

(2004) 09 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1335 of 2004

Sanatan Goswami

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-09-2004

Acts Referred:

Rajasthan Prisons (Shortening of Sentences) Rules, 1958 — Rule 12, 8, 9

Citation : (2005) CriLJ 1076 : (2005) 1 RCR(Criminal) 893 : (2005) 1 RLW 66 : (2004) 4 WLC 561

Hon'ble Judges : Shiv Kumar Sharma, J; R.P. Vyas, J

Bench : Division Bench

Advocate : R.S. Chauhan, for the Appellant; M.L. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Vyas, J.—The instant petition has been filed by petitioner - Sanatan Goswami, praying that the respondents may be directed to immediately release the petitioner prematurely under the provisions of the Rajasthan Prisons (Shortening of Sentences) Rules, 1958 (hereinafter referred to as "the Rules, 1958"). It has further been prayed that the respondents may be directed to convene the meeting of the Advisory Board and place the case of the petitioner before the said Board. It has also been prayed that any other order, which is deemed fit in the facts and circumstances of the present case, may be passed in favour of the petitioner to immediately release him prematurely.

2. The facts giving rise to this petition are that on 15th July, 1985, the petitioner was involved in a criminal case for the offence u/s 326/34, IPC, and he was sentenced to ten years" rigorous imprisonment by the District & Sessions Judge, Jaipur.

3. Aggrieved by the said judgment of the learned District & Sessions Judge, the petitioner preferred a S.B. Criminal Appeal before this Court. The said appeal of the petitioner was dismissed by this Court and. the order of conviction and

sentence passed by the learned Sessions Judge was upheld.

4. It is contended by the learned counsel that the petitioner has undergone the sentence of about 6 years and nine months and, during the course of this period of incarceration, he was released on Parole, both on emergent as well as regular basis, four times, but there was no adverse report against him during the aforesaid parole period. It is further contended that on the basis of his excellent conduct, time and again, he was released on Parole, during the period of six years and nine months and, in the year, 2001, considering his excellent conduct, he was transferred from the Central Jail, Jaipur to the Sampurnanand Open Air Camp, Sanganer, Jaipur and since then, he is living in the Open Air Camp, Sanganer, Jaipur, as the prisoners, having good conduct are placed in the Open Air Camp. It is also contended that since the petitioner has completed more than six years and nine months of actual imprisonment, therefore, he is eligible to have his case considered for shortening of sentence under the provisions of the Rajasthan Prisons (Shortening of Sentence) Rules, 1958. Lastly, it is contended that despite the eligibility of the petitioner for premature release, the respondents are not placing the case of the petitioner before the Advisory Board for consideration, whereas it is obligatory on the part of the respondents-authorities to place the case of the petitioner before the Advisory Board under the provisions of the Rules, 1958, because he was having a good conduct during the course of incarceration and he has completed 2/3rd part of his conviction, therefore, he is legally entitled to be considered for premature release under the provisions of the Rules, 1958.

5. It is submitted by the learned counsel that this action of the respondents-authorities is unjust, unfair & unreasonable and against the concept of equality with reference to Articles 14, 19 and 21 of the Constitution of India. It is also submitted that looking to the facts and circumstances of the present case, the case of the petitioner should be considered for premature release under the provisions of the Rules, 1958.

6. A reply has been filed on behalf of the respondents, in which it is stated that the case of the petitioner for release on premature basis has already been put up before the Advisory Board, in its meeting held on 3.3.2004, for consideration. It is further submitted that the State Government, after examining the complete report of the petitioner's case, vide order dated 19.4.2004 (Annex.R/2), has decided not to release the petitioner on premature basis.

7. In pursuance to the reply of the State Government, a further affidavit has been filed by the petitioner, in which it is stated that on the basis of the facts as mentioned in the reply to the petition, the petitioner has come to know that his case has already been considered by the State Government and vide order dated 19.4.2004, the State Government has decided not to release him on premature basis under the provisions of the Rules, 1958. It is also stated that a copy of the decision of the State Government has not been supplied to the petitioner and his case has not been taken into consideration in right perspective, looking to his

conduct during the course of incarceration.

8. Heard learned counsel for the petitioner at length as well as learned counsel for the respondents.

9. Learned counsel for the petitioner has vehemently argued with reference to the provisions of the said Rules of 1958 and more emphasis has been made on Rule 8 of the Rules, 1958 and contended that the petitioner is eligible to be considered for premature release by the Advisory Board. He has also argued that in view of Rules 8 and 12 of the Rules, 1958 and looking to the conduct of the petitioner, during the course of incarceration, he is, in any case, entitled to be released prematurely.

10. We have considered the submissions of the learned counsel. Rule 9 of the Rules, 1958 relates to the non-eligibility for consideration by the Advisory Board for the purpose of premature release and Rule 12 is regarding consideration by Government. Rules 9 and 12 read as under :-

"9. Prisoners not eligible for consideration by the Advisory Board. -The Advisory Board shall not consider the cases of following types of prisoners :-

(i) Prisoners convicted of rape, forgery, dacoity or any offence against the State involving violence. For this purpose any offence punishable Under Sections 466 to 469 and Sections 471 to 474 of the Indian Penal Code shall be deemed to be a variation of the offence of forgery and an offence punishable Under Sections 396 to 402 of the Indian Penal Code shall be deemed to be a variation of the offence of dacoity and prisoners convicted of these offences as also those convicted of offences punishable Under Sections 366, 366A, 366B, 372, 373, 489A, 489B, 489C and 489D of Indian Penal Code shall also be excluded from reference to the Advisory Board.

(ii) Prisoners who are habitual criminals and are homeless or having three or more convictions all of which are of such a nature as to justify their classification as "habitual criminals".

(iii) Prisoners who are habitual criminals of the "Goonda class".

(iv) Prisoners detained under Preventive Detention Act, 1950."

"12. Consideration by Government.-On receipt of the proceedings of the Advisory Board, and other relevant papers, the Government shall order release of prisoner in cases for which, having regard to all the circumstances of the case, it considers that the prisoner may be released without any danger to the society. In case of a prisoner sentenced by Court-Martial the Government shall forward its recommendations to the Government of India for necessary orders."

11. In view of the provisions of the said Rules, we are of the opinion that the person, convicted of an offence against the State involving the violence and his act is dangerous to the society, cannot be considered to be released on premature basis under the provisions of the Rules, 1958.

12. In the present case, serious offence has been committed by the petitioner by ruining the whole career of the complainant party by throwing acid over him, resulting into his complete blindness.

13. Keeping in view the aforesaid facts and circumstances of the case, while considering the case of the petitioner for premature release under the said provisions of the Rules, 1958, a report was sought from the Superintendent of Police, Jaipur City (North), Jaipur, who, vide his letter/report dated 13.11.2003, has categorically stated that if the petitioner is released prematurely, then possibility of his being dangerous to the life of the complainant party cannot be ruled out, as there are serious inimical relations between the accused and the complainant party. Apart from that, if the petitioner is released prematurely, it will be dangerous to the society and will give a very bad message to the society. In addition to this, no fruitful purpose would be served in order to achieve the object regarding the offence, so committed by the petitioner.

14. On that very basis, the matter was examined by the State Government with subjective satisfaction and with all objective considerations as well as the provisions of Law & Rules of 1958 and, thereafter, the State Government decided not to release the petitioner prematurely.

15. So far as the contention of the learned counsel that the petitioner, time & again, was released on Parole, is concerned, the parole concept is quite different, having different objects and on that very basis, it does not mean that he has, time & again, enjoyed the benefit of parole, therefore, he can claim, as a matter of right, to get the benefit of premature release under the provisions of the said Rules of 1958.

16. Learned counsel for the petitioners has relied upon two authorities in Masoom Bai v. State of Rajasthan and Ors. (1991) (16) RCC 467) and Smt. Jyoti Sharma v. State of Rajasthan (1992 (17) RCC 150)

17. We have considered, scanned and examined the authorities cited by the learned counsel for the petitioner, which are of no help to him. Looking to the facts and circumstances of the present case, the authorities relied upon by the learned counsel relate to certain facts, under which the person concerned was entitled to be released on premature basis under the provisions of the Rules, 1958, as the Governor has not acted on the advice of the State Government and he has not taken into consideration the recommendation of the Advisory Board. The Governor has passed the rejection order and did not record his satisfaction muchless under Rule 12 of the Rules of 1958.

18. The interpretation, which is being made, is basically based on certain facts and circumstances of the case. Here, under the circumstances, on the basis of the cases so cited by the learned counsel, the person concerned was entitled to be released on premature basis, but, in the present case,- the circumstances are quite different. The offence which has been committed by the petitioner is very serious in nature and consequently, the complainant party has been made

completely blind. Apart from that, there are inimical relations between them and the entire career of the complainant - party has been ruined by the accused and his life has also been made zeorpadise, by throwing acid over him.

19. In this view of the matter, the State Government considered the case of the petitioner, on the recommendation of the Advisory Board and found a fit case for not releasing him prematurely, because by release of such type of person, on premature basis, it will give a bad message to the society and it will also be dangerous to the society.

20. The object of the said Rules is based on certain principles, but no-one can claim, as a matter of right, to get premature release. The premature release is based on certain facts and circumstances of the case. Therefore, looking to the facts and circumstances of the present case, these both the authorities, relied upon by the learned counsel for the petitioner, have no relevancy, in the instant case.

21. So far as the violation of Articles 14, 19 and 21 of the Constitution is concerned, looking to the facts and circumstances of the present case, as a serious offence has been committed by the accused-person, it is not reasonably practicable to consider the case of the petitioner for premature release and there is no question of any violation of the aforesaid Articles.

22. In view of the facts and circumstances of the present case, as well as the authorities referred to by the learned counsel for the petitioner, we are of the opinion that it is not a fit case to be considered for premature release under the provisions of the said Rules of 1958.

23. Consequently, for the reasons mentioned above, we do not find any merit in this writ petition. The same stands dismissed.