenced by Court Martial. Following the same, a learned Single Judge of Andhra Pradesh High Court in Dhirender Kumar Singh's case (supra) held that an accused who is being tried under the Navy Act is entitled to invoke provisions of Sections 438 and 439 Code of Criminal Procedure

13. The issue involved in the case herein is, however, altogether different. The question is of powers exercisable by a Writ Court under Articles 226 and 227 of our Constitution. Can these powers be curtailed by a statute even if it is a Special Law in terms of Section 5 of the Code of Criminal Procedure ?

14. Since the aforesaid substantial question of law can be decided only at the time of final adjudication of the writ petition and this is not the stage to express any viewpoint on merits of case but having regard to the guidelines laid down by the Division Bench in Dharam Pal's case (supra) and the view taken by a learned Single Judge of this Court in the interlocutory order dated August 28, 1995, referred to above and the fact that the Petitioner has already undergone more than eight years and eight months of actual sentence which includes more than seven years after sentence and nothing adverse is reported against his conduct while undergoing the sentence and also having regard to the fact that if the Petitioner's sentence is not suspended, the writ petition itself might be rendered infructuous on completion of the entire period of sentence, I find it a fit case where the interim directions to stay suspension of sentence of life imprisonment awarded to the Petitioner and to release him on bail be issued.

15. Consequently, this application is allowed, the sentence of life imprisonment awarded to the Petitioner by the General Court Martial vide its order dated June 10, 1998 is ordered to be suspended and during the pendency of this petition, the Petitioner is directed to be released on bail on furnishing bail bond in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of the Register General of this Court.

Application allowed.