
(2010) 03 MP CK 0018
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1620 of 2009

Pradeep Dantre

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2010) ILR (MP) 2045

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : D.K. Katare, for the Appellant; Nidhi Patankar, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Sharma, J.—The Petitioner before this Court has filed this present petition being aggrieved by an order dated 28.2.2008 passed by the State Government rejecting the application of the Petitioner preferred by him under the provisions of M.P. Prisoners' Release on Probation Act, 1954.

2. The contention of the Petitioner is that he was convicted for an offence u/s 302 of I.P.C. vide judgment of conviction dated 7.3.1984 and a criminal appeal against the aforesaid judgment has been dismissed by this Court on 30th November, 1999. He has further stated that a SLP preferred by the Petitioner before the Apex Court has also been dismissed on 5.5.2000. The Petitioner has stated that he is in jail since the year 2000 and an application was submitted by him for his release under the Provisions of M.P. Prisoners Release on Probation Act, 1954 and the matter was recommended by Superintendent of Jail, Station House Officer, Police Station Inderganj and also by various authorities. The Petitioner's contention is that other persons in whose cases also recommendations were made, they have been released on probation, however, the Petitioner has not been released on probation and the Respondent/State has passed the impugned order which is a non-speaking order, i.e. order dated 28th February, 2008. The Petitioner has also argued before this Court that the

impugned order is bad in law and in similar circumstances of this case in the case of Man Singh v. State of M.P. and Ors. (W.P. No. 5268/07 decided on 11.9.2008), this Court has quashed an identical order and the matter has been remanded back to the State Government to pass a fresh order keeping in view the Provisions of Probation Act. The Petitioner has prayed for quashing of the aforesaid order.

3. Learned Counsel for the Petitioner has relied upon the judgment delivered by the Apex Court in the case of Arvind Yadav Vs. Ramesh Kumar and Others, . His contention is that the conduct of the Petitioner while he was in custody should have been looked into by the authorities while passing the impugned order. The learned Counsel for the Petitioner has also relied upon the judgment delivered by Full Bench in the case of Gangacharan Baijnath Prasad v. State of Madhya Pradesh and Ors. 1994 M.P.L.J 792. His contention is that the Respondents/State has only considered his conduct prior to his conviction and the order has not been passed in consonance with the provisions of M.P. Prisoners' Release on Probation Act, 1954.

4. The learned Counsel for the Petitioner has also relied upon a judgment delivered in the case of S.N. Mukherjee Vs. Union of India, and his contention is that in case a decision is given by an administrative authority, reasons must be recorded and the order passed by the administrative authority should be a well reasoned order. His contention is that in the present case the order passed by the Respondents is not a reasoned order. Learned Counsel for the Petitioner has also submitted that the wife of the Petitioner is not well and she is suffering from cancer and the impugned order dated 28th February, 2008 deserves to be quashed and the Petitioner deserves to be released on probation.

5. A reply has been filed on behalf of the Respondents/State and the contention of the Respondents/State is that that case of the Petitioner was considered on merits and a detailed speaking order has been passed vide order dated 28.2.2008 assigning the reasons for not releasing the petition on probation. The Respondents/State has relied upon the a judgment in the case of Arvind Yadav Vs. Ramesh Kumar and Others, . Learned Counsel for the Respondents/State has enclosed Annexure R/2 dated 24.12.2008 which provides that for the purpose of release on probation, a convict should have undergone minimum 14 years imprisonment (actual) and as in the present case, the Petitioner has undergone only 11 years, he is certainly not entitled for release on probation.

6. Heard the learned Counsel for the parties at length and perused the record.

7. In the present case, it is an admitted fact that the Petitioner was convicted for an offence u/s 302 of Indian Penal Code vide judgment of conviction dated 7.3.1984 and has stated in the writ petition that he has completed about 11 years of rigorous imprisonment(actual). The Notification as contained in Annexure R/2 dated 24.3.2008 which is an amendment in the M.P. Prisoners' Release on Probation Act, 1954, reads as under:

8. Keeping in view the aforesaid as the Petitioner has put in jail only for 11 years of imprisonment, he cannot be released on probation prior to completion of 14 years as per the aforesaid Notification. However, his case can be considered for release on probation even prior completion of 14 years as he is in jail for more than ten years. This Court has carefully gone through the order dated 28.2.2008 and the State Govt. has passed a reasoned order assigning the reasons in paragraph 5 of the order dated 28.2.2008 for not releasing the Petitioner under the M.P. Prisoners' Release on Probation Act, 1954. The Apex Court in the case of Arvind Yadav Vs. Ramesh Kumar and Others, , in paragraph 7 has held as under:

7. Apart from the fact that there are factual infirmities in the impugned judgment, it is also to be borne in mind that the victim and the family of the victim who have suffered at the hands of the convict have also some rights. The convicts have no indefeasible right to be released. The right is only to be considered for release on license in terms of the Act and the Rules. The Probation Board and the State Government are required to take into consideration the relevant factors before deciding or declining to release a convict. In the present case, the Probation Board had not recommended the release. The State Government had confirmed the order of the Board. The writ petition had failed before the learned Single Judge. The facts of individual cases were not considered by the Division Bench. In the case of Ramesh Kumar, the stand of the State Government was that he along with six others had formed an unlawful assembly and murdered Jitendra, son of Shashi Mohan Yadav on 29.9.1994 in Hoshangabad, Madhya Pradesh causing seventeen injuries on him with swords, knives and gupti and that Ramesh Kumar was the accused in fourteen cases field under various sections of the Indian Penal Code. The manner of commission of crime is a relevant consideration. In a given case, the manner of commission of offence may be so brutal that it by itself may be a good sole ground to decline the license to release. The Rules provide for a detailed procedure for consideration of application for release. Once rejected, again application for release can be made after two years. The Board comprises of the Home Secretary of the State Government or any other empowered officer, IG of Prisons or Deputy IG and another member.

9. From bare perusal of the aforesaid aforesaid judgment it is evident that the Apex Court has held that the manner of commission of crime is also a relevant consideration and in the present case, the Respondent/State in paragraph 5 has dealt with the aforesaid aspect while considering the case of the Petitioner for release on probation and, therefore, this Court is of the considered opinion that no irregularities of any kind has taken place while rejecting the case of the Petitioner for release on probation under M.P. Prisoners' Release on Probation Act, 1954.

10. Resultantly, no case for interference is made out and the writ petition is hereby dismissed. However, the Petitioner shall be free to apply again for release

in accordance with law.