

(2009) 11 AP CK 0050
In the Andhra Pradesh High Court
Case No : Writ Petition No. 23236 of 2009

Sd. Mahaboob Subhani

APPELLANT

Vs

The State of A.P. and The Superintendent

RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Andhra Pradesh Prisons Rules, 1979 — Rule 321
Criminal Procedure Code, 1973 (CrPC) — Section 433A
Penal Code, 1860 (IPC) — Section 302, 449, 506

Citation : (2010) 1 ALD(Cri) 99 : (2010) CriLJ 2071 : (2010) 7 RCR(Criminal) 898

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : A. Gayatri Reddy, for the Appellant; GP, for the Respondent

Final Decision : Allowed

Judgement

Gopala Krishna Tamada, J.—The petitioner herein is a life convict and he approached this Court and filed the present writ petition with the following prayer:

That the Hon''ble Court may be pleased to issue a writ of Mandamus directing the respondents herein to release the petitioner viz., Sd. Mahaboob Subhani, C.T. No. 1102, confined in Central Prison, Rajahmundry, and set him at liberty, forthwith, by declaring the action of the respondents in not releasing the petitioner by extending the benefits of the guidelines issued in G.O.Ms. No. 338 Home (Prisons-C) Department, dated 24-07-2009 and by accepting the recommendations of the Selection Committee and deleting the petitioner's name while issuing orders in approving the recommendations of the Committee vide G.O.Ms. No. 415 Home (Prisons-C) Department, doled 01-10-2009, on the occasion of Independence Day, 2009, as illegal and arbitrary affecting the right to liberty of the petitioner, which affects the fundamental rights of the citizen, amounting to wrongful confinement and illegal detention in keeping him in jail beyond 01-10-2009, and

award damages.

2. The brief facts of the case are that the petitioner was the 1st accused in S.C. No. 5 of 2001 on the file of IV Additional Sessions Judge at Guntur and he was tried for the offences punishable under Sections 302, 449 and 506 IPC. The trial Court, though found the 2nd accused not guilty of any of the offences, found A-1, the petitioner herein, guilty of the alleged offences and accordingly sentenced him to death for the offence punishable u/s 302 IPC. As the death sentence is required to be confirmed by the High Court, the matter was referred to the High Court. Meanwhile, the petitioner filed Crl.A. No. 275 of 2001 questioning the judgment passed by the trial Court. This Court being not convinced with the appreciation of the evidence by the trial Court, dismissed the referred trial and allowed the appeal of the accsued/appellant and remanded the matter back to the trial Court. This Court also ordered withdrawal and transfer of the case from IV Additional Sessions Judge, Guntur to the file of Metropolitan Sessions Judge, Vijayawada for cross-examination of the witnesses again by the petitioner. On remand, the learned Metropolitan Sessions Judge, Vijayawada, permitted the petitioner to cross-examine the witnesses, and ultimately, vide his judgment dated 26-11-2001, delivered in S.C. No. 5 of 2001, found him guilty of the offences punishable under Sections 302, 449 and 506 IPC; (1) u/s 302 IPC, he was sentenced to under go life imprisonment and to pay a fine of Rs. 2,000/- in default, simple imprisonment for two months, (2) u/s 449 IPC , he was sentenced to undergo simple imprisonment for 5 years and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for 15 days and (3) u/s 506 IPC, he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/-, in default, simple imprisonment for 15 days, and all the sentences were directed to run concurrently. Assailing this judgment dated 26-11-2001, the petitioner preferred Crl.A. No. 31 of 2002 and the State also preferred Crl.A. No. 754 of 2003, and this Court by its judgment dated 31-03-2004, confirmed the sentence of imprisonment imposed by the learned Metropolitan Sessions Judge, Vijayawada. As the petitioner was not granted bail, he has been in jail at Central Prison, Rajahmundry, for more than two years. While so, the Government issued orders in G.O.Ms. No. 338, dated 24-07-2009, granting special remission to the life prisoners on the occasion of the Independence Day 2009 and the guidelines set in at Para 3 in the said G.O. read as follows:

3. The Government hereby issue the following guidelines giving one time exemption to the orders issued in the reference first read above, to consider the cases of following categories of prisoners in the State, who have been convicted by Civil Courts of criminal jurisdiction:

a) All convicted women prisoners sentenced to imprisonment for life who have undergone an actual sentence of 5 years and total sentence of 7 years including remission as on 15-08-2009.

b) All decrepit petitioners as defined in Rule 321(h) of A.P. Prison Rules, 1979, r/

w G.O.Ms. No. 44, Home (Prisons B2) Department, dated 16-03-2007.

c) All the convicted prisoners sentenced to imprisonment for life including those governed by Section 433-A, Code of Criminal Procedure, 1973 (Central Act 2 of 1974) aged more than 65 years and have undergone an actual sentence of 5 years and total sentence of 7 years including remission as on 15-08-2009.

d) All the convicted prisoners sentenced to imprisonment for life including those governed by Section 433-A, Code of Criminal procedure, 1973 (Central Act 2 of 1974) and who have undergone an actual sentence of 7 years and total sentence of 10 years including remission as on 15-08-2009.

In pursuance of the G.O., the Jail Superintendent of the Central Prison at Rajahmundry, prepared a list of those who have completed seven years of actual sentence and ten years of sentence including the remission and the special remission as on 15-08-2009 and recommended the case of the petitioner also for his release, but, the authorities refused the release the petitioner on the ground that he is not entitled to the benefits of the remission as provided under the G.O. The same is questioned in this writ petition.

3. The main contention put-forth by the learned counsel for the petitioner is that as on 02-10-2009, the petitioner had undergone the actual sentence of 7 years 10 months and 4 days and according to her, the petitioner was in jail as under trial prisoner for a period of 752 days i.e. 2 years 22 days. The special remission granted by the Government as per G.O. dated 24-07-2009 is 1 year 8 months and ordinary remission he earned for his good conduct in the jail is 1 year 11 months 28 days and thus, the total sentence, he has undergone is 13 years 6 months 24 days and in spite of the same, the authorities have neither extended the benefits of the G.O. to the petitioner, nor released him.

4. On the other hand, the learned Government Pleader for Home has drawn my attention to Clause (ix) of para 4 of G.O.Ms. No. 338 and stated that the petitioner is not entitled to the benefit of remission since the petitioner was originally sentenced to death, later on, his sentence was commuted to life and his case attracts Clause (ix) of para 4 of the G.O.Ms. No. 338, dated 24-07-2009.

5. Having examined and considered the requests of various political parties and also the family members of the prisoners, the Government of Andhra Pradesh have decided to provide a special remission to the life convicts, who have completed 5 or 7 years of sentence, and the prisoners, who have crossed the age of 65 years and are suffering from chronic diseases. The eligibility criteria was detailed in Clauses (c) and (d) of para 3 of the G.O.Ms. No. 338, dated 24-07-2009, which reads as under:

(c) All the convicted prisoners sentenced to imprisonment for life including those governed by Section 433-A, Code of Criminal Procedure, 1973 (Central Act 2 of 1974) aged more than 65 years and have undergone an actual sentence of 5 years and total sentence of 7 years including remission as on 15-08-2009.

(d) All the convicted prisoners sentenced to imprisonment for life including those governed by Section 433-A, Code of Criminal procedure, 1973 (Central Act 2 of 1974) and who have undergone an actual sentence of 7 years and total sentence of 10 years including remission as on 15-08-2009.

6. From the above provision, it is clear that a person, entitled to the benefit of remission, shall have to undergo a minimum sentence of 7 years and a total sentence of ten years including all the remissions as on 15-08-2009. As per the recommendations made by the Superintendent of the Jail, the petitioner is figured at Sl. No. 33 in the list of prisoners recommended by the Superintendent of Jail for grant of special remission as on 15-08-2009, and he had actually undergone a sentence of 9 years 9 months and 9 days and when all the remissions are included, the total sentence is 13 years 5 months and 7 days. If these recommendations are accepted, the petitioner squarely falls within the parameters fixed under the G.O.Ms. No. 338, dated 24-07-2009, but the Director General of Police, Hyderabad, refused to accept the recommendations insofar as the petitioner's case is concerned on the ground that the petitioner was originally sentenced to death by the trial Court.

7. In my considered opinion, the view expressed by the Director General of Police, Hyderabad, is not correct. It is true that initially the learned IV Additional Sessions Judge, Guntur, found the petitioner guilty of the offences for which he was tried and sentenced him to death, but in appeal, the sentence was set aside and the matter was remanded to the trial Court for fresh cross-examination of the witnesses by the petitioner. Once the matter is remanded to the trial Court for fresh trial, it cannot be said that the petitioner was convicted and sentenced to death. However, after remand, the trial Court again found the petitioner guilty of the offences, for which he was tried, but this time, the petitioner was sentenced to life imprisonment. Therefore, the subsequent judgment alone has to be taken into consideration, but not the earlier judgment, whereunder he was sentenced to death, for the reason that the earlier judgment is no more in existence.

8. Clause (ix) of Para 4 of the G.O.Ms. No. 338, dated 24-07-2009, comes into operation, if the trial Court found the accused guilty of the offence and sentenced him to death and the same is reversed by a competent appellate Court i.e. either the High Court or the Supreme Court. But here the petitioner's case is different, for the reason that even though the petitioner was imposed a sentence of death, the same was set aside by this Court in CrI.A. No. 275 of 2001 and the matter was remanded to the trial Court, and on remand, the trial Court itself convicted the petitioner and sentenced him to life imprisonment. Therefore, the view expressed by the Director General of Police, Hyderabad, cannot be countenanced.

9. From the facts narrated above, which are not disputed by the Government Pleader for Home, it is clear that as on 15-08-2009, the petitioner had undergone the actual sentence of 9 years 9 months and 9 days and if the total sentence undergone by the petitioner including all the remissions is calculated, it

comes to 13 years 5 months and 7 days, and G.O.Ms. No. 338, dated 24-07-2009, is meant for all those persons who have completed 7 years of actual sentence and 10 years of sentence including all the remissions and hence, there is no doubt to arrive at a conclusion that the petitioner is entitled to the benefits of the G.O.Ms. No. 338, dated 24-07-2009.

10. In the result, this Writ Petition is allowed at the stage of admission and the respondents are hereby directed to release the petitioner-Sd. Mahaboob Subhani, S/o. Khadarvali, forthwith, if he is not required in connection with any other crime or case. There shall be no order as to costs.