
(1991) 01 MP CK 0003
In the Madhya Pradesh High Court
Case No : M. P. No. 263 of 1990 (J.)

Ramsewak

APPELLANT

Vs

State of M. P. Jail Department and Another

RESPONDENT

Date of Decision : 07-01-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1993) 2 MPJR 111

Hon'ble Judges : S.K. Chawla, J;P.C. Pathak, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Chawla, J.

The petitioner is a life convict whose application for release on licence is pending with District Magistrate, Shahdol.

The grievance of the petitioner is that his application with the District Magistrate is pending since 3-2-89. In the earlier writ petition filed by him, the Hon'ble High Court by order dated 31-7-89 in M. P. No. 2916/89 (Anaexure-1) granted 6 months time to the State Govt. to decide the petitioner's application. Despite such an order, the State Govt. has failed to decide his application which has not even now crossed beyond the stage of the District Magistrate. The petitioner prays for his release on bail pending decision of his application.

In the return filed on behalf of the State Govt. it is inter alia stated that the petitioner had undergone actual sentence of 4 years 1 month and 7 days as on 31-3-90, his conviction u/s 302/34 IPC having been recorded on 24-2-86.

We find that rule 4 of the M. P. Prisoners Release on Probation Rules, 1964 was amended on 12-6-89 whereby the word "with" was substituted by the word "without". The effect of this amendment was that after 12-6-89 a prisoner does not become eligible for being considered for release on licence unless he has

served one third of his sentence of imprisonment or a total period of 5 years without remission, (emphasis is supplied to show the result of amendment). Considering the amended rule, it must be held that since the petitioner has not served even till this date a total period of 5 years without remission (his conviction having been recorded on 24-2-86) he is not eligible for being considered for release on licence. The rule as amended on 12-6-89 was not brought to the notice of the Bench which passed the previous order on 31-7-89.

Ku. Nema learned counsel for the petitioner placed reliance on the ruling reported in *Rameshwar Prasad v. State of M. P.* 1986 MPLJ 1, to contend that the period of detention as under trial prisoner should also be taken into account while calculating the period of sentence. The ruling only lays down that the period of detention as under trial prisoner of a lifer has to be counted in computing the period of detention in case there is an order of the appropriate Govt., under Sections 432 or 433 of the Criminal Procedure Code, 1964. That ruling has no application to the present case. It does not say that the period of detention as under trial prisoner shall be treated as sentence served by a prisoner. By no kind of reasoning can it be said that the period of detention as under trial prisoner is serving of the sentence. Rule 4 of the M. P. Prisoners Release on Probation Rules, 1964 laying down the eligibility for release on licence speaks of service of sentence for a particular period. It does not speak of any particular period of detention to entitle a prisoner for being considered for release on licence.

Since the petitioner has not so far earned eligibility for being considered for release on licence as he has so far not served 5 years of sentence, the present petition is misconceived and must be dismissed. It is accordingly dismissed but with the observation that the petitioner will be free to apply for release on licence as and when he completes 5 years of sentence.