

(1999) 08 BOM CK 0119
In the Bombay High Court
Case No : Criminal W.P. No. 167 of 1998

Rambhau Pandurang Wankhede

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 427, 427(2), 432, 433, 433A
Penal Code, 1860 (IPC) — Section 131, 132, 222, 225, 232

Citation : (1999) 08 BOM CK 0119

Hon'ble Judges : G.D. Patil, J;A.B. Palkar, J

Bench : Division Bench

Advocate : V.V. Deo appointed, for the Appellant; R.R. Paranjape, Assistant Public Prosecutor, for the Respondent

Judgement

A.B. Palkar, J.—Rule, Heard forthwith by consent of parties.

2. This petition is filed by a prisoner who is sentenced to rigorous imprisonment for seven years in a subsequent case after the initial sentence of imprisonment for life offence punishable u/s 376 of Indian Penal Code. In the present petition, the petitioner has challenged the order dated 30th April 1998 passed by the respondent placing him under category 8(a) contained in Government Policy guideline dated 11-5-1992 and calling upon him to undergo imprisonment for 30 years and subsequent direction of the Jail Authorities that subsequent sentence of rigorous imprisonment for seven years is to be undergone after the initial sentence of imprisonment for life.

2A. For the purpose of present petition, relevant facts are that the petitioner was sentenced for the offence under sections 366 and 376 of the Indian Penal Code to suffer rigorous imprisonment for life by the Additional Sessions Judge, Khamgaon in Sessions Trial No. 15 of 1983. When the prisoner was convicted, another case was pending in the Sessions Court at Akola numbered as 65 of 1980 arising out of Crime No. 379/80 in which also the charge was under sections 366 and 376 of the Indian Penal Code. In this pending case, he was

sentenced to suffer rigorous imprisonment for seven years for the offence punishable u/s 376 of the Indian Penal Code.

3. The grievance of petitioner is that while considering the period required by him to be undergone in jail, he has been categorised as falling in Category No. 8(a) as per the Guidelines issued by the Government on 16th November 1978 as modified further on 11th May, 1992. In addition the sentence of 7 years rigorous imprisonment which is imposed subsequent to the imposition of sentence of life imprisonment on him although that case was instituted earlier is, according to the Jail Authorities, to run consecutively and not concurrently.

4. On behalf of the State, reply to the petition is filed twice and the facts are not very much in dispute. Although the date on which he was sentenced by the Sessions Court, Akola, is not on record, it is not in dispute that the sentence of life imprisonment passed by the Sessions Court, Khamgaon in Sessions Trial No. 15/83 was passed earlier and the sentence of seven year's rigorous imprisonment was passed thereafter, that is to say, when he was already a life convict in the aforesaid sessions trial. On behalf of the State, reference has been made to the portion of the judgment of Additional Sessions Judge, Khamgaon mentioning the reasons for awarding the life imprisonment and the reasons in brief are that the prisoner is a habitual offender; he has been committing such type of offences specially against minor girls and is, therefore, obviously a menace to the society. Most of such girls are poverty stricken minor girls and he deserves no sympathy. In the submissions filed thereafter it has been specifically stated that the petitioner has been shown as a habitual offender and as per Part II of the Maharashtra Prisoners Manual Rules, a specific provision is made only for review of the sentence of prisoners who are non-habitual offenders. As the petitioner is categorised in Category 8(a) and is directed to undergo 30 year's imprisonment, the question of review of his subsequent sentence of rigorous imprisonment for 7 years does not arise at this stage. Moreover, the review is to be considered only in respect of non-habitual offenders and the petitioner is a habitual offender.

5. What is required to be decided is, whether the categorisation done by the Government and consequent direction the petitioner to undergo rigorous imprisonment for 30 years is legally sustainable. Whether, the case of petitioner can be said to be falling in Category 8(a) and if not, whether his case falls in some other category and if his case is not covered by any of the categories of the aforesaid guidelines, then what is required to be done. The next point that arises for consideration is, whether the sentence of rigorous imprisonment for seven years which is imposed subsequent to the passing of life imprisonment in one case can be directed to run consecutively. After considering the arguments of both the sides at length and perusing the guidelines as well as the provisions of Criminal Manual and Criminal Procedure Code, we find that the prisoner's case does not fall in Category 8(a) of the Guidelines issued in 1978 or in 1992 and the consequent order passed by the Government on 30th April 1998 is not legally

sustainable. Petitioner's case, in our opinion, is not covered by any of the categories mentioned in the Government Guidelines and will have to be considered independently of the Guidelines. In view of the provisions of section 427 (2) of Criminal Procedure Code subsequent sentence of rigorous imprisonment for seven years passed against the prisoner when he was already undergoing life imprisonment, cannot be directed to run consecutively.

6. Taking the last point first, it is worthwhile to refer to section 427 of the Code of Criminal Procedure, 1973. Section 427 governs the cases of offender already sentenced for another offence. Sub-section (2) of section 427 is an exception to the general provisions contained in section 427. It will be clear from mere perusal of sub-section (2) that when a person who is undergoing life imprisonment is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence. The subsequent sentence in this sub-section clearly means sentence passed subsequently to the sentence of life imprisonment already passed against him. It has no reference to the date of commission offence. Therefore, obviously when it is not disputed that the rigorous imprisonment of seven years passed against the prisoner by the Sessions Court, Akola was subsequent in time than the sentence of life imprisonment passed by the Sessions Judge, Khamgaon, there remains no doubt that this sentence of 7 years has to run concurrently with the sentence of life imprisonment which the prisoner was undergoing at the time when the said sentence was awarded to him. This is not a matter of any policy and the guidelines issued under 14 year rule have nothing to do with this as it is clearly a matter of application of section 427(2) of Criminal Procedure Code.

7. Coming to the aspect of categorisation, we would like to make it clear that in view of the admitted fact that petitioner was found habitually committing such heinous offences and in any case he is undergoing sentence for the offence of rape in two different cases and in one of which he has been sentenced to suffer life imprisonment after considering his criminal history specially the fact that the victims were minor girls, we would like to make it clear that we have absolutely no sympathy with the petitioner-prisoner. At the same time, categorisation of prisoner has to be in accordance with the guidelines and if the case is not covered by the Guidelines, then it is open for the Government to decide as to how much sentence of imprisonment the petitioner should undergo in case of life imprisonment.

8. On behalf of the prisoner, Mr. V. V. Deo (appointed) contended that the normal rule is of 14 years minimum term of imprisonment and since the case of the petitioner is not covered by the Guidelines and if the case is not covered by category 8(a) in the guideline or any other guidelines, then he is entitled to the benefit of 14 year rule as it would amount to discrimination if he is not considered to be governed by 14 year rule. In order to determine whether the categorisation is proper, it is necessary to refer to the guidelines. The earlier

Guideline was issued on 16th November 1978 in the opening paragraph it is stated that the guiding principles laid down in the Guidelines of 1971 indicates only a broad division of the pattern of crimes for the purpose of premature release of prisoners sentenced to imprisonment for life and do not cover all the categories of prisoners sentenced for various offences and in order to have a more comprehensive coverage of cases involving the punishment of imprisonment for life which could be followed while considering the cases for premature release under the 14 year Rule. The question of evolving comprehensive guidelines was considered by the Government and the revised Guidelines have been issued on 16th November 1978, Category 8 reads as under :

Categorisation of Crime Period of total imprisonment including remissions to be undergone.

(8). Persons guilty of offences not involving murder, who are sentenced to life imprisonment.

Persons sentenced to life imprisonment for offences like (a) offences against the State (Chapter VI, Indian Penal Code); (b) abetment of Mutiny political activities and involving (sections 131, 132, Indian Penal Code), (c) offences against public justice (sections 222 and 225 in respect of coinage, stamps etc. (sections 232, 238, 255, Indian Penal Code) etc. 24 years (Twenty four years).

The Government issued further Guidelines on 11th May 1992 and after making reference to the earlier guidelines of 16th November 1978, it is stated in categorical terms in the Guidelines issued as under :

"In view of the amendment to Criminal Procedure Code, 1973 and the introduction of section 433A by Criminal Procedure Code (Amendment) Act, 78 imposing restrictions on the power of the appropriate Government to remit the sentence of prisoners convicted after 18th December 1978, the existing guidelines issued by letter dated 16th November, 1978, under reference had become inapplicable in the cases of prisoners undergoing life imprisonment covered by section 433A Criminal Procedure Code. The question of framing revised guidelines in consonance with section 433A Criminal Procedure Code was, therefore, under consideration of the Government. The Government is now pleased to issue revised guidelines for considering the cases of such prisoners convicted after 18th December 1978 for premature release. The earlier guidelines dated the 16th November 1978, however, continue to apply the cases of the convicts not covered by section 433A excepting those which are specifically included in the revised guidelines.

2. The guiding principles laid down herein indicates only of broad division of the pattern of crimes for the purpose of premature release of prisoners sentenced to imprisonment for life after 18th December 1978 and do not cover all the categories of prisoners of various offences.

3. The criteria in the guidelines prescribed refer to normal case i.e. the cases of prisoners within normal features and having good behaviour in the prisons. While submitting the cases of such prisoners, to the Government for review under the "14 Year Rule" on completion of 12 years of actual imprisonment the recommendations of the Advisory Board in each case based on the above mentioned guiding principles and the recommendations of the Inspector General of Prisons should invariably be submitted to the Government."

Category 8(a) the revised Guidelines directs the imprisonment to be undergone to be 30 years and the Category is as below :

(8) Persons guilty of offences not involving murder, who are sentenced to life imprisonment.

(a) Persons sentenced to life imprisonment for offences life

(a) offences against the State (Chapter VI, Indian Penal Code),

(b) Abetment of Mutiny (section 131, 132, Indian Penal Code),

(c) offences against public justice (section 222 and 225 of IPC),

(d) offences in respect of Coinage, Stamps (section 232, 238, 225 of Indian Penal Code), etc. 30 years.

From the above categorisation, it is clear that there the Eighth category does not cover of all the offences not involving murder in which the prisoners are sentenced to life imprisonment. In the above category 8(a), only the title says "persons guilty of offences not involving murder, who are sentenced to life imprisonment" and the type of offences are provided in sub-clauses (a), (b), (c) and (d), as stated above. It is obvious that the case of the present petitioner cannot be said to have been covered by either of the sub-clauses of category 8 and this position is beyond dispute. It was also not disputed that there is no other category in the guidelines covering the case of petitioner, because the Categories upto number 6 are of murders and category No. 6 is of escapers whereas category No. 7 pertains to commutation of death sentence to life imprisonment.

9. This being the position, petitioner's case cannot be considered as falling in Category 8 (a) and consequently, the order dated 30th April 1998 to the effect that his case falls in Category 8 (a) of Guidelines of 11th May, 1992 is not legally sustainable and will have to be quashed.

10. It is, however, necessary to make clear that in law, imprisonment for life is nothing but imprisonment for entire life and powers of remission or commutation are with the Government and section 432 Criminal Procedure Code is in respect of power of suspension or remission of sentence whereas section 433 covers the cases of commutation. From the provisions of sections 432, 433, 434 and 435 it is clear that these powers are of the State and the Central Government, as the

case may be and the Courts have no power to grant any remission or to commute the sentence of prisoner and the powers having been vested in the Government (in the present case, the State Government), we would like to direct the State Government to reconsider the case of petitioner-prisoner with the observation that the Government alone has the power to grant remission and any of the observations in the aforesaid judgment shall not be considered as guidance or even as hindrance in the way of the Government for considering the case of the petitioner in proper perspective and coming to a decision as to what term of imprisonment the petitioner should undergo when his case does not fall in Category 8(a) or in any other categories of the Guidelines issued in 1978 or in 1992.

11. We, therefore, quash the impugned order dated 30th April, 1998 passed by the respondent and direct the respondent State to consider the case of the prisoner on the basis that it is not covered by any of the categories of the Guidelines of 1978 or of 1992 and the Government can exercise its powers under the provisions of Criminal Procedure Code for remission of the sentence of the prisoner as deemed fit in the facts and circumstances of the case. The Government shall take appropriate decision in the matter within a period of three months from the date of receipt of writ of this Court. The respondent is also directed to treat the substantive sentence of rigorous imprisonment for seven years passed in Sessions Trial No. 65 of 1985 by the Sessions Judge, Akola to run concurrently with the sentence of life imprisonment in sessions trial No. 15 of 1983 passed by the Sessions Judge, Khamgaon. The petition is, therefore, partly allowed and the rule made absolute as indicated above. Counsel's fee is quantified at Rs. 2500.00 (Rupees Two thousand five hundred only).