
(2011) 04 BOM CK 0124

In the Bombay High Court

Case No : Criminal Writ Petition No. 689 of 2010

Raju Shamlal Dubay

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 30-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 433A, 59
Penal Code, 1860 (IPC) — Section 302

Citation : (2012) BomCR(Cri) 782

Hon'ble Judges : Tahilramani V.K., J; Tahaliyani M.L., J

Bench : Division Bench

Advocate : S.B. Saikhede, for the Appellant; T.A. Mirza, Assistant Public Prosecutor, for State, for the Respondent

Judgement

Tahilramani V.K. (Smt.), J.—Heard both sides. Rule. Rule is made returnable forthwith and with consent of the learned Counsel for both sides the matter is heard finally.

2. The petitioner is a convict undergoing life imprisonment in Central Prison, Amravati.

3. The case of the petitioner is that he was convicted u/s 302 of I.P.C. and sentenced to life imprisonment by judgment and order dated 28/5/1997 passed by the Additional Sessions Judge, Bhandara. His further case is that he has completed 14 years of actual imprisonment in the jail, however, the respondent-State has not passed any order in relation to his pre-mature release as provided by the guidelines issued by the State u/s 433A of Cr.P.C. for premature release of prisoners serving life sentence under the 14 year Rule. The learned Counsel for the petitioner submitted that though the petitioner has completed 14 years of actual imprisonment, his case has not yet been categorized by the government under the "14 years guidelines". She further stated that the petitioner who is maintaining good conduct and discipline in the prison during his term of imprisonment is entitled to be released on completing 14 years of actual

imprisonment.

4. The petitioner had earlier preferred Criminal Petition No. 64/2009, wherein he had also prayed for the same relief. At that time it was pointed out that the case of the petitioner had already been submitted to the State on 10.3.2009 and the Government would take appropriate decision thereon. The grievance of the petitioner is that despite assurance given by the Government which is reflected in the order of this Court dated 7.5.2009 in the said writ petition, no step in that direction has been taken by the government.

5. The respondents have denied that the conduct of the petitioner while in prison is good. The affidavit filed by the respondents further shows that the case of the petitioner was referred by the prison authorities to the Government. Thereafter the matter was referred to the Advisory Board. The Advisory Board consists of Collector, Amravati who is the Chairman, District and Sessions Judge, Amravati and Inspector General of Police, Special Range Amravati. After considering the case of the petitioner, the Advisory Board did not recommend the pre-mature release of the petitioner to the State Government keeping in view the record of the petitioner and his behaviour in the prison. While considering the case of the petitioner, the Advisory Board took into consideration the cases in which the petitioner is involved, which are as under:-

S.No.

Name of Police Station

Crime No.

Sections

1]

Gondia

304/85

147,148,149, 306,302 of I.P.C

2]

-do-

320/86

392,34 of I.P.C.

3]

-do-

162/87

379 of I.P.C.

4]

-do-

174/88

392,34 of I.P.C.

5]

-do-

37/88

341,326,34 I.P.C.

6]

-do-

342/88

342,506 of I.P.C.

7]

-do-

160/89

27 of Arms Act.

8]

-do-

163/89

27 of Arms Act.

9]

-do-

8/92

122 Bombay Police Act

10]

-do-

30/92

27 of Arms Act

11]

-do-

98/92

307, 34 of I.P.C.

12]

-do-

115/92

27 of Arms Act

13]

P.S.Salekasa

58/95

458, 392 of I.P.C.

14]

-do-

61/95

458,392 of I.P.C.

15]

-do-

63/95

458, 392 of I.P.C.

16]

P.S. Bhandara

149/96

302 of I.P.C.

17]

Police Station

Imamwada, Nagpur

1164/99

303, 224 of I.P.C.

6. It is also noticed that on 7.5.2010 a fight took place in the Nagpur Central Prison between two groups of prisoners who were kept in the Small Round Barrack at Central Prison, Nagpur. One group comprised of Prisoner Nos. C-5993 Amarsingh, C-597 Premsingh and C-7705 Rakesh Kamble and another group of

seven prisoners of which the petitioner was a part. A scuffle took place during which one party assaulted the other party by means of an iron pipe measuring about 3 feet in length and about 1 inch in width, which was broken and severed from the sewage pipe line and with a Katani (a sharp and strong weapon similar to knife). The other party assaulted by means of paved stone tiles and Katani i.e. weapon like knife. In the incident, Prisoner No. C-5993 Amarsingh by means of an iron pipe attacked Hawaldar Shri Ramteke, the Circle Officer on duty, who tried to separate the scuffle. He also attacked and injured Rakshak Shri Gaikwad. Prisoner C-5993 Amarsingh fatally attacked the Jailor Grade-2 Shri Lomate by means of weapon similar to knife. In the incident, the petitioner caused damage to the government property including table, table top and writing pad of Circle Jailor.

7. On account of the incident dated 7.5.2010 an offence came to be registered at Police Station, Dhantoli vide Crime No. 131 of 2010 against the persons belonging to both the groups.

8. From the record, it appears that the petitioner is alleged to be a hardened criminal involved in various criminal cases. After the petitioner was committed to prison, he had committed murder of an under trial prisoner on 27.7.1999. When the petitioner was sent under police escort to Government Medical College and Hospital, Nagpur, he absconded after committing murder of the Police Constable who was accompanying him on that day. The petitioner was prosecuted for these offences.

9. The relevant factors while considering the case of a life convict for pre-mature release would be his conduct while in prison and even outside the prison during the period that the prisoner is serving out the sentence of life imprisonment.

10. The Hon''ble Supreme Court in State of Haryana Vs. Mahender Singh and Others, has observed-

No convict has a fundamental right of remission or shortening of sentence. The State in exercise of its executive power of remission must consider each individual case keeping in view the relevant factors. The Prisons Rules are made under the Prisons Act and the Prisons Act by itself does not confer any authority or power to commute or remit sentence. It only provides for the regulation of the prisons and for the terms of the prisoners confined therein. It is the State Government which decides whether the sentence of a prisoner is to be remitted and whether he can be released prematurely.

11. In Gopal Vinayak Godse Vs. The State of Maharashtra and Others, , the Constitution Bench of the Supreme Court held that the sentence of imprisonment for life is not for any definite period and the imprisonment for life must, prima facie, be treated as imprisonment for the whole of the remaining period of the convicted person's natural life. It was also held in AIR Para 5 as follows : (SCR pp. 444-45)

It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for transportation for life" enable the drawing of any such all-embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.

Thus, it is seen that the sentence of transportation for life or its prison equivalent, i.e. life imprisonment, is one of the indefinite duration. It cannot be said that a prisoner has a right to be released after completing 14 years or 21 years of actual imprisonment.

12. In AIR 1945 64 (Privy Council) , the Privy Council while considering the case of a prisoner who had raised similar contentions, held as under:

Assuming that the sentence is to be regarded as one of 20 years, and subject to remission for good conduct, he had not earned remission sufficient to entitle him to discharge at the time of his application.

13. The Rules framed under the Prisons Act enable a prisoner to earn remissions - ordinary, special and State - and the said remissions will be credited in the account of a prisoner towards his term of imprisonment for the purpose of working out the remissions.

14. The Rules relating to the remission system as provided under the Maharashtra Prison Manual provides for four categories of prisoners; (a) Convict Overseers, (b) Night Watchmen, (c) Other Prisoners, and (d) Prisoners working on conservancy jobs. Admittedly, the petitioner does not fall in category of (a) (b) and (d). Hence, he will fall in category (c) which is Other Prisoners. The scale of remission provided to "Other Prisoners" is as under-

(i) Three days per month, for good behaviour, discipline and participation in the various institutional activities, such as physical training, educational programmes and the like; and

(ii) Four days per month, for performing the allotted work in accordance with the prescribe standards.

The behaviour of the petitioner in prison is not good. It is also reported that he is not doing allotted work as per prescribed standard, in such case, obviously there would be hardly any remission to his credit so as to release him earlier.

15. The State indisputably is entitled to make a prison policy as contra-distinguished from a sentencing policy. The Prisons Act, 1894 was enacted to amend the law relating to Prisons. Sub-section (5) of section 59 thereof empowers the State Government to make rules for the award of marks and shortening of sentences. The State has formulated a policy in regard to premature release of life convicts which in short is known as the "14 year Rule". As

stated earlier the matter is referred to the Advisory Board, and thereafter a decision is taken by the State government. This procedure has been followed in the present case.

16. The guidelines for pre-mature release under the 14 years rule of prisoner serving life sentence specifically state that the criteria in the prescribed guidelines refer to normal cases i.e. the cases of prisoners within normal features and having good behaviour in the prison. The recommendations of the Advisory Board in each case based on the above mentioned principles and the recommendations of the Inspector General of Prison are invariably submitted to the Government while submitting the cases of such prisoners to the government for review under the 14 years rule, on completion of 12 years of actual imprisonment. In the case of the petitioner, the Advisory Board as well as the Inspector General of Prison did not recommend the pre-mature release of the petitioner. From the conduct and the behaviour of the petitioner which we have discussed in earlier paras we cannot find any fault with the authorities in deciding that the petitioner is not entitled to any remission.

17. Looking the above facts, no case is made for interference. Hence Rule is discharged.

18. Office to communicate this judgment and order to the petitioner who presently is in Central Prison, Amravati. Fees, to be paid to the appointed Counsel, are quantified at Rupees One Thousand Seven Hundred and Fifty Only.