
(2009) 09 MP CK 0012
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4257 of 2008

Siyaram

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 148, 149, 302, 324

Citation : (2009) ILR (MP) 51 : (2009) 4 MPLJ 79 : (2010) 1 RCR(Criminal) 207

Hon'ble Judges : R.S. Jha, J

Bench : Single Bench

Advocate : D.D. Bhargava, for the Appellant; Samdarshi Tiwari, Government Advocate, for the Respondent

Judgement

R.S. Jha, J.

Shri D.D. Bhargava, Learned Counsel for the petitioners. Shri Samdarshi Tiwari, learned Government Advocate for the respondents/State.

The petitioners have filed this petition being aggrieved by the orders dated 18-1-2008 and 7-3-2008 by which their applications seeking release on probation under the provisions of M.P. Prisoners Release on Probation Act, 1954 (for brevity "the Act") and the M.P. Prisoners, Release on Probation Rules, 1964 (for brevity "the Rules") have been rejected.

It is submitted by the Learned Counsel for the petitioners relying upon several unreported judgments, that the authority is required to look into each and every factum specifically antecedents and conduct of the prisoners in the prison and thereafter take a decision but in the instant case the authority has rejected the application for release on probation solely on the ground that the manner in which the petitioners have committed the offence was extremely brutal and heinous which is impermissible. It is also submitted that the impugned order passed by the respondent suffers from non-application of mind, therefore, deserves to be quashed.

Per contra, learned Government Advocate appearing for the respondent/State submits that the authority under the Act and Rules has considered the application filed by the petitioners and taking into consideration the brutal and heinous manner in which the offence was committed, has rejected the applications of the petitioners for release on probation relying upon the judgment of Supreme Court rendered in the case of State of M.P. Vs. Kusum, .

I have heard the Learned Counsel for the parties at length.

From a perusal of the record and the impugned order, it is clear that the petitioners along with co-accused namely; Govindram, Maniklal, Haridas, Manmohan and Rattu formed an unlawful assembly and having equipped with lethal weapons with an intention to kill Siti alias Ramdas and Prabhudayal and brutally committed murder of Prabhudayal on 20-3-1980.

It is also clear from the record that the petitioners have been convicted for offence punishable u/s 302/149, 120-B, 324, 149, 148 of the Indian Penal Code by the Additional Sessions Judge, Tikamgarh in Sessions Trial No. 66/80 by the judgment dated 10-12-1981 and have been sentenced to undergo life imprisonment.

It is also apparent from the perusal of the impugned order that the authority, after taking into consideration the manner of commission of the offence, has rejected the applications of the petitioners for release on probation on the ground that the petitioners were not entitled to be released on probation in view of the manner in which the offence was committed by them by forming an unlawful assembly and brutally committing the murder with lethal weapons.

In the cases of Kusum (supra), the Supreme Court while affirming the order passed by this Court quashing the circular dated 3-8-2005 with regard to prohibition to entertain applications for release on probation, has reaffirmed the relevant factors that are required to be considered by the authorities while dealing with an application for release on probation and has quoted paragraph 7 of the judgment, rendered in the case of Arvind Yadav Vs. Ramesh Kumar and Others, , paragraph 7 of the aforesaid judgment is in the following terms :-

7. Apart from the fact that there are factual infirmities in the impugned judgment, it is also to be borne in mind that the victim and the family of the victim who have suffered at the hands of the convict have also some rights. The convicts have no indefeasible right to be released. The right is only to be considered for release on licence in terms of the Act and the Rules. The Probation Board and the State Government are required to take into consideration the relevant factors before deciding or declining to release a convict. In the present case, the Probation Board had not recommended the release. The State Government had confirmed the order of the Board. The writ petition had failed before the learned Single Judge. The facts of individual cases were not considered by the Division Bench. In the case of Ramesh Kumar, the stand of the State Government was that he along with six others had formed an unlawful

assembly and murdered Jitendra son of Shashi Mohan Yadav on 20th September, 1994 in Hoshangabad, Madhya Pradesh causing 17 injuries on him with swords, knives and gupti and that Ramesh Kumar was the accused in fourteen cases filed under various sections of the Indian Penal Code. The manner of commission of crime is a relevant consideration. In a given case, the manner of commission of offence may be so brutal that it by itself may be a good sole ground to decline the licence to release. The Rules provide for a detailed procedure for consideration of application for release. Once rejected, again application for release can be made after two years. The Board comprises of the Home Secretary of the State Government or any other empowered officer, I.G. of Prisons or Deputy I.G. and another member.

A bare reading of the aforesaid paragraph makes it clear that the manner of commission of offence is a relevant consideration and a given case, the manner of commission of the offence may be so brutal that it by itself may be a good and sole ground to decline the licence to release.

In the instant case, the authorities on going through the record have held that the brutal and preplanned manner in which the murder of the victim was committed by the petitioners along with others in broad day light did not warrant their release on licence under the provisions of the Act and rules.

In such circumstances, no perversity or material irregularity can be found in the impugned order rejecting the application of the petitioners for release on probation. I am also of the considered opinion that in view of the judgment of the Supreme Court in the case of Kusum (supra), the applications for release on probation can be rejected on the sole ground of the brutal manner of commission of offence, as has been held therein.

In the circumstances, I do not find any merits in the petition which is accordingly dismissed. Consequently, interim relief granted on earlier occasion stands vacated.