
(2008) 03 RAJ CK 0029
In the Rajasthan High Court

Rishipal

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34
Prisons Act, 1894 — Section 12, 59

Citation : (2009) 5 RCR(Criminal) 236 : (2008) 4 RLW 3123

Hon'ble Judges : Shiv Kumar Sharma, J;Guman Singh, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—The petitioner, a convicted prisoner undergoing sentence of imprisonment, seeks to issue writ of mandamus directing respondents to include the period of parole in the total period of undergone sentence and to refer his case to Advisory Board for consideration on merit under the provisions of Rajasthan Prisons (Shortening of Sentences) Rules, 1958 (for short "1958 Rules").

2. Contextual facts depict that the petitioner was convicted for the offences under Sections 302 read with 34 IPC to suffer imprisonment for life. Appeal against the judgment of trial Court was dismissed by the High Court on August 26, 1998 as well as the SLP was dismissed by the Apex Court on January 25, 1999. During the period of imprisonment the petitioner was released on parole respectively for 15 days, 32 days and 19 days. The petitioner claims that the period of parole be treated as sentence undergone and it should be counted with the period of imprisonment.

3. In the reply the respondents averred that since the petitioner neither completed 14 years of actual sentence including under-trial period nor completed the period of remission of 4 years as provided in Rule 8(2)(i) of the Rajasthan Prisons (Shortening of Sentences) Rules, 2006 (for short "2006 Rules") he is not eligible for consideration of premature release.

4. We have heard learned Counsel for the petitioner and learned Advocate

General at length.

5. 2006 Rules that were enacted u/s 59(1) of the Prisons Act 1894 were required to be laid before the State Legislature in view of Sub-section (2) of Section 59 which provides as under:

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.

Since 2006 Rules were not laid before the State Legislature, they are not binding on the petitioner.

6. That takes us to the question whether the sentence is actually continuing to run during parole period?

7. A Constitution Bench of Hon"ble 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.

8. Considering the meaning given to word "parole" the Apex Court observed in para 27 thus:

..."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.

9. We also deem it appropriate to refer para 30 of Sunil Fulchand Shah (supra) which reads thus:

30. Since release on parole is only a temporary arrangement by which a detenu is released for a temporary fixed period to meet certain situations, it does not interrupt the period of detention and, thus, needs to be counted towards the total period of detention unless the rules, instructions or terms for grant of parole, prescribe otherwise. The period during which parole is availed of is not aimed to extend the outer limit of the maximum period of detention indicated in the order of detention. The period during which a detenu has been out of custody on temporary release on parole, unless otherwise prescribed by the order granting parole, or by rules or instructions, has to be included as a part of the total period of detention because of the very nature of parole. An order made u/s 12 of temporary release of a detenu on parole does not bring the detention to an end for any period- it does not interrupt the period of detention - it only changes the mode of detention by restraining the movement of the detenu in accordance

with the conditions prescribed in the order of parole. The detenu is not a free man while out on parole. Even while on parole he continues to serve the sentence or undergo the period of detention in a manner different than from being in custody. He is not a free person. Parole does not keep the period of detention in a state of suspended animation. The period of detention keeps ticking during this period of temporary release of a detenu also because a parole remains in legal custody of the State and under the control of its agents, subject at any time, for breach of condition, to be returned to custody.

10. Out answer to the question framed in aforesaid para 6 is that during parole period there is no suspension of sentence but the sentence is actually continuing to run during that period also.

11. We thus hold that the petitioner (who was released on parole respectively for 15 days, 32 days and 19 days) is entitled to get this period counted as sentence undergone. For these reasons, we direct the respondents to include the period of parole in the total period of sentence undergone by the petitioner and refer the case of petitioner to the Advisory Board for consideration on merits in accordance with provisions of the Rajasthan Prisons (Shortening of Sentences) Rules, 1958.