

**(2001) 03 AP CK 0075**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 20587 of 2000**

Smt. Rayapudi Lakshmi

APPELLANT

Vs

The Superintendent, Central Prison and Others

RESPONDENT

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**Date of Decision :** 07-03-2001

**Acts Referred:**

Andhra Pradesh Prisons Rules, 1979 — Rule 967

**Citation :** (2001) 1 ALD(Cri) 507 : (2001) 2 ALT 471 : (2001) 1 APLJ 322 :  
(2001) 2 RCR(Criminal) 761

**Hon'ble Judges :** S.B. Sinha, C.J.; S.R. Nayak, J

**Bench :** Division Bench

**Advocate :** G.P. for Home, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.B. Sinha, J.—This application filed by one Smt. Rayapudi Lakshmi taken up as Public Interest Litigation, raises a question as to whether the period of 760 days availed as parole by her husband Sri Rayapudi Venugopal who was undergoing life imprisonment would be treated as part of sentence.

2. The petitioner's husband was convicted for the offence punishable u/s 302 and 148 IPC and sentenced to undergo life imprisonment by a Judgment and Order of the First Addl. Sessions Judge, Machilipatnam in S.C. No. 202 of 1990. He had been on parole on four occasions viz., for 152 days as per the orders issued in G.O.Rt. No. 1946, Home (Prisons-C) dated 19.7.1995, for 61 days as per the orders in G.O.Rt. No. 1708 dated 2.8.1996, for a period of 273 days by virtue of the orders issued in G.O.Rt. No. 1728 dated 4.7.1977 and again for a period of 274 days as per the orders in G.O.Rt. No. 268 dated 6.2.1999, totaling a period of 760 days. He surrendered to the prison on 17.11.1999. He was also released on furlough for a period of 14 days in the year 1997 and surrendered to the prison on 10.5.1997.

3. According to the petitioner, all life convicts are entitled to the following

benefits:

"1. emergency escort parole for 2 days, to attend the death ceremonies etc.,

2. Escort parole at the cost of the prisoner.

3. Furlough

4. Parole

5. Indefinite parole

6. Mercy"

4. It is not in dispute that furlough and parole are granted subject to certain conditions which are to the following effect :

" 1. The prisoner shall reside with his family in the village during the period of release on furlough/leave and shall not go beyond the limits of the said place or the head quarters of the police station of the area in which he resides, without the permission of the Sub-Inspector Police Station of the area concerned.

2. The prisoner shall not commit any offence punishable under any law for the time being in force.

3. The prisoner shall not associate with notoriously bad characters nor lead a dissolute life.

4. The prisoner shall not indulge in party politics nor take part in political propaganda.

5. The Prisoner shall furnish surety/personal bond.

6. The prisoner shall bear the cost of the to and fro journey to the village.

7. The Prisoner shall surrender himself to Superintendent of Prison on the expiry of the period of release on furlough/leave."

5. The contention of the petitioner is that furlough and parole being the concessions granted in favor of a prisoner and that as the conditions laid down for the release of the prisoner under both the concessions being one and the same, there doesn't appear to be any reason why a discrimination shall be made in not treating the period during which a prisoner is on parole as part of the sentence as is allowed in the case of furlough.

6. Rule 967 of A.P. Prison Rules, 1979 provides for grant of furlough to prisoners including life convicts as some sort of relief to them keeping in view their good character during the period of imprisonment actually undergone. Rule 967(d) clearly provides that the concession of release on furlough/leave shall be conditional on good behavior on the part of the prisoner during the period of imprisonment actually undergone. Rule 970 provides that the period of furlough/leave may be sanctioned under the rule as ordinary remission. Therefore,

furlough/leave is governed by the rule of remission. A prisoner may be released on parole in case of serious illness, death or marriage of any member of the family or near relative or for any other sufficient cause. Rule 974 of the Prison Rules which governs the release of a prisoner on parole reads thus:

"974. (1) A prisoner may be released on parole/emergency leave u/s 432 of the Code of Criminal Procedure, 1973 for such period as the Government may order in case of serious illness, death or marriage of any member of the family or near relative or for any other sufficient cause. The period spent under Parole/Emergency leave will not count as a part of the sentence.

(b) u/s 432 of the Code of Criminal Procedure, 1973, Parole/Emergency leave shall be granted by the Government of the State where the prisoner was convicted for an offence against a law relating to a matter to which the executive power of the State extends and by the Central Government where he was convicted for an offence against any law relating to a matter to which the executive power of the Union Government extends. The State Government shall deal with the petitions in the latter class in the manner prescribed by the Central Government in the rules published by the Ministry of Home Affairs Notification No. 40/32/55-Judl. I dated the 9th November, 1955.

(2) When a petition for release on parole/emergency leave on the ground of serious illness death or marriage of any member of the family or near relative of the petitioner, or for any other sufficient cause is made by a prisoner, the Superintendent of the prison in which the prisoner is imprisoned shall examine certified by the Superintendent of the prison concerned, in the manner laid down therein.

xxx xxx xxx (13) The period spent on parole shall not be counted as part of sentence."

7. Parole and furlough are granted to a prisoner subject to certain conditions as noticed hereinbefore. Sub-rule (1) read with rule 13 of Rule 974 of the Rules clearly states that the period spent on parole shall not be counted as part of sentence; whereas in the case of furlough, Rule 970 of the Rules clearly provides that furlough/leave shall be governed by the ordinary rule of remission. Thus, the manner in which the period spent by a prisoner on parole or furlough is to be counted is governed by the statutory rules. It is, therefore, not a case where the State has made any discrimination. It may also be noticed herein that while furlough is granted for good behavior on the part of the prisoner during the period of imprisonment actually undergone, parole is granted for such period as the Government may order in case of serious illness, death or marriage of any member of the family or near relative or for any other sufficient cause. Furlough / leave is granted to a prisoner as a result of leave earned by him on showing good behavior during the period of imprisonment actually undergone. Therefore, parole and furlough being distinct and are granted on different grounds, it cannot be said that there exists any discrimination in not treating the period spent on

parole as part of the sentence. It may be that the conditions laid down for the release of the prisoner on parole and furlough are one and the same, but, that doesn't confer any right on the prisoner to claim that the period spent on parole is to be counted as part of the sentence as in the case of furlough when the statutory rules do not provide so.

8. Furthermore, this aspect of the matter has been considered by the Apex Court in *Poonam Lata Vs. M.L. Wadhawan and Others*, . While considering the question as to whether the period of parole has to be excluded while computing the period of detention ordered under the provisions of Conservation of Foreign and Prevention of Smuggling Activities, Act, 1974, the Apex Court held:

"Parole brings him out of confinement from that place. Whatever may be the terms and conditions imposed for grant of parole, detention as contemplated by the Act is interrupted when release on parole is obtained. The position would be well met by the appropriate answer to the question "how long has the detenu been in actual custody pursuant to the order? According to its plain construction, the purpose and object of Section 10 is to prescribe not only for the maximum period but also the method by which the period is to be computed. The computation has to commence from the date on which the detenu is taken into actual custody but if it is interrupted by an order of parole, the detention would not continue when parole operates and until the detenu is put back into custody. The running of the period recommences then and a total period of one year has to be counted by putting the different periods of actual detention together. We see no force in *Shri Jethmalani*'s submission that the period during which the detenu was on parole has to be taken into consideration in computing the maximum period of detention authorized by S.10 of the Act."

Yet again in *Pushpadevi v. M.L. Wadhavan*, : 1987CriLJ1888 , the Apex Court held:

"Even if any conditions are imposed with a view to restrict the movements of the detenu while on parole, the observance of those conditions can never lead to an equation of the period of parole with the period of detention. One need not look far off to see the reason because the observations of the conditions of parole, wherever imposed, such a reporting daily or periodically before a designated authority, residing in a particular town or city, traveling within prescribed limits alone and not going beyond etc. will not prevent the detenu from moving and acting as free agent during the rest of the time or within the circumscribed limits of travel and having full scope and opportunity to meet people of his choice and have dealings with them, to correspond with one and all to have easy and effective communication with whomsoever he likes through telephone, telex etc. Due to the spectacular achievements in modern communication system, a detenu, while on parole, can sit in a room in a house or hotel and have contacts with all his relations, friends and confederates in any part of the country or even any part of the world and thereby pursue his unlawful activities if so inclined. It will, therefore, be futile to contend that the period of parole of a detenu has all

the trappings of actual detention in prison and as such both the periods should find a natural merger and they stand denuded of their distinctive characteristics. Any view to the contrary would not only be opposed to realities but would defeat the very purpose of preventive detention and would also lead to making a mockery of the preventive detention laws enacted by the Centre or the States. It will not be out of place to point out here that in spite of the Criminal Procedure Code providing for release of the convicted offenders on probation of good conduct, it expressly provides, when it comes to a question of giving set-off to a convicted person in the period of sentence, that only the actual pre-trial detention period should count for set-off and not the period of bail even if bail had been granted subject to stringent conditions. In contrast, in so far as preventive detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, are concerned, the Act specifically lays down that a person against whom an order of detention has been passed shall not be released on bail or bail bond or otherwise (vide Section 12(6) of the Act) and that any revocation or modification of the orders of detention can be made only by the Government in exercise of its powers u/s 11. Incidentally, it may be pointed out that by reason of sub-s (6) of Section 12 of the Act placing an embargo on the grant of bail to a detenu there was no necessity for the Legislature to make a provision similar to sub-section (4) of Section 389 of the Code of Criminal Procedure, 1973 (corresponding to sub-section (3) of Section 426 of the old Code) for excluding the period of bail from the term of detention period. For these reasons, the plea for treating the period of parole as part of the detention period has to necessarily fail."

9. In the instant case, as noticed hereinbefore, there exists a statutory rule to the effect that the period of parole shall not be treated as part of the sentence.

10. For the reasons aforementioned, we are of the opinion that the period of 760 days spent by the husband of the petitioner cannot be treated as part of the sentence. The Writ petition, therefore, fails and it is accordingly dismissed.