

(1991) 10 RAJ CK 0004

In the Rajasthan High Court

Case No : .Civill Write (Habeas Corpus) Petition No. 4214 of 1991

Smt. Jyoti Sharma

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-10-1991

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 433A

Citation : (1991) 2 RLW 229 : (1991) 2 WLN 507

Hon'ble Judges : V.S. Dave, J; Mohani Kapur, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.S. Dave, J.—Call it by any name, lack of proper coordination, or lack of will to work seriously or inefficiency by the various departments of the Government, they all result in gross injustice to one, who is awaiting the day of deliverance from the prison bars, more particularly when he has acquired legal right to be set free. It is all the more unfortunate when the files concerning such speechless persons who are lodged in jail, are expected to be dealt with by all those officers who are expected to know the law and more particularly when law laid down by this court is not followed in letter and spirit. It is all the more distressing when orders passed in identical circumstances in identical cases are more followed in breach than in observance and this habeas corpus petition is not an exception to such a situation.

2. This petition has been filed praying for the release of Kalulal from jail where, according to the petitioner, he is in wrongful confinement, since he was legally entitled to be released having been recommended more than twice by the Advisory Board constituted under the provisions of Rajasthan Prisoners (Shortening of Sentence) Rules, 1958 (hereinafter referred to as "the Rules of 1958"). By these rules provisions have been made about pre-mature release of the accused on recommendation of Advisory Boards constituted under the Rules

in circumstances mentioned therein. According to Sub-rule (iii) of Rule 8 of the Rules of 1958 the prisoners who have been sentenced to more than 15 years imprisonment or transportation and imprisonment for terms exceeding in aggregate 15 years and have served 2/3 of the sentence including remission are eligible for consideration for premature release by the Advisory Board.

3. The Advisory Board duly constituted under law, considered the cases of 40 convicts in its meeting dated 19th October, 1989 and recommended only three persons for pre-mature release to the Government including Kalulal. In accordance with Rule 10 of the Rules of Advisory Board the recommendations were placed before the Government but the same were rejected by the State Government vide its order, dated 17th January, 1990.

4. Habeas Corpus Petition was filed in this court by Masoombai for release of one Saleem who was one of the three recommended, since the case of Saleem was also rejected by State Government vide same order, dated 17th January, 1990. This court quashed the order, dated 17th January, 1990 by a detailed judgment and ordered the release of Saleem forthwith. Before allowing Masoombai's Habeas Corpus Petition we had called for the original record, wherein the case of Saleem and the present petitioner Kalulal were considered along with one more. As per record when the matter was recommended to the State Government by the Advisory Board on 19th October, 1989, it was considered by Special Secretary to the Government who discussed the same with the Chief Secretary. They considered and came to conclusion that Section 433A Cr.P.C. was not applicable in these cases. Copy of the amendment in Code of Criminal Procedure was placed on record and the matter was placed for consideration before the then Hon'ble Chief Minister of Rajasthan. The record indicated that the then Chief Minister Shri Harideo Joshi accepted the recommendation of the Advisory Board and recommended the release of all the three prisoners on 11th December, 1989. Thereafter on 17th January, 1990 on a separate sheet of paper by one line order quoted hereunder:

rhu cfUn;ks dks le; iwoZ fjpgk djus dk dksbZ dkj.k ugh gSA

H.E. the Governor of Rajasthan rejected the recommendation. This court thereafter elaborately dealing with the order of H.E. the Governor directed the release of Saleem forthwith.

5. Once this order was passed, in our opinion it was obligatory on the State Government to have released the other two prisoners also placed in the identical situation. However, no such recommendations were made by any authority at any stage.

6. The case of Kalulal on whose behalf this Habeas Corpus Petition has been filed was once again placed before the Advisory Board on 21st June, 1990 and then again on 24th March, 1991 and 10th May, 1991 and in these meetings also the Advisory Board recommended the case for premature release but till date recommendations of the Advisory Board have not been followed resulting in this

Habeas Corpus Petition.

7. The State Government filed reply to the Habeas Corpus Petition wherein the stand taken is that the petitioner is in open air camp where he has been transferred under Open Air Jail Rules and he is working in a furniture shop. The only reply is that the matter is being considered by the State Government and while making oral submissions on behalf of the State it was argued that the State Government is considering as a matter of policy as to whether prisoners who are in open air jail should also be extended the benefit of the Rules of 1958. This is a stunning and shocking argument coming on behalf of the State. Rajasthan Prisoners Open Air Jail Rules, 1972 were enacted with a view to encourage the prisoners having good conduct, satisfactory performance of work and a life of self discipline amongst the convicts of Rajasthan and to provide to them with a pre-release opportunity to learn social adjustment and economic self dependence. These rules were framed in exercise of the powers conferred by Clause (18) of Section 59 of the Prisoners Act, 1984, and provisions were made as to extend benefit to those who were eligible for being considered to be sent to open air camp. Hence for selecting the prisoners for open air camp also the Advisory Board was constituted. Several benefits mentioned in the rules were made available to such prisoner. The preamble of the rule says that the same were made in order to provide opportunity to learn social adjustment and economic self dependence. There is also a provision in the rules that the persons who commit acts of misconduct and fail to pay penalties as imposed by Prisoners' Panchayat and who do not perform their scheduled task and are found undesirable were required to be sent back to the jail by the officers In-charge of the camp. The State Government should have felt boastful for making such rules which are mile-stone in direction of reformatory theory of punishment but contrary to it the State Government's reply that it is considering as to whether the prisoners are entitled to these rules shall be considered under the Rules of 1958 is an amusing argument as the same runs counter to the preamble of Open Air Camp Rules. It could never be the intention of the framers of the rules that the persons who are considered by the Advisory Board as fit for learning self discipline and economic self dependence on their showing good conduct in jail should be placed in a worse situation than those who have been lounging in jail. There is neither impediment mentioned in Open Air Camp Rules nor in the Rules of 1958 which prohibit consideration of the cases by the Advisory Board for pre-mature release. It is all the more extremely regrettable that the wisdom of the members of the Advisory Board, Chief Secretary and Chief Minister who had recommended the case of Kalulal is sought to be negated by the subordinate officers of same Government.

8. We have discussed in details in Masoombai's case about consideration and powers of the Advisory Board and the role of the State Government thereafter. We had held in the said judgment that the law contemplates the consideration of the case of premature release by the Board and the State Government has been given limited power to refuse the recommendations of the Advisory Board and in

case such an order of refusal is passed, it has to be in consonance with Rule 12 of the Rules of 1958 for which it has to be shown that the release of such prisoners would be a danger to the society. There can be one more ground available to the State for rejecting the recommendation of the Advisory Board and that can be that the recommendation of the Advisory Board has been made on a record which is fraudulently prepared or where there are material concealment of facts or that the person has tried to over reach the Board by some other misrepresentation. In that case the State Government may reject the recommendation of the Advisory Board and it may consider the case in its next meeting. We had also held in *Massombai's* case that H.E. the Governor who is the head of the State has to act on the advice of the State Government except in cases where powers have specially been given to the Governor to exclusively deal with the matters such as general powers of remission, pardon etc. In cases like the present under the Rules of 1958 it is obligatory for His Excellency the Governor to act according to the advice of the Government or that he can send the case back to the State Government for reconsideration of the recommendation for reasons to be mentioned therein. We have already held in *Massombai's* case that the order of His Excellency the Governor in the instant case which is in one line is neither a speaking order nor discloses that the material was placed before him and that he had an occasion to pursue the same. For these reasons this petition deserves to be allowed.

9. Their Lordships of the Supreme Court while dealing with the case of *Rudul Sah* had considered the cases of illegal detention of the prisoners in jail. The then Chief Justice of India Hon^{ble} Y.V.Chandrachud speaking for the court in *Rudul Sah Vs. State of Bihar and Another*, observed as under:

Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mullet its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

The observations of their Lordships are fully applicable to the present case. The facts of the present case show that the State Government has failed to show any respect to the recommendations of the Advisory Board repeatedly and virtually

wrongfully detained Kalulal in jail for about two years. He ought to have been released latest when this court delivered the judgment in Masoombai's case on 14th February, 1991. We therefore, are firmly of the opinion that this Habeas Corpus Petition deserves to be allowed forthwith.

10. We would accordingly direct the release of Kalulal son of Amarji resident of village Babnia Tehsil Salumber District Udaipur forthwith.

11. An argument has been advance on behalf of the petitioner that compensation should be awarded for wrongful confinement, since it is demonstrated that the petitioner is maliciously being detained. The learned Counsel has relied on the aforementioned decision of the Supreme Court where the State was directed to pay a compensation of Rs. 35,000/-besides leaving an opportunity to the petitioner to bring a suit against the State for damages. In the case before their Lordships of the Supreme Court the facts were little different as the accused Rudul Sah was of unsound mind at the time of passing the order of acquittal and he was being treated while in jail.

12. In the result this Habeas Corpus Petition is allowed. Kalulal son of Shri Amarji resident of village Babnia Tehsil Salumber District Udaipur at present at Sampurnanand Open Air Camp, Sanganer, Jaipur is directed to be released forthwith if not required in any other case. The State shall pay a cost of Rs. 5000/- to the petitioner, of this Habeas Corpus Petition which includes token compensation to be paid for respondent's in action in dealing with the case of Kalulal whose fundamental right guaranteed under Article 21 of the Constitution is ex facie violated. This order will not preclude Kalulal from bringing a suit to recover appropriate damages from the State or its erring officers. It will be open to the State also to have recourse against the erring officers. A copy of this order may be sent to Hon"ble Chief Minister by name.