
(1992) 01 MP CK 0032

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3159 of 1991

Ramesh Bhagwan Kure

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 15-01-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 433A

Citation : (1992) 1 MPJR 218 : (1992) 37 MPLJ 271 : (1992) MPLJ 271

Hon'ble Judges : K.L. Issrani, J; Faizan Uddin, J

Bench : Division Bench

Advocate : D.D. Bhargava, for the Appellant; Dilip Naik, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

Faizan Uddin, J.

This is a petition under Articles 226/227 of the Constitution of India, by the petitioner, who is a life convict, challenging the order of the State Government, rejecting his application for release on licence under the provisions of the M. P. Prisoners Release on Probation Act, 1954 and the rules made thereunder.

The petitioner is a life convict. He had made an application for his release on licence under the provisions of the M. P. Prisoners Release on Probation Act, 1954 and the Rules made thereunder. That application on the recommendation of the Probation Board was rejected by the State Government on the ground that the release of the petitioner is likely to result in breach of peace which was Challenged by the petitioner in M. P. No. 4938/1989. The said petition was disposed of by this Court by order dated 25-6-1990 quashing the order of the State Government with the direction to reconsider the petitioner's case in the light of the observation made in the said order within the period of 4 months. In pursuance of the aforesaid order, the respondents considered the petitioner's case afresh and rejected the same again on the ground that the petitioner had

not completed 14 years of imprisonment without remission in accordance with Section 433A of the Code of Criminal Procedure. It is this order which has been challenged by the petitioner in this petition.

Respondents have filed the return stating that the petitioner had undergone only 11 years of imprisonment including remissions and, therefore, in view of the provisions of Section 433A of the Code of Criminal Procedure, he is not entitled to be released on licence. Reliance has been placed on the decision in the case of Ashok Kumar alias Golu Vs. Union of India and others, We are afraid, the said decision does not advance the case of the respondents as their Lordships of the Supreme Court in the case of Ashok Kumar v. Union of India (supra) did not go into the question of application of Section 433-A of the Code of Criminal Procedure in the case of conditional premature release to the lifers. In this connection, it would be appropriate to reproduce the observations made in the said decision which run as follows -

"The hypothetical question whether it was permissible in law to grant conditional premature release to a life convict even before completion of 14 years of actual imprisonment, which release would tantamount to the prisoner serving time for the purpose of Section 433-A of the Code? It is difficult and indeed not advisable to answer such a hypothetical question without being fully aware of the nature of conditions imposed for release. In each case, the question whether the grant of conditional premature release answers the test laid down by the Supreme Court in Maruram's case Maru Ram and Others Vs. Union of India (UOI) and Others, (Paragraph 71 page 153)] would depend on the nature of the conditions imposed and the circumstances in which the order is passed and is to be executed. No general observation can be made."

It may be pointed out here that a Division Bench of this Court in which one of us (Faizan Uddin, J.) was a member, in Misc. Petition No. 3155/88, Babu Pahalwan v. The State of M. P. decided on 21-10-1989, (1990 MPLJ 682), has held that a prisoner under the M. P. Prisoners Release on Probation Act, 1954 and the rules made thereunder, is not set at liberty with absolute freedom but he is released on licence subject to various conditions on breach of which his licence may be revoked and he may be remanded back to custody and committed to prison to serve out his remaining sentence. It has been held that in a sense the prisoner so released on licence remains under the deemed custody. Therefore, the provisions of Section 433-A of the Code of Criminal Procedure cannot be attracted to such a premature release on licence.

In view of these facts and circumstances the respondents were not justified in rejecting the petitioner's application merely on the ground that he has not served out 14 years of actual imprisonment. The petitioner's case falls within the zone of consideration in view of the rules and, therefore, his application must be decided on merits.

In the result, the petition succeeds and is hereby allowed. The impugned orders

passed by the Probation Board and the State Government are quashed. The respondents are directed to decide the petitioner's case afresh on merits positively within a period of 4 months from today. The petition is disposed of accordingly.