
(1992) 11 BOM CK 0114

In the Bombay High Court

Case No : Criminal Writ Petition No. 639 of 1992

Shankar Babu Ghavali

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 23-11-1992

Acts Referred:

Constitution of India, 1950 — Article 14

Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 433A

Penal Code, 1860 (IPC) — Section 302

Citation : (1993) 2 BomCR 204 : (1993) CriLJ 1497

Hon'ble Judges : V.A. Mohta, J; M.S. Rane, J

Bench : Division Bench

Advocate : Deepak R. More, for the Appellant; Y.V. Patil, Additional Public Prosecutor, for the Respondent

Judgement

V.A. Mohta, J.—The three Petitioners, Shankar Babu Ghavali, Babaji Rama Ghavali, and Babaji Rama Ghavali, have been sentenced to undergo imprisonment for life u/s 302 of the Indian Penal Code in Sessions Case No. 46 of 1978 decided on 27-7-1979 by the Sessions Judge, Ratnagiri. They were arrested on 14-6-1978 and since then till this day they continue to be in the portals of the jail. By these three separate petitions, a common relief of order of release on serving fourteen years of imprisonment is sought. Hence they are being disposed of by this common order.

2. The Government of Maharashtra has framed the new revised guidelines for premature release under "14 year Rule" of prisoners serving life sentence, after 18-12-1978 on which day Section 433A was introduced in the Code of Criminal Procedure. Section 433A imposes restrictions on the power of the appropriate Government to remit the sentences of prisoners convicted after 18-12-1978. By these guidelines communicated to the Inspector General of Prisons by the Home Department vide letter dated 11-5-1992, broad division of crimes for the purposes of premature release of prisoners sentenced to life imprisonment after 18-12-1978 is made and criteria prescribed for normal cases. Prison authorities

are expected to make recommendations to the Government about premature release on that basis for exercise of power vested in it u/s 432, Cr.P.C. The division is made into 19 categories against which are mentioned periods of imprisonment (ranging between 22 to 30 years) to be undergone including remissions subject to minimum of fourteen years actual imprisonment including set off period. The Petitioners have been put in category 2(b) which means "murders arising out of land dispute, family fueds, family prestige and superstition with pre-meditation or by a gang". For this category period prescribed is 24 years. By a letter dated 21-7-1992, this decision has been communicated by the Home Department of the State of Maharashtra to the Petitioners through the Superintendent, Yervada Central Prison, Pune, where presently they are Kept.

3. Shri Gorwardkar, Shri More and Smt. Sarnaik, learned Counsel for the Different Petitioners, have raised following two contentions in support of the petitions :-

(a) The guidelines are violative of Art. 14 of the Constitution, and

(b) The new guidelines issued on 11-5-1992 cannot apply to prisoners who are convicted prior to that date.

4. Having heard the learned Counsel for the Petitioners and Shri Patil, learned Public Prosecutor, we do not find substance in any of these two points. Section 433A imposes restrictions on the clemency powers of the Government mandating that notwithstanding anything contained in Section 432 or Section 433, the convict-prisoner shall not be released from prison unless he has served atleast fourteen years of imprisonment. This does not mean that upon completion of fourteen years of imprisonment, there is a right in the convict for being released. Undoubtedly, each crime has its own peculiarity, but this does not mean, general classification and categorisation cannot be made for the purposes of remission of sentence. Remission is not by way of right. It is a discretionary matter of the State Government. For that exercise certain guidelines are necessary and in case broad policy is laid down in the guidelines there is nothing wrong about it. Indeed exercise of remission power without guidelines may be vulnerable to the attack of arbitrariness. Complete foot proof check on arbitrariness in the matter of exercise of any discretion can never be made, for it is impossible to conceive of a discretion which is incapable of being misused. All that is possible is to minimise the possibility and these guidelines serve that laudable purpose. Guidelines always existed. They go on changing as per demands of the situation. Section 433A called for change in the guidelines. Change was made. Is there arbitrariness in the classifications made, is the next question ? We do not think so. Classifications are based on nature of crime and its severity and have nexus with the purpose of remission of sentence. We, therefore, see no substance in the attack of arbitrariness on the guidelines. They are not violative of Art. 14.

5. The Supreme Court in the case of Maru Ram and Others Vs. Union of India

(UOI) and Others, while upholding the validity of the said provision has held that it is prospective in operation and would apply only to conviction recorded after 18-12-1978. Relying upon the ratio of that decision, it is submitted that these guidelines also cannot be applied to prisoners convicted prior to 18-12-1978. The ratio of that decision cannot apply to the new guidelines required to be formulated for being in tune with Section 433A. The point of time for application of guidelines and point of time for application of Section 433A cannot be the same. The old guidelines will govern only the premature release of those prisoners who have completed fourteen years imprisonment and also have satisfied the requirement of total imprisonment prescribed under those guidelines on or before the date of enforcement of the new impugned guidelines. In the case of Kashinath Bhagat v. State - Writ Petition No. 213 of 1992 decided on 20-6-1992, it has been held so and with that ratio we have our respectful concurrence.

6. Our attention was invited to two decisions (i) Sadhu Singh and Others Vs. State of Punjab, , wherein it is held that executive instructions in the Punjab Jail Manual have no statutory force and can be amended from time to time and (ii) Mohan Singh Vs. The State of Madhya Pradesh, , where remission of sentence on the occasion of public rejoicing based on caste basis was struck down as bad in law. The ratio of none of these decisions even remotely applies to the matter at hand. We see no substance ever in point No. 2.

6A. The three convict-petitioners before us have yet not completed fourteen years of imprisonment imposed upon them after 18-12-1978. There is no question of the old guidelines applicable to them. The petitions, therefore, are devoid of any substance. They are dismissed. Rules discharged.

7. Petitions dismissed.