
(2008) 05 RAJ CK 0075
In the Rajasthan High Court

Ram Avtar Khatik and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 29-05-2008

Acts Referred:

Rajasthan Prisons (Release on Parole) Rules, 1958 — Rule 2(d)

Citation : (2008) 3 RLW 2752

Hon'ble Judges : Shiv Kumar Sharma, J;Mahesh Bhagwati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The question that emerges for our consideration in the instant cases is:

Whether the sentence is actually continuing to run during emergent parole period?

2. In *Rishipal v. State of Raj. and Anr.* D.B. Civil Writ Petition No. 6462/2007 decided on 13.3.2008, it was held that during the parole period, there is no suspension of sentence but the sentence is actually continuing to run during that period also.

3. The contention of learned Advocate-General Mr. B.P. Agarwal is that the case of the petitioners is governed under the provisions of Rule 12 of the Rajasthan Prisoners Release on Parole Rules, 1958 (for short the Parole Rules). Rule 12 of the Parole Rules provides as under:

Parole period regarded as imprisonment served- The period for which a prisoner stays on parole under Rule 9, without violating the conditions laid down for the purpose, shall be treated as imprisonment served by him. All other kinds of parole shall be treated as sentence suspended.

4. Undinably, in the Parole Rules, the term "all other kinds of parole" has not been defined. The Constitution Bench of the Supreme Court in *Sunil Fulchand*

Shah Vs. Union of India and Others, , considered the distinction between "bail" and "parole" and indicated thus:

Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain Constructive control over him through the sureties.

The Apex Court further held in Para 27 as under:

..."parole" is a form of temporary release from custody, which does not suspend the sentence or the period of detention, but provides conditional release from custody and changes the mode of undergoing the sentence.

5. The word "parole" has been defined in Rule 2(d) of Parole Rules as under:

Parole means conditional enlargement of a prisoner from the Jail under these rules.

6. This definition, in our opinion, covers the emergent parole granted under Rule 10 also. The words "all other kinds of parole" incorporated in Rule 12 are against the definition of "Parole" provided in Rule 2(d). We, therefore, hold that the sentence is actually continuing to run even during emergent parole period. For these reasons, the writ petitions are allowed and the respondents are directed to include the period of emergent parole in the total period of sentence undergone by the petitioners.