

(1997) 10 BOM CK 0059

In the Bombay High Court

Case No : Criminal Writ Petition No. 145 of 1997

Sheshrao Chandrabhan Dakhore

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-10-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Criminal Procedure Code, 1973 (CrPC) — Section 433

Citation : (1998) 5 BomCR 188

Hon'ble Judges : D.D. Sinha, J;A.D. Mane, J

Bench : Division Bench

Advocate : R.D. Mane, for the Appellant; S.V. Chillarge, Assistant Public Prosecutor, for the Respondent

Judgement

A.D. Mane, J.—On request of learned Counsel for the parties, rule is made returnable forthwith.

2. This petition is filed by prisoner No. C-1791, who is undergoing sentence of life imprisonment in Open Jail at Paithan, for his premature release.

3. The petitioner was convicted u/s 302 and 307 of the Indian Penal Code in the Sessions Case No. 163 of 1981 by the learned Sessions Judge, Yeotmal. He was sentenced to death in the first instance but on his appeal and reference made by the learned Sessions Judge, Yeotmal, the High Court, while confirming the conviction converted death sentence into life, by its judgment and order dated 17-8-1982.

4. The petitioner's mother made an application and that was treated as Criminal Writ Petition No. 459 of 1995, for premature release of the petitioner on his completion of actual 14 years of imprisonment. On 8-11-1995 that petition came to be rejected, since it was found that prisoner had not undergone substantive imprisonment of 14 years. The present petition is therefore, filed on 7-4-1997, inter alia stating that the petitioner has completed actual imprisonment of 14

years and therefore, under the guidelines for premature release under "14 years Rule" the petitioner is eligible to be released forthwith.

5. In support of the petition, the petitioner submits that during pendency of this petition on a quarry made by the Court, the respondent-State produced a letter on 20- 8-1997, dt. 17-1-1995 from the Home Department, Mantralaya, Mumbai to show that the Government has decided that the petitioner be released on completion of 30 years of his imprisonment including the remissions, subject to completion of actual imprisonment of 14 years, his good behaviour and conduct in the prison up to the aforesaid time of his release.

6. In this context, the petitioner submits that the decision of the Government as intimated vide letter dt. 17-1-1995 is not only incorrect but arbitrary and it is against the guidelines for the premature release under "14 years Rule" in respect of prisoners serving the life imprisonment. In this context, it is submitted that normally, murders relating to sexual matters or arising out of relations with woman, dowry death and other form of bride burning etc. should be of the imprisonment to be undergone including all remissions subject to maximum of 14 years of actual imprisonment including set off period ranges between 22 years, 24 years, 26 years and 28 years. The petitioners' case, according to the learned Counsel for the petitioner, therefore, falls under the first category, as referred to in the guidelines. The Government, however, carved out the category No. 7, namely, the case of prisoner whose death sentence is commuted to life imprisonment. The period of imprisonment to be undergone including remissions, subject to maximum of 14 years of actual imprisonment including set off period of 30 years. That decision bringing case of the petitioner in category 7 is not proper in law. In this context, it is submitted that if such category is allowed to exist, the judgment passed by the Court would be a nullity and therefore, period of imprisonment to be undergone including the remissions subject to "14 years Rule" including set off the period must be restricted in a normal case of 22 years.

7. The petitioner submits that two years remission has been allowed as per the policy decision of the Government on 50th year of Indian Independence. The petitioner, therefore, having completed 26 years of period of imprisonment inclusive of remissions under "14 years Rule" is entitled to be given benefit of premature release.

8. On behalf of the respondent return of the District Superintendent of Open Prison, Paithan has been filed. It is submitted that as per the record maintained by the office, total imprisonment undergone upto 30-4-1997 by the petitioner comes to 26 years and 26 days and as per the guidelines of premature release under "14 years Rule" of the prisoner serving life sentence after 10-12-1978, a prisoner in whose case death sentence has been commuted to life imprisonment has to undergo sentence of 30 years, including the remission, subject to minimum 14 years actual imprisonment including set off period. In the present case, therefore, the petitioner has not completed 30 years imprisonment, including the remissions upto the date under "14 years Rule" for premature

release and therefore, the petition is misconceived,

9. The respondent has also further clarified the position by filing an additional affidavit in reply in which it is stated that it is true that two years remission to every prisoner from 15-8-1997 by way of policy decision, as a part of 50th year of Indian Independence has been given vide letter dt. 6-8-1997 issued by the Home Department, Mantralaya, Mumbai, the petitioner has been given remission of 720 days i.e. two years and considering the Government Circular dt. 6-8-1997, the petitioner would be entitled to be released on 1-5-1998. It is also submitted that the case of the petitioner was rightly considered in category 7 of the Guidelines issued by the Government of Maharashtra dt. 11-5-1992 and, therefore, the petitioner is not entitled to be released before 1-5-1998.

10. Shri Mane, learned Counsel for the petitioner tried to reiterate the contentions as raised in the petition that merely because death sentence is commuted to life that by itself is no ground to classify different category of prisoner in the guidelines of premature release under "14 years Rule". The learned Counsel tried to contend that such a classification is unreasonable, especially when case of the petitioner falls in category No. 1 of the Guidelines, namely, "Murders relating to sexual matters or arising out of relations with woman, dowry death and other form of bride burning etc." According to him, the maximum period of imprisonment under these categories is 28 years but if regard be had to the facts and circumstances of the case in which the petitioner was tried, the period of imprisonment to be undergone by the petitioner would be not more than 24 years. If period of imprisonment to be undergone including all remissions subject to minimum of 14 years actual imprisonment, including set off period is considered, according to learned Counsel, the petitioner having undergone period of imprisonment for more than 24 years, must be held to be entitled to the premature release forthwith.

11. We are unable to accept the arguments advanced by Shri Mane, learned Counsel. Guidelines for premature release under the "14 years Rule" of the prisoners serving life sentence are issued on 11-5-1992 by the Home Department of Government of Maharashtra, revising the earlier guidelines in case of prisoners convicted after 18-12-1978, in view of the amendment to Criminal Procedure Code, 1973 and introduction of section 433-A to the Criminal Procedure Code by Amending Act of 1978. Section 433-A of the Code provides that the person who has been sentenced to life imprisonment or whose death sentence has been commuted to life imprisonment will have to undergo minimum actual imprisonment of 14 years. It imposes restrictions that convicted prisoner shall not be released from prison unless he has served 14 years of imprisonment. This does not however, means that till completion of 14 years, there is right to convict prisoner for being released.

12. It is necessary to emphasise here that each crime has its own peculiarities, but that does not mean that general classification and categorisation cannot be made for the purpose of remission of sentence. Remission is not by way of right

and it is discretionary matter of the State Government. For that exercise, certain guidelines are necessary and in case a broad policy is laid down in the guidelines there is nothing wrong about it. There is, therefore, no arbitrariness in classification made when the Government issued guidelines for premature release under the "14 years rule" of prisoner serving life sentence after 18-12-1978, by which the present petitioner's case falls under category 7-A. We, therefore, find no substance in the attack made by the learned Counsel for the petitioner that the policy decision of the respondent-State Government suffers from any arbitrariness or illegality or it is violative of the provisions of Article 14 of the Constitution of India.

13. In the view that we take, since the petitioner would be released on 1-5-1998, the writ petition is premature and the same is liable to be dismissed.

14. In the result, the petition fails and it is dismissed. Rule is discharged. Inform the petitioner accordingly.

15. Petition dismissed.