

(1998) 04 BOM CK 0036

In the Bombay High Court

Case No : Criminal Writ Petition No. 40 of 1998

Sarjerao Pole

APPELLANT

Vs

The State of Maharashtra and another

RESPONDENT

Date of Decision : 22-04-1998

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Maharashtra Government Prisoners Manual, 1979 — Rule 2
Penal Code, 1860 (IPC) — Section 302

Citation : (1998) 5 BomCR 834 : (1999) CriLJ 1433 : (1998) 3 MhLj 115

Hon'ble Judges : V.K. Barde, J; B.B. Vagyani, J

Bench : Division Bench

Advocate : R.G. Deo, for the Appellant; K.B. Choudhary, Assistant Public Prosecutor, for the Respondent

Judgement

V.K. Barde, J.—Rule. Rule made returnable forthwith for hearing with the consent of learned Counsel for the parties.

2. This writ petition is filed by son of the convict - Ramrao Dattarao Pole who is undergoing imprisonment for life in District Open Prison, Paithan. The said Ramrao is convicted in Sessions Case No. 29/84 for offence punishable u/s 302 of I.P.C. and the conviction was confirmed by this Court in Criminal Appeal No. 173/1984. The petitioner has contended that his father was arrested on 9-9-1983 and so by 9-9-1997 he completed 14 years of actual imprisonment. He has further contended that in the year 1985, his father was released on parole for 10 days from 11-1-1985. The period of parole was extended for further 10 days. During the period of parole, his father had applied for extension of the period of parole to the Hon'ble Minister, State of Maharashtra, by his application dated 28-1-1985 on the ground of illness of his mother. The prisoner received communication from the Desk Officer, Home Department, Mantralaya, under the letter dated 12-2-1985 that his application dated 28-1-1985 was forwarded to Commissioner to grant parole for a period of 30 days and accordingly the parole was granted and he continued on parole till 2-3-1985.

3. Prisoner could not return to jail because of the illness of his mother for a period of 3 months. It is further contended by the petitioner that his father was told by the Hon"ble Minister that his parole was extended by 2 months from 2-3-1985. But, he is not having any order to that effect. The prisoner again sent application dated 3-5-1985 requesting that his period of parole be extended till 4-5-1985 because his mother was sick and was admitted in hospital. However, this application was not accepted by the authorities.

4. The jail authorities treated the entire period of six months from 2-3-1985 to 2-10-1985 as unauthorised absence from jail and, therefore, even after completion of 14 years actual imprisonment, the petitioner's father is not released from jail. It is, therefore, prayed that the authorities be directed to release the father of the petitioner from jail.

5. Heard Shri R.G. Deo, learned Counsel for the petitioner and Shri K.B. Choudhary, learned A.P.P. for respondents.

6. The State has filed affidavit-in-reply and it is contended that the orders are issued by the concerned authorities and the category of the prisoner is fixed as 2(b) as per the Government guidelines dated 11-5-1992. So the prisoner has to undergo total imprisonment of 24 years including 14 years actual imprisonment. On calculating his period of actual imprisonment, sanctioned parole, State remissions and other remissions, prisoner has undergone sentence of 23 years 7 months and 8 days as on 28-2-1998. So he would be released from jail on 20-7-1998 on completion of the period of 24 years.

7. It is further contended that the prisoner was released on parole for the period of 10 days from 5-1-1985 to 11-1-1985. His period of parole was further extended by 10 days and the prisoner had to surrender in jail on 1-2-1985. He surrendered on 3-8-1985. Thus, he had remained outside jail without authority for 183 days. For this unauthorised absence, the prisoner is punished by reducing his remission of the period of two years as per the Prison Manual, 1979 - Notification No. M.J.M. 1561/39466 dated 2-7-1964 Rule 2(a). It is further contended that judicial appraisal for this punishment is also obtained by the jail authorities from Extra Joint District Judge and Additional Sessions Judge, Aurangabad, on 28-1-1997. As the period of remission is reduced by two years, the prisoner is not released on completion of the period of 24 years. He will be released on 20-7-1998.

8. We had directed the learned A.P.P. to furnish a statement as to what would be the period of imprisonment of the convict if the remission of two years had not been deducted and the learned A.P.P. today has filed the statement which indicates that if the remission of period by way of punishment for remaining outside jail for 183 days unauthorisedly had not been reduced as on 31-3-1998, the prisoner has undergone the total imprisonment for 24 years 10 months and 8 days including the parole period and remissions. So as on today if the punishment of deduction in remission is not taken into consideration, the

prisoner has undergone the imprisonment of 24 years 11 months.

9. The learned Counsel for the petitioner has argued that the rule which provides for punishment for unauthorised absence clearly indicates that before imposing any such punishment, prisoner's explanation should be obtained and if he could give sufficient and good explanation, then punishment be not imposed. But in the present case, the jail authorities had not obtained any explanation from the prisoner as to why he should not be punished for remaining outside jail unauthorisedly for 183 days. It is also argued by the learned Counsel for the petitioner that the alleged breach was committed by the prisoner in the year 1985. However, the order of deduction in remission is passed by the authorities in the year 1997, more than 11 years after the alleged breach. So if all these things are considered, the order of punishment is not good in law and it be quashed and the prisoner be released from jail.

10. Rule 2 of Notification No. M.J.M. 1561/39466 dated 2nd July, 1964, reads as follows :-

"2. In each case of late surrender from furlough or breach of any of the conditions of parole, the punishment mentioned below or specified in section 48-A of the Act may be awarded by the Superintendent at his discretion with due regard to the circumstances of the case and after obtaining the prisoner's explanation and the prior approval of the Inspector General or the Deputy Inspector General if required under clause 1. If the Superintendent is satisfied that the contravention was for good or sufficient reasons, he may excuse the prisoner.

(a) A maximum cut of 5 days" remission for each day of over-stay provided that, where the prisoner has no! sufficient remission to his credit he shall cease to earn remission for such period as the Superintendent may direct.

(b)

(c)

(d)"

11. The learned A.RP has argued that as per this rule, the maximum cut-of of 5 days remission of each day of over-stay is allowed. However, the authorities have taken lenient view and for remaining outside jail without authority for 183 days, only remission of two years is deducted, and further that the Sessions Judge has approved this punishment. So interference be not effected in the order of punishment.

12. It has to be noted that the prisoner was released on parole for the period of 10 days and thereafter his period of parole was extended by 10 days. The circumstances do indicate that he had applied for extension of period of parole, but further extension was not granted to him and ultimately he surrendered before the prison authorities in August, 1985. On his surrender, no action was

taken against him for remaining outside jail without authority. It also appears that at that time, no explanation was obtained from him as to why he remained outside jail without authority. The affidavit filed by the State does not indicate that the concerned authorities had obtained any explanation of the prisoner before passing the order of punishment. If immediately on returning to jail, explanation had been sought from the prisoner and if after considering that explanation, the order of punishment had been passed, it would have been proper and legal. Now nearly 11 years after that incident without obtaining any explanation from the prisoner, the order of punishment is passed. It appears that this aspect of the case was not brought to the notice of the Additional Sessions Judge when his appraisal was obtained to the punishment awarded by the jail authorities.

13. The Rule 12(a) of Prison Manual quoted above does indicate that discretion is vested in the Superintendent of Jail for awarding punishment for unauthorised absence and three conditions are imposed before exercising such discretion : (1) due regard to the circumstances of the case; (2) after obtaining prisoner's explanation; and (3) prior approval of the Inspector General or Deputy Inspector General if required under clause (1); and the rule further makes it clear that if the Superintendent is satisfied that the contravention was for good or sufficient reason, he may excuse the prisoner. Here prior approval of the Inspector General of Prison was obtained before imposing the punishment vide letter dated 12-3-1997, however, the explanation of the prisoner was not obtained. Even the principles of natural Justice require that if any punishment is to be imposed on any person, he should be heard and then the punishment be imposed. Here the specific rule is framed that his explanation should be obtained and no such explanation was obtained and, therefore, the order of imposing punishment of deduction in remission of two years on account of unauthorised absence from jail for 183 days imposed on the prisoner- Ramrao Dattarao Pole is not legal and proper, it has to be quashed.

14. It is, therefore, directed that as the prisoner has undergone actual imprisonment for 24 years 11 months up-till-now including remissions, he be released forthwith from jail if not required in any other case, treating that he has undergone the entire period of sentence.

15. With these directions, Rule made absolute.