
(2002) 04 MP CK 0049
In the Madhya Pradesh High Court
Case No : Writ Petition No. 265 of 2002

Prabhat Singh

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Constitution of India, 1950 — Article 14
Madhya Pradesh Prisoners Release on Probation Act, 1954 — Section 2
Madhya Pradesh Prisoners Release on Probation Rules, 1964 — Rule 4, 6, 6(1), 6(2), 6(3)

Citation : (2003) ILR (MP) 508 : (2002) 4 MPHT 56

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Suresh Gupta, for the Appellant; K.B. Chaturvedi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.—The petitioner by this petition has prayed for a writ of mandamus for quashing the order, Annexure P-1 by which his case for release on probation has been rejected by the State Government. It is the case of the petitioner that he was convicted for having committed an offence punishable under Sections 302/149, IPC and was sentenced to life imprisonment on 11-8-1997 in Sessions Trial No. 46/86 by the Additional Sessions Judge, Shivpuri. In all, there were live accused persons in the said case. One of the accused. Rad-heykishan son of Gopal has been acquitted by the Supreme Court in appeal and the appeal of four accused had been dismissed. After serving the sentence for five years, they moved an application under Rule 4 of the Madhya Pradesh Prisoners" Release on Probation Rules, 1964 (hereinafter referred to as the "Rules"), One of the accused, Feran Singh has been released on probation vide Annexure P-2 but in the case of petitioner and two other accused, the prayer has been rejected vide the impugned order dated 19-9-2001, Annexure P-1.

2. It is the case of the petitioner that when Feran Singh was released on probation, his case also required similar consideration. There was nothing different in the case of petitioner and the said Feran Singh. Accordingly, it is submitted that the law of equality has been violated and the discrimination amounts to violation of Article 14 of the Constitution of India. It is further averred by the petitioner that his case was processed as per the provisions of Rule 6 (2) and (3) of the Rules. The Superintendent of Jail, District Magistrate and Probation Officer have recommended the case of petitioner's release on probation. Non-official member of the Board had also recommended the case of the petitioner even then the case of the petitioner has not been considered properly and it has been rejected.

3. Heavy reliance has been placed on the Full Bench judgment of this Court in the case of Ganga Charan v. State of M.P. and Ors. 1994 J.L.J. 795 and a Division Bench decision of this Court in the case of State of M.P. and another Vs. Anil, as well as a decision of the Supreme Court in the case of Sunil Batra Vs. Delhi Administration and Others etc., . Apart from this a series of unreported judgments have been brought to my notice and on the basis of the aforesaid, it is submitted by the learned Counsel for the petitioner, Shri Suresh Gupta that the requirements of the rules have not been complied with.

4. By referring to Annexure P-1, it is submitted by the learned Counsel for the petitioner that the State Government has not applied its mind independently. It is stated that after reproducing the decision of the Board in a single line it has been ordered that the recommendations of the Board are accepted. No independent application of mind is seen from the order.

5. It is further submitted by the learned Counsel for the petitioner that as held by the Full Bench by this Court in the case of Ganga Charan (supra) "antecedents" of the prisoners have to be seen and the nature of the crime are also to be taken into consideration. However, placing heavy reliance on the aforesaid decision, it has been stated that viewed in the light of the observations made in the above case, the present case has not been decided in accordance with law. It is the case of the petitioner that the Probation Board had simply narrated the incident which led to the conviction and has held that the release of the petitioner is not in public interest. However, while doing so, nothing is there on the record to indicate that the petitioner will create breach of peace or break the law in any manner whatsoever. It is stated by learned Counsel that consideration has not been done in accordance with the rules, regulations and the law as laid down by this Court in a series of judgments following the judgment of Ganga Charan (supra).

6. Per contra, learned Govt. Advocate, Shri K.B. Chaturvedi submits that the Probation Board had considered the nature of the crime, the manner in which it was committed and after taking into consideration the fact that there was enmity between the petitioner and the family of the deceased employee, the decision was taken.

7. It is, therefore, averred by him that no case for interference is made out.

8. Having heard the learned Counsel for the parties, I am of the opinion that the State Government has not considered the case strictly in conformity with the provisions of law.

9. Rule 6 of the Rules provides for release of the prisoners on probation. According to the said rule, after complying with the provisions of Sub-rules (1), (2) and (3), the application is to be placed before the Government and the provision of Sub-rule (6) contemplates that the Government shall on the receipt of recommendation of the Board pass such orders as it may deem proper. The Government while taking into consideration the recommendation of the Board and apply its mind and take a final decision in the matter. Application of mind and assessment of the case has to be done in the light of the observations made by the Full Bench in the case of Ganga Charan (*supra*). Even though the Probation Board in its order had referred to the said judgment of the Full Bench but the reasoning given in the recommendation of the Board indicates that it has not done the same in letter and spirit. After considering the definition of the word "antecedent" and the provisions of the rules, the Full Bench in paras 9 and 10 observed as follows :--

"There is no logic in restricting the sweep of the word "antecedents" to the period prior to the commission of crime. A person who commits a crime may be at large for a considerable period or he might have been in judicial custody for a considerable period. It may be that conviction takes place several years after the crime. Legislative intention could not have been to ignore as irrelevant the conduct of the prisoner between the date of the crime and the date of his entry into prison. So also, the nature and circumstances of the crime cannot be irrelevant in deciding whether a prisoner is to be released on licence. Background, setting and modus operandi of crime could be different. A crime can be carefully premeditated and executed or it can be committed on the spur of the moment. A crime can be committed for strong motive or for insignificant or no motive. A crime may be gruesome or otherwise. It may be committed for monetary gain or for no gain. The circumstances/of the crime will be helpful in throwing a "flood of light on the personality of the criminal. It could not be the legislative intention to ignore these valuable clues to his personality. The decision of the Government to release or not is dependent on its opinion whether the prisoner is likely to abstain from crime and lead a peaceable life. The opinion is to be asked on the consideration of his antecedents and his conduct in prison. All aspects of his antecedents preceding his entry into prison which will include antecedents prior to the crime, the circumstances of the case, conduct subsequent to crime and in prison have to be taken into consideration in the process of formation of opinion on the crucial question whether he is likely to abstain from crime and lead a peaceable life. No aspect by itself may be decisive. No aspect is to be ignored. The total picture and the colours which go to make up the picture are relevant. This is implied in the words used in Section 2 as well as

in Hindi text of the provision."

"The crucial words in Section 2 are "from his antecedents and his conduct in the prison". There was a view presented before the referring Bench that the antecedents must be confined to his life in prison. Such a view would be wholly illogical. The Legislature has not stated "from his antecedents and conduct in the prison". The word "his" has been used twice, to qualify "antecedents" as well as "conduct in prison". The expression "his antecedents" by itself is capable of comprehending within its ambit "his conduct in prison" also since "antecedents" would mean "antecedents to the consideration by the State Government of the prisoners' request for release". The Legislature evidently desired to give due importance to "conduct in prison". That must be the reason why words "his conduct in prison" have been incorporated in the provision though even in the absence of such words, his conduct in prison being antecedent to the conviction, would be relevant. There is nothing in the scheme of the Act or the provision of Section 2 of the Act to indicate that "antecedents" are restricted to any period. By "antecedents" is meant, "antecedents" before his entry into prison, whether before or after the crime which led to the conviction. That the Statute is based on the reformatory aspect of penology is no reason to hold that the expression "antecedents" should be confined either to the period prior to the commission of the crime or to the period spent in prison."

10. From the aforesaid it is clear that it not only the manner in which the crime has been committed which has to be taken into consideration but the aspects with regard to the position which existed prior to the commission of the crime, subsequent to the crime, behaviour in the prison and various other things have to be considered. The Full Bench in the aforesaid case has held that neither one aspect by itself is decisive nor an aspect is to be ignored. According to it, the total picture and the colours which go to make up the picture are relevant.

11. After having so observed in the facts and circumstances of that case, the Full Bench has observed that merely looking into the matter and accepting the recommendations without any independent application of mind by the Competent Authority is not enough.

12. Viewed in the light of the aforesaid observations and in the facts and circumstances of the present case also, it can easily be concluded that the State Government did not apply its mind independently. On the contrary, just accepted the recommendations of the Board without considering the matter in the light of the observations made by the Full Bench in the case of Ganga Charan (supra).

13. In State of M.P. and another Vs. Anil, a Division Bench of this Court has observed in Paragraphs 8 and 9 as under:--

"Board consists of 3 members as per Rule 6 (5) of the M.P. Prisoners' Release on Probation Rules, 1964. Two of the members, namely, Secretary, Home/any other Officer empowered in this behalf by the Government and Inspector General of Prisons/Deputy Inspector General of Prisons are Government Officials associated

with the Department, one of the functions of which is relatable to administration of criminal justice in the State including keeping of prisoners, their maintenance and release from time to time, be on Court direction or otherwise. It is only the non-official member who does not belong to any of the Departments of the State Government. His participation for offering independent view is significant, therefore, necessary so that the matter is examined properly independently and objectively.

Contention that majority is already there since 2 members have the same opinion, cannot be accepted in the absence of non-official member whose participation could convince either both or at least one out of 2 and tilt the majority to his side, thereby affecting the ultimate result of consideration. It is the salutary rule that when statute requires an act to be done in a particular manner, it has to be done in that manner for that no other mode is permissible. Statute does not empower the remaining 2 members to function in the absence of non-official member, nor does it provide that the act done by the remaining members in the absence of the third would not vitiate the proceedings. Legislature has not provided for functioning in such circumstances. It can be said that the intention of Legislature was that the Board would consist of 3 members who will jointly/collectively consider the case before them and decide it. Therefore, it is not difficult to concur with the view taken by the learned Single Judge that absence of the third member would vitiate the decision taken by the Board as well as of the State Government on the recommendation of the Board."

13. The observations made by this Court in the case of Anil (*supra*) indicates the significance of non-official member and the role he plays in the decision making process.

14. In the instant case also, the facts have not only been scrutinized in the light of the observations made in the Full Bench decision in the case of Ganga Charan (*supra*). But the reasons for releasing one of the prisoners, Feran Singh has not at all been taken into consideration.

15. If the facts and circumstances mentioned in Annexure P-1 for rejecting the case of the petitioner are accepted then the same reasoning would apply in the case of Feran Singh also. If Feran Singh can be released on probation, there is no reason why the same yardstick cannot be followed in the case of the petitioner also. Even though, learned Counsel for the petitioner has invited my attention to a series of judgments in this regard passed by this Court, the fact remains that in most of the cases the law laid down in the case of Ganga Charan (*supra*) had been followed and it has been the consistent view of this Court that the State Government has to apply its mind and take a decision after examining the matter carefully and in case it has to reject the claim then valid reasons sustainable in law have to be recorded.

16. Learned Government Advocate has placed heavy reliance on a Division Bench decision of this Court in L.P.A. No. 49 of 1996 (*State of M.P. and Ors. v. Sandeep*)

decided on 18-3-1996. Placing reliance on the said judgment, it is stated that case for releasing the petitioner on probation has been made out. It is stated that in the aforesaid case also the Division Bench rejected the claim for release on probation in spite of the fact that the Superintendent of Police, District Magistrate and Probationary Officer had recommended for the release.

17. A perusal of the aforesaid judgment indicates that in the said case the question of application of mind by the State Government and non-disclosure of reasons were not involved. In view of that, the said judgment is not applicable in the facts and circumstances of the present case.

18. I am therefore of the considered view that the State Government while considering the case of the petitioner for release on probation has not considered the same in the light of the law laid and discussed hereinabove. The question of discrimination vis-a-vis Fera Singh was not taken into consideration and no reasons have been given for accepting the recommendations of the Board. In fact, no independent application of mind can be seen in the order impugned.

19. Considering the aforesaid, I am of the considered view that the matter has to be remitted back to the State Government and the State Government is directed to reconsider the case of the petitioner in the light of the observations made hereinabove within a period of two months from the date of production of a certified copy of this order.

20. The writ petition is allowed to the extent indicated hereinabove.