

(1984) 12 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ (Habeas Corpus) Petition No. 1665 of 1984 and 12 Ors.

Subudhi and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-12-1984

Acts Referred:

Constitution of India, 1950 — Article 161, 72
Criminal Procedure Code, 1973 (CrPC) — Section 401, 428, 432, 433A
Penal Code, 1860 (IPC) — Section 302
Prisons Act, 1894 — Section 59

Citation : (1985) RLW 134 : (1985) 1 WLN 385

Hon'ble Judges : N.M. Kasliwal, J; Dwarka Prasad Gupta, J

Bench : Division Bench

Judgement

Dwarka Prasad Gupta, J.—As all these petitions raise identical questions, they are dispossessed of by a common order.

2. The petitioners have filed habeas corpus petitions stating that they were convicted for offences u/s 302 1PC and were sentenced to imprisonment for life and that each one of them have undergone imprisonment for a period of more than 14 years. As such it has been prayed that the respondents may be directed to release the petitioners forthwith and set them at liberty.

3. Notices of these petitions were given to the Superintendent, Central Jail, Jaipur, who had produced before us a statement of the sentences under gone by each one of the petitioners as on December 3, 1984. We have perused the statement produced by the Superintendent, Central Jail, Jaipur and the reply filed on his behalf. We have to consider from the record produced before us as to whether the petitioners have served 2/3 of the sentence including jail remissions earned by him. The decision in these matters shall be governed by the provisions of Clause (iii) para 139 of the Rules made u/s 59(27) and (28) of the Prisons Act, relating to admission, custody, employment, dieting treatment and release of prisoners The relevant portion of para 139 reads as under:

Para 139. Prisoners eligibility for consideration by the Advisory Board: The Advisory Board shall be entitled to consider cases of the following types of prisoners only:

(i) A prisoner other than habitual criminal undergoing a substantive sentence of three years or over who has completed two years imprisonment or half of his sentence whichever is greater, including remission

(ii) A prisoner being a habitual criminal who has served 21/2 years of his substantive sentence, including the period of remission or has served two-third of his sentence including the period of remission whichever is greater

(iii) A prisoner sentenced to more than 14 years imprisonment or transportation for life or to transportation and imprisonment for terms exceeding in the aggregate 14 years and has to serve two third of his sentence including remission. A sentence for transportation for life will be construed to be one of imprisonment for 20 years for this purpose in each case. The period of imprisonment shall include sentences in default of payment of fine, if the same has not been paid. The remission actually earned by a person shall be taken into account by the Advisory Board, not a special remission granted in celebration of public function, for example, Independence Day, Republic Day, etc.

(iv) Prisoners awarded long term sentences by Court Martial and have served two-third of their sentences including the period of remission

(v) Prisoners suffering from infectious disease, such as Leprosy, Tuberculosis, provided their disease is likely to be dangerous to other prisoners and conditions prescribed in Para 38 are fulfilled

(vi) Prisoners who have attained the age over 65 years in case of male prisoners an over 55 years in case of woman prisoners in whose case no public interest is likely to be served by keeping them in prison provided they are serving sentences for their first and only conviction.

4. Thus according to Clause (iii) of the aforesaid provisions, a sentence of imprisonment for life, which is equivalent to transportation for life, shall be construed as one of imprisonment of or 20 years for this purpose and a prisoner sentenced to imprisonment for life has to serve 2/3 of his sentence, including remissions actually earned by him. After the prisoner has undergone 2/3 of the sentence for imprisonment for life construed as one for 20 years, he shall be entitled to get his case considered by the Advisory Board constituted for the purpose. It has been made clear in the aforesaid provisions that special remissions granted in celebration of public functions would not be counted for the purpose of referring the case of the prisoner to the Advisory Board, but the remission actually earned by a person shall only be taken into account by the Advisory Board. Para 142 provides that the Advisory Board shall submit its recommendations with the history of each case to the State Government. The Advisory Board, while making its recommendations on the basis of the material

placed before it, may advise the State Government that the prisoner may be prematurely released conditionally or unconditionally or that his premature release be refused or the consideration of the prisoner may be postponed for a definite period to be specified in the recommendations. Thereafter, on receipt of the proceedings of the Advisory Board and other relevant papers under the provisions of para 150, the State Government shall order release of the prisoner in whose case, having regard to all the circumstances, it considers that the prisoner may be released without any danger to the society.

5. Learned Public Prosecutor submitted in the first instance that the period for which the prisoner was released on parole should not be counted for calculating the 2/3 period of sentence under Clause (iii) of Para 139. The aforesaid provision clearly lays down that such a prisoner who has been sentenced to imprisonment for life has to serve two third of the period of 20 years including remissions actually earned. Thus the period spent on parole cannot be counted for the purposes of calculating the 2/3 period of sentence. It was then submitted by the learned Public Prosecutor that the period of custody of the prisoner during investigation, enquiry or trial should not also be set off in the case of a person sentenced to imprisonment for life. His contention is that Section 428 of the Criminal Procedure Code is not applicable to the case of a person sentenced to imprisonment for life. Section 428 of the Criminal Procedure Code reads as under:

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment: Where an accused person has on conviction, been sentenced to imprisonment for a term, (not being imprisonment in default of payment of fine), the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

6. Learned Public Prosecutor appears to be right in submitting that the provisions of Section 428 Cr. P.C. would not be applicable to an accused person who has been sentenced to imprisonment for life because the section speaks of "imprisonment for a term", while imprisonment for life does not relate to any specified term of imprisonment but it relates to the rest of the life of the convicted person. Thus in our view the provisions of Section 428 of the Criminal Procedure Code are not attracted to the case of a person sentenced to imprisonment for life and so benefit of the period which the concerned person remained under custody during investigation, enquiry or trial cannot be given to such a person.

7. In *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, , it was held by their Lordships of the Supreme Court that the sentence of transportation for life or its present equivalent, the life imprisonment, is one of indefinite duration, the remissions earned do not in practice help such a convict as it is not possible to predicate the time of his death. It is because of this reason that the

rules provide for a procedure to enable to the appropriate Government to remit the sentence u/s 401 of the Code of Criminal Procedure, on a consideration of the relevant factors, including the period of remissions earned by the prisoner. The question of allowing remissions is exclusively within the province of the appropriate Government; and although the rules made by the Government make provisions for remissions, the entire sentence is not remitted.

8. The same view was later expressed by their Lordships of the Supreme Court in *State of Madhya Pradesh Vs. Ratan Singh and Others*, wherein it was observed that a sentence for life would enure till the life time of the accused, as it is not possible to fix a particular time of the prisoners death; so any remissions allowed under the rules could not be regarded as a substitute for a sentence in the case of imprisonment for life. The Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer, but they merely amount to administrative instructions with regard to the various remissions to be given to the prisoner from time to time.

9. The decision in *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, was again followed by their Lordships of Supreme Court in *Maru Ram and Others Vs. Union of India (UOI) and Others*, and it was observed as under:

A sentence of imprisonment for life was nothing less and nothing else than an imprisonment which lasted till last breath. Since death was uncertain, deduction by way of remission did not yield any tangible date for release and so the prayer of Godse was refused. The nature of a life sentence is incarceration until death, judicial sentence of imprisonment for life cannot be in jeopardy merely because of long accumulations of remissions. Release would follow only upon an order u/s 401 of the Criminal Procedure Code, 1898 (corresponding to Section 432 of the 1973 Code) by the appropriate Government or on a clemency order in exercise of power under Article 72 or 161 of the Constitution. Godse (*supra*) is authority for the proposition that a sentence of imprisonment for life is one of "imprisonment for the whole of the remaining period of the convicted person's natural life.

10. We may also refer to the provisions of Section 433A of the Code of Criminal Procedure, which was introduced by the Criminal Procedure Code (Amendment) Act, 1978, wherein it has been provided that in case a sentence of imprisonment for life is imposed, the convicted person shall not be released from prison unless he had served at least fourteen years of imprisonment. In *Maru Ram's* case (*supra*) their Lordships of the Supreme Court held that the provisions of Section 433A are prospective in nature and would not be applicable to persons who were convicted by the Sentencing Court before December 18, 1978, when the Amendment Act of 1978 came into force. Thus, persons who were convicted and sentenced to imprisonment for life before December 18, 1978, are entitled to the benefit accruing to them from the remission scheme, as Section 433A did not stand in their way. The cases before us are of those persons who were convicted before 18th December, 1978 and as such Section 433A shall not stand in their way in getting benefit of the provisions of Para 139 of the Rules, which we have

quoted above.

11. The report which has been placed before us by the jail authorities and the statement of sentences submitting by them shows that the four convicted persons Udami son of Hanuman, Gheesa son of Hanuman, Mania @ Mani Ram son of Dularam and Krishan Singh son of Chandra Pal Singh have undergone sentence for a period of more than 13 years and 4 months, which constitutes 2/3 of the total sentence of 20 years, without including the period of State remissions and the period of custody during investigation, enquiry or trial. Para 139 specifically provides that for the purpose of making a reference to the Advisory Board, a sentence for transportation of life, which is equivalent to life imprisonment will be construed as an imprisonment for a period of 20 years. There is no reason why the cases of these four accused persons should not be referred to the Advisory Board, as according to the relevant provisions of para 139 they are entitled to get their cases considered by the Advisory Board and the recommendations of the Advisory Board should be sent to the State Government for passing a proper order in accordance with the provisions of para 150. The State Government after considering the record and on the basis of the recommendations of the Advisory Board may pass proper orders for premature release for the concerned prisoners or any of them. We, therefore, direct the Superintendent, Central Jail, Jaipur that the cases of these four convicted persons named above, who are the petitioners before us, should be referred forthwith to the Advisory Board so that the same can be considered at the next meeting of the Board. We also direct that the Advisory Board and the State Government should consider the cases of these four petitioners for premature release within a period of three months.

12. In the cases of Kanhya Singh s/o Gordhansingh Rameshwar son of Sheonath and Roshan s/o Ramhet, we find that the sentences already undergone and the jail remissions earned by these petitioners are less than 2/3 of the period of 20 years, as such the cases of these persons have not yet become ripe for referring to the Advisory Board. We hope that the concerned jail authorities will place their cases for consideration before the Advisory Board as soon as they serve the requisite period of 13 years and 4 months, inclusive of jail remissions earned by each one of them, which is equivalent to 2/3 portion of 20 years provided in Para 139 of the Rules.

13. In the case of Dana @ Dansingh son of Nanuram, Sanwalia s/o Baldas, Bhanwarsingh s/o Kishan Singh and Subudhi s/o Chirmoli stand on different footing. Each one of them has undergone imprisonment for a period of more than 14 years and 3 months. The Jail authorities have placed before us the entire record of these petitioners and we are satisfied that for the reasons beyond the control of the authorities the relevant material could not be obtained by them so as to enable them to place the cases of these petitioners before the Advisory Board. It has been pointed out that the High Court office has not supplied copies of the judgments of this Court in the cases of these petitioners to the

Superintendent, Central Jail, Jaipur, which are ripe for consideration by the Advisory Board. The High Court Registry is directed to provide copies of judgments of this Court in the cases of the aforesaid petitioners within six weeks so as to enable the jail authorities to place the cases of these petitioners before the next meeting of the Advisory Board. In the case of these four petitioners also we direct that the Advisory Board and the State Government to consider and decide their cases for premature release within three months.

14. Rameshwar Lal s/o Kistura has undergone imprisonment including jail remissions for a period of 14 years and 5 months but his case has not so far been referred to the Advisory Board on the ground that the reports of the Superintendent of Police and the District Magistrate have not so far been received by the concerned jail authorities. The aforesaid person was sentenced to imprisonment for life and has already undergone imprisonment for a period of more than 14 years, together with the remissions earned under the provisions of the Jail Manual, and as such Para 135 is applicable and the jail authorities should send his case forth-with to the State Government through the Inspector General of Prisons.

15. Para 135 reads as under:

135. Release of prisoners under the 14 year rule:

"(1) When a prisoner has been sentenced to transportation for life whether or not he has also been sentenced to a term of imprisonment, or when he was sentenced to a term of imprisonment or terms of imprisonment exceeding 14 years, he shall be considered for release as soon as the term already undergone (together with any remissions earned under the rules) amounts to fourteen years. His case shall be reported to the Rajasthan Government brought the Inspector General with full information regarding the character of his crime, his conduct in prison and the probability of his reverting after release to criminal habits or instigating others to commit crime, in order to enable the Rajasthan Government to decide whether he should be released, and, if so, whether he should be subjected to police supervision or other suitable conditions. If the Rajasthan Government decides that he should not be released, then, after two years from the Rajasthan Government's order, his case shall be reported again for further consideration.

(2) The Superintendent of the jail in which the prisoner is undergoing his sentence shall be primarily responsible for submitting the report under sub-paragraph (1).

16. Thus, the Superintendent of the jail in which the prisoner is lodged is primarily made responsible for submitting the report to the State Government and then the Government should consider the character of the crime, the conduct of the prisoner in jail, the probability of his reverting after release to criminal habits or instigating others to commit crime and thereafter proceed to decide as to whether the prisoner should be released prematurely with or without

conditions.

17. We, therefore, direct that the case of Rameshwar s/o Kistura should be referred by the Superintendent, Central Jail, Jaipur to the State Government forth-with under para 135 referred to above and the State Government should decide his case for premature release within a period of three months.

18. In the case of Bhajansingh the record placed before us by the Superintendent, Central Jail shows that his are for premature release was placed before the Advisory Board was sent to the State Government but the State Government did not agree with the recommendations of the Advisory Board and did not consider it proper to release the petitioner prematurely under para 150. As such no relief can be granted to Bhajan Singh by the Court.

19. In the result, the petition of Bhajansingh is dismissed. The writ petitions filed by Roshan, Rameshwar son of Sheonath and Kanhya Singh are disposed of subject to the directions given above. The writ petitions of Udami, Gheesa, Mania, Krishan Singh, Sanwalia, Bhanwarsingh, Dana @ Dansingh, Subudhi are allowed in part and the Advisory Board and the State Government are directed to decide their cases for premature release within a period of three months, as indicated above. The writ petition filed by Rameshwar Lal son of Kistura is also allowed and the State Government is directed to consider his case under para 135 of the Rules.