

(2008) 10 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 139 of 2008

Sanjay Jain

APPELLANT

Vs

The Deputy Inspector General of Prisons and Another

RESPONDENT

Date of Decision : 13-10-2008

Acts Referred:

Citation : (2008) ILR (Kar) 4820

Hon'ble Judges : S.R. Bannurmath, J;K. Ramanna, J

Bench : Division Bench

Advocate : Vishwanath K.S, for the Appellant; Geetha Menon, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

S.R. Bannurmath, J.—Heard the learned Counsel for the petitioner and Smt. Geetha Menon, learned Addl. Govt. Advocate, who has taken notice for respondents No. 1 and 2.

2. The case of the petitioner in this writ petition is that the brother of the petitioner who was arrested, tried and convicted in S.C. No. 130/98 for the offence punishable under the provisions of N.D.P.S. Act. It is not much in dispute that the Spl. Judge has found him guilty of the offence alleged and sentenced him to undergo R.I. for 10 years with fine of Rs. One lakh carrying default sentence. The conviction passed by the Spl. Judge has been affirmed by this Court in Criminal Appeal No. 744/2005. The grievance of the petitioner (brother of the detenu-Accused No. 1) is that, his brother/A-1 has completed the sentence of imprisonment of 10 years and has also paid the fine and as such, was entitled to be released as having completed the sentence on 9/10/2008.

3. However, as the jail authority is not ready to release him on the ground that during the period of imprisonment the detenue had been released on parole for a period of 28 days, he has to serve the sentence for the said 28 days from 9/10/2008. In this regard, relying upon the pronouncement of the Constitution

Bench of the Apex Court in case of Sunil Fulchand Shah v. Union of India and Ors. 2000 SCC Cri. 659 it is contended that as the Apex Court has explained the term "Parole" and its implications by stating that "release on parole 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 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".

4. As such, it is submitted that the stand taken by the jail authorities that the detenu had a benefit of parole for 28 days and that it does not come as the part of sentence/imprisonment is incorrect.

5. Having perused the aforesaid pronouncement of the Apex Court wherein the law regarding the parole and its implication having been fully considered, it is to be noted that as the law laid down by the Apex Court in the very case, "the period of detention would not stand automatically extended by any period of parole granted to the detenu unless the order of parole or rules or instructions specifically indicates as a term and condition of parole, to the contrary." The underlined portion aforesaid indicates that normally, parole will not interrupt the period of detention, however if the rules or even the order of parole indicates otherwise, it forms an exception.

6. In the present case, as rightly pointed out by the learned Addl. Govt. Advocate, the Karnataka Prison Manual, 1978 framed under the Karnataka Prisons Act, Article 650 deals with the "Parole" and in the same, it is clearly mentioned that "the period spent under parole will not count as a part of sentence".

7. This clearly indicates that so far as State of Karnataka is concerned, the period of detention would stand automatically extended even if a person is on parole. As such, we find that the stand taken by the jail authorities in not releasing the detenu on 9/10/2008 on the ground that he has to serve 28 days further in lieu of the parole appears to be just and proper and hence, we find no merit in the petition.

8. Accordingly, the petition stands rejected.