

(2000) 08 KAR CK 0008
In the Karnataka High Court
Case No : WPHC No. 77 of 2000

Shashi alias Shashidharan and Others	APPELLANT
Vs	
State of Karnataka and Others	RESPONDENT

Date of Decision : 28-08-2000

Acts Referred:

Constitution of India, 1950 — Article 161
Criminal Procedure Code, 1973 (CrPC) — Section 107, 108, 109, 433 A
Penal Code, 1860 (IPC) — Section 302, 34, 394

Citation : (2000) CriLJ 4808

Hon'ble Judges : Ashok Bhan, Acting C.J.; R. Gururajan, J

Bench : Division Bench

Advocate : Ahamed S.N. and Associates, for the Appellant; Mohana Shanthana Goudar, SPP, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Three life convicts in Writ Petition No. 77/2000 and three other life convicts in Writ Petition No. 21/2000 are before this Court seeking for a writ in the nature of Habeas Corpus directing the immediate release of the petitioners and declare that the detention from 26-1-2000 onwards as illegal on the following factual matrix.

2. Petitioners in Writ Petition No. 77/2000 Sri Shashi @ Shashidharan, Sri. K. Rajan, and Sri Anshad, have suffered a conviction order for the offences punishable u/s 302 r/w 34, IPC and Section 394 r/w 34 of IPC in Sessions Case No. 22/89 on the file of the Addl. City Civil and Sessions Judge, Bangalore in terms of the judgment passed in the year 1992. They have undergone 10 years of actual sentence as on 26-1 -2000.

Petitioners in Writ Petition No. 21/2000 Sri. Ganghadharaiah, Sri Rangappa, Sri Gundaiah, have suffered a conviction order for the offences punishable u/s 302 of the IPC in Sessions Case No. 106/88. They further say that for the purpose of calculation of actual ten years of sentence parole period is required to be

considered. If parole period is considered they also complete 10 years of actual sentence as on 26-1-2000.

3. Petitioners say in the petition that the State Government has issued a notification in Government Order No. HD-219/PRA/99, Bangalore dated 25-1-2000 ordering the release of 56 male life convicts who have served 10 years of actual sentence as on 26-1-2000, five years of sentence in the case four female life convicts and also six life convicts who are suffering from serious diseases are to be released from various jails in the State in terms of the notification dated 25-1-2000. Case of the petitioners is that they have also completed 10 years of actual sentence and hence, they are eligible for the same treatment by the State. They further aver that in view of the similarity between the petitioners and others who have been released petitioners' detentions after 26-1-2000 is illegal and in violation of Article 21 of the Constitution of India.

4. Notices were ordered in response to which the State has filed its counter-affidavit in both the petitions. The respondents state that the Government had no doubt issued a notification on 25-1-2000 ordering release of 56 male life convicts and four female life convicts and six life convicts who are suffering from serious diseases as stated in the Writ Petition. They say that the said remission/concession was granted in view of the Golden Jubilee Celebration of Republic Day by the State. They refer to the proposal dated 22-10-99 (Annexure-R-1) order issued under Article 161 of the Constitution of India, (Annexure-R-2) dated 25-1-2000 along with Annexures R-3 dated 31-1-2000, Annexure-R-4 letter dated 25-1-2000, Annexure-R-5 corrigendum dated 11-7-2000. On the basis of these documents they say that the remission/concession, in terms of Annexure-A the order dated 25-1-2000 is not available for those who are convicted for the offences of dacoity, robbery, rape, rioting and to the persons who were detained under Preventive Detention Acts. They also say that all the 56 persons who were released pursuant to the order dated 25-1-2000 have not been convicted for the offence of either dacoity or robbery.

5. According to the respondents, the petitioners in W.P. No. 77/2000 were convicted for the offence of dacoity and murder, hence they are not entitled for special treatment in terms of Annexure-A. The other petitioners in W.P. No. 21/2000 have not completed ten years of actual sentence in terms of Annexure-A. They justify their action. In fact an additional affidavit is filed clarifying the position by the corrigendum dated 11-7-2000.

6. We have heard the learned counsel Sri S. N. Ahmed and Sri Mohan Shantana Goudar learned State Public Prosecutor at great length.

7. The petitioners' counsel reiterated the facts and grounds raised in the petition in support of their prayer. He further relied on a judgment of the Supreme Court in the case Sunil Fulchand Shah v. Union of India reported in 2000 AIR SCW 582 for the purpose of counting parole period for ten years actual sentence in terms of the order dated 25-1-2000 (Annexure-R-2).

8. Per contra, learned State Public Prosecutor argued that the petitioners are not eligible or entitled for this remission on account of their having committed the offences of dacoity rape and such other offences which are excluded for the purpose of concession/remission of sentence.

9. The Governor issued an order dated 25-1 -2000. It is necessary to notice the birth of this order. Annexure-R-1 is the basis for issuing Annexure-R-2 (remission order) .The Government took a policy decision to provide premature release of life term prisoners in Karnataka on 26-1-2000 on the eve of Golden Jubilee Celebrations of the Republic Day in the light of the premature release in Andhra Pradesh and Kerala. After noticing the premature release in these two States, the Inspector General of Prisons has stated that Section 433A of Code of Criminal Procedure provides for premature release and the Governor can pardon or remit the sentence under Article 161 of the Constitution. Such releases can be done on special occasions like the Golden Jubilee Celebrations of the Republic in the year 2000. After noticing the special occasion of the Golden Jubilee Celebration the Inspector General of Prisons has written a letter to the Government recommending for special remission in respect of certain categories of prisoners. It is made clear that the said special remission is not available in respect of habituals, prisoners sentenced under Sections 107, 108 and 109 of Code of Criminal Procedure, prisoners sentenced under Prevention of Corruption Act, Robbery, Dacoity, Rioting, Rape, Defamation, and prisoners detained under Preventive Detention Act, Prisoners convicted under Foreigners Act and Passports Act and prisoners under going imprisonment under the Official Secrets Act and prisoners of other States. Based on these recommendations the cabinet recommended to the Governor to grant amnesty to 56 male life prisoners four female life convicts and six terminal ill prisoners strictly in accordance with the recommendation of the Inspector General of Prisons. They have given the details of the persons who were to be given this remission. A Corrigendum is issued on 31-1-2000 in which it is made clear that the special remission indicated in para 2 of the Government Order dated 25-1-2000 Annexure-R-2 is not applicable to habituals, prisoners convicted under the Corruption Act, Robbery, Dacoity, Rioting, Rape, etc. Later, another letter dated 21-2-2000 was also issued by the Government. Now by the present corrigendum dated 11-7-2000 (Annexure-R-5) they have made it very clear that the remission in the Government Order is not applicable to habituals, convicts under Prevention of Corruption Act, prisoners convicted for robbery, dacoity, rioting etc, as mentioned in detail in the corrigendum. A reading of all these orders would show to us that on the special occasion of the Golden Jubilee Celebration of the Republic of India the Governor has taken a decision to grant special remission in respect of 66 prisoners who have completed 10 years of actual sentence as seen in Annexure-R-1 four female life convicts as in R-2 and 6 life convicts as in R-3 on the basis of Cabinet recommendations.

10. Admittedly, all these petitioners in W.P.No. 77/2000 have committed the offence of dacoity and murder for which the petitioners were convicted by the

Sessions Court and they are undergoing the term of sentence imposed on them by the Court. In these circumstances, we are clearly of the view that the petitioners though have completed 10 years of actual sentence cannot claim the remission as a matter of right in terms of Annexure-R-2. They are excluded from the benefit of R-2 on account of their having committed an act of robbery and murder which acts are not pardoned for the purpose of special remission in terms of Article 161 of the Constitution of India by the Governor. Petitioners argument that the special remission as referred to in the said order has to be read only for the purpose of clause 2 i.e. two months special remissions to convict prisoners sentenced to more than one year imprisonments and also one month remission to prisoners who are sentenced to undergo less than one year imprisonment and not to the petitioners. His argument is that Annexure-R-1 r/w Annexure-R-2 would show that the special remission though is not applicable for convicts under robbery, dacoity and rioting and this special remission has to be read only for the purpose of calculation in terms of F and G found in para 6 of Annexure-R-1, the proposal of the Inspector General of Prisons. He wants a restricted meaning to be given to Special remission on the facts of this case. Though at the first blush this argument is attractive but on greater detail it is seen from various orders of the Government/Governor that the grant of special remission is restricted only for 66 prisoners that is to those who have not undergone the sentence for robbery rape dacoity etc.

11. A careful reading of the annexures also would show that the Governor in terms of the proposal of the Inspector General of Prisons which has been approved by the Cabinet has categorically decided not to grant the special remission to certain category of convicts. Special remission is referable to special occasion namely the Golden Jubilee Celebration. The said special remission cannot be confined to Clause E and F in para 6 as sought to be contended by the petitioners. When a constitutional authority on a special occasions decides to grant special remission only to a set of prisoners, we cannot release the present prisoners who are otherwise excluded from the grant of special remission by reading as a whole all the documents filed by the respondents before this Court. The latest corrigendum dated 1-7-2000 categorically states that the remission in the Government Order dated 22-1-2000 is not applicable to those robbery, dacoity, rioting, rape convicts. In these circumstances, we reject the argument of the petitioners.

12. Learned counsel for the petitioners refers to the prison manual to contend that the special remission has to be read in a restricted manner on the facts of this case. We do not agree. When the orders are clear we do not want to introduce any new grant of special remission which the Government/ Governor thought not to grant on the special occasions of Golden Jubilee Celebration. Article 161 of the Constitution provides a jurisdiction to the Governor to grant special remission on a special occasion. The same has been exercised only in respect of 66 prisoners.

13. Petitioners in W.P.No. 21/2000 contend that since they have completed 10 years of sentence including the parole period they are entitled for the benefits in terms of Annexure-A/Annexure-R-1 - the Government order. They rely on a judgment in the case of Sunil Fulchand Shah v. Union of India 2000 AIR SCW 582 referred to above in support of their submission. Petitioners essentially rely on Annexure-R-1 the Government Order dated 25-1-2000. The said order is an order issued in terms of Article 161 providing for remission in the sentence on a special occasion. It is well settled that the Court cannot substitute its view in a matter like this. It is no doubt true that the Supreme Court in the case of the Sunil Fulchand Shah has ruled that parole does not interrupt the period of detention and, thus that period needs to be counted towards the total period of detention unless the terms for grant of parole, rules or instructions, prescribe otherwise (underlined by us). In the case on hand, no material is provided to know the terms on which the parole was granted to these petitioners. The Rule 650 of the Karnataka Prison Manual categorically states that period spent under parole will not form part of the sentence. The judgment given in the case of Sunil Fulchand Shah is also rendered while considering the scope of the COFEPOSA Act. It is not a case dealing with the remission granted in exercise of the constitutional power under Article 161 of the Constitution. Hence, in our view, though the said judgment rules that detention is also to be counted depending upon the terms of the parole the said judgment is of no assistance to the facts of this case. Admittedly, the petitioners have not served the actual sentence in terms of the Government Order, read with Rule 650 of the Karnataka Prison Manual. When the order is very clear in showing the concession only for those who have suffered actual sentence it is not open for the petitioners to seek that benefit contrary to the conditions prescribed therein. Therefore we do not accept the contention that we can interfere in these matters and order release of the petitioners in these cases.

14. We are also supported by a Division Bench decision of this Court in W.P.No. 43848/95 Dated 15-6-1998 1996 Cri LJ 4480 (V. Shafeeque Ahmed v. State of Karnataka). This Court in the said decision while considering the scope of Article 161 and Section 433A, Cr.P.C. has categorically ruled reading as under in paras 4 and 5 of the order :

4. Article 161 of the Constitution clearly says that the Governor of a State shall have the power to grant pardons, reprievers, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

5. So it is for the Governor, on the recommendations of concerned authorities, to deal with remissions or respites of punishment or to commute the sentence. This Court cannot usurp the power of the Governor in a petitioner under Article 226 of the Constitution.

15. Respectfully following the said judgement we hold that in the light of the clear decision to grant concession only in respect of 66 life convicts who have

suffered the actual 10 years sentence, we cannot extend the concession/benefits to these petitioners in the absence of 10 years actual sentence suffered by them in terms of the order.

16. Counsel for the petitioners finally contended that one Yogi alias Yogindra and Geetha were released in the identical circumstances. Petitioners cannot compare themselves with Yogi alias Yogindra and Geetha while seeking benefit in terms of Annexure-R-2. Though there is no factual foundation laid for this argument, still we permitted him to have his submission. The State Public Prosecutor has clarified to us that Yogi alias Yogindra was convicted for the offences punishable under Sees. 376, 511 and 302, IPC. He was sentenced to undergo life imprisonment for the offence punishable u/s 302, IPC. He was sentenced to undergo imprisonment for 6 years for the offence punishable u/s 376, IPC. Both the sentences were ordered to run concurrently. He has completed the sentence of six years for the offence punishable u/s 376, IPC.

17. In so far as Geetha is concerned it was pointed out to us that she was also convicted for the offence punishable under Sections 302, 392 and 201, IPC. She was sentenced to undergo life imprisonment for the offence punishable u/s 302, IPC and was sentenced to undergo imprisonment for 7 years for the offence punishable u/s 392, IPC. Both the sentences were ordered to run concurrently. She has completed the sentence of seven years for an offence punishable u/s 392, IPC.

18. In the light of the clarification made available to us by the State Public Prosecutor we are clearly of the view that the case of Yogi alias Yogindra and stand on a different footing.

19. In the circumstances, we do not accept any one of the contentions urged by the petitioners. No case is made out for our interference in these petitions by the petitioners. In the result, these petitions stand dismissed but without any order as to cost on the peculiar facts of this case.