

(2003) 03 RAJ CK 0011

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 9481 of 2002

Prakash

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-03-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 304
Constitution of India, 1950 — Article 226

Citation : (2003) 2 RLW 920

Hon'ble Judges : S.K. Keshote, J;M.R. Calla, J

Bench : Division Bench

Advocate : B.K. Sharma, for D.P. Pujari, for the Appellant; Inderraj Saini, Govt., for the Respondent

Final Decision : Allowed

Judgement

Calla, J.—D.B. Criminal Appeal No. 372/95, Basanta and Anr. v. State of Rajasthan was decided by a Division Bench of this Court Quorum : Hon"ble S.K. Keshote and F.C. Bansal JJ, Justice S.K. Keshote was heading the Bench), on 12th of November, 2002. In terms of the order as was passed, by the Division Bench on 12th of November, 2002 the accused appellant Basanta, who was convicted u/s 304 Part II, I.P.C., was sentenced to undergo six years Rule 1. with a fine of Rs. 5000/- (Rs. five thousand only) and, in default, of payment of fine he was to further undergo rigorous imprisonment for a period of one year. It was also recorded by the Division Bench, while deciding the appeal, that the accused Basanta had already undergone the sentence for more than six years, as per the record, and on depositing the fine he was to be set at liberty forthwith, if not required in any other case.

2. Petitioner Prakash, who is a relative of accused Basanta, has filed this Petition of Habeas Corpus with the allegation that accused Basanta has already served the sentence for a period of more than what he was required to serve and it has been categorically stated in the petition that he has served the sentence for a

period of seven years and ten months whereas the substantive sentence required to be undergone by him in this case was only six years and a further period of one year in case of default to pay the fine of Rs. 5000/-.

3. On behalf of the respondents, a reply has been filed and a stand has been taken that accused Basanta did not deposit the amount of fine of Rs. 5000/- which was imposed on him and, therefore, he could not be released. However, it has not been disputed that Basanta not already served the sentence of seven years and ten months.

4. This submission made on behalf of the State of Rajasthan by Mr. Inderraj Saini, Government Advocate, is not at all sustainable. The specific averment made by the petitioner in para 6 of the petition that accused Basanta had served the sentence of 7 years and 10 months, has not been controverted or denied and it is argued before us that he is not being released only because he has not deposited the amount of fine of Rs. 5000/- although he has served the sentenced awarded to him.

5. In our opinion, even if accused Basanta had not deposited the amount of fine Rs. 5000/-, once he has served the sentence for a period more than one year (in lieu of default to deposit the fine of Rs. 5000/-) beyond the period of six years inasmuch as he has served the sentence of 7 years and 10 months, there is no question of further detaining him in the jail. Moment he completed 7 years of sentence in all, he should have been released forthwith. The imprisonment of Basanta beyond the period of 7 years, in the facts of this case, is clearly illegal and it is transparently a clear case of unlawful detention. Basanta, is therefore, required to be released immediately. It is also admitted before us that he is not required in any other case.

6. For the reasons aforesaid, in the facts and circumstances of the case, this petition of Habeas Corpus is allowed and we direct that accused appellant No. 1 Basanta in D.B. Criminal Appeal No. 372/95 decided on 12.11.2002, be released forthwith. By way of caution we also observe that he may be so released and set at liberty after ascertaining that he is not required in any other case. The Government shall be well advised to pay the compensation to the widow of the deceased in the criminal case. Because the respondents have detained accused Basanta beyond a period of 7 year, sum of Rs. 5000/- shall now be paid to Gilhari, the widow of the deceased in the criminal case, so that the respondents may not repeat such lapses in other case in future, amount of Rs. 5000/- (Rs. five thousand) may, therefore, be paid to the widow of the deceased named Gilhari, in the criminal case.

7. The petition is allowed accordingly.