

(2010) 10 RAJ CK 0018

In the Rajasthan High Court

Case No : Criminal Parole Writ Petition No. 5152 of 2010

Suraj Giri

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Criminal Procedure Code, 1973 (CrPC) — Section 401(6), 433, 433A

Rajasthan Prisons (Release on Parole) Rules, 1958 — Rule 10, 10A, 11, 12, 13

Citation : (2010) 4 APLJ 178 : (2011) CriLJ 1534 : (2010) 4 RLW 3507

Hon'ble Judges : Prakash Tatia, J; Kailash Chandra Joshi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—In spite of provision for release of the prisoners on parole periodically and ultimately on permanent parole and in spite of provision for shortening of sentence of the prisoners, the prisoners are lodged in jail beyond the period of 14 years and we found some of the prisoners behind bar since last 20 years. Therefore, the important issue has come up before consideration of this Court in these writ petitions. Issue involved is that whether the prisoner who has completed the requisite period of sentence and has not availed the benefit of first, second and third parole or any of the above parole in terms of Rule 9 of the Rajasthan Prisoners Release on Parole Rules, 1958 (for short "the Rules of 1958"), then cases can be considered for release on permanent parole under Rule 9 of the Rules of 1958.

2. The contention of the State is that as per Rule 9, only a prisoner who has been released on first parole for 20 days, then on second parole for 30 days and thereafter on third parole for 40 days alone, is a prisoner whose case can be considered for release on permanent parole, as the rule says that "if during the third parole also the prisoner has behaved well and his character has been exceedingly well and if the prisoner's conduct has been such that he is not likely

to relapse into crime, his case may be recommended to the Government through the State Committee for permanent release on parole...." Whereas the contention of the learned Counsels for the Petitioners is that the parole is a benefit to the prisoner with clear aim and object that prisoner should be given opportunity to re-settle in the society by giving him opportunities of living with his family and or in the society. Even in a case where person has been convicted for life term, he may also be set free to live with his family and in the society. The parole rules nowhere provides any penal clause for punishing the prisoner for not availing the benefit of release on parole periodically as provided in Rule 9 of the Rules of 1958. It is also submitted that if a prisoner is not availing the benefit of release on parole periodically under Rule 9, then it is because of his ignorance about his rights in seeking his release under Rules of 1958 as well as such lapse can be attributed to the jail authorities and the Government in providing the benefit of law to the prisoners as it is also duty of the jail authorities and Social Welfare Department of the Government to make the prisoners aware of their right and benefits under beneficial provisions so that the prisoners may be encouraged to improve their conduct. The learned Counsel for the Petitioners relied upon various judgments which we shall be considering hereinafter.

3. We considered the submissions advanced by learned Counsel Shri Mahesh Bora, J.S. Bhati and Shri K.R. Bhati and considered the relevant law.

4. Before examining the law of parole in force in India, we may look into the meaning and history of parole.

5. The word "parole" has not been defined as such in the Rules of 1958 which were framed in exercise of power conferred under Sub-section (6) of Section 401 of the Code of Criminal Procedure, 1898 (as it was in force at that time and amended by subsequent Act of 1973). We are benefited by the information technology as learned Counsel Shri Nishant Bohra during the course of argument, with the help of his net connection available in the mobile telephone, drew our attention to the definition of the parole given in the Wikipedia, the free encyclopedia available on net, wherein history of parole has been given from several reference quoted from large number of books and research work. As per the definition of parole given in the Wikipedia, the parole originated from the French word parole and it says:

All of the meanings originated from the French parole ("voice", "spoken word"). Following its use in late-resurrected Anglo-French Chivalric practice, the term became associated with the release of prisoners based on prisoners giving their word of honor to abide by certain restrictions. One proposed reform is that parole bonds be used to incentivize Defendants not to re-offend.

6. It also says that parole should not be confused with probation, as parole is serving the remainder of a sentence outside the prison, where probation is given instead of a prison sentence and as such tends to place more rigid obligations

upon the individual serving the term. It is the supervised release of a prisoner before the completion of their sentence in prison. The parole is not commutation of sentence, as parolees even when they are released on parole are serving their sentences and are required to be returned to the prison if they violate the conditions of their parole. As per the history of parole is concerned, as per Wikipedia, (Web:<http://en.wikipedia.org/wiki/parole>) Alexander Maconochie, a Scottish geographer and captain in the British Royal Navy, introduced the modern idea of parole when, in 1840, he was appointed superintendent of the English penal colonies in Norfolk Island, Australia. He developed a plan to prepare them (prisoners) for eventual return to society that involved three grades. The first two consisted of promotions earned through good behavior, labor, and study. The third grade in the system involved conditional liberty outside of prison while obeying rules. A Violation would return them to prison and starting all over again through the ranks of the three grade process.

7. It appears that above may be theme behind the Rules of 1958 and in exercise of powers conferred by Sub-section (6) of Section 401 of the Code of Criminal Procedure, 1898 (Old Act), the Government of Rajasthan framed the Parole Rules known as Rajasthan Prisoners Release on Parole Rules, 1958.

8. Rule 9 of the Rules of 1958 is more relevant which is as under:

9. Parole period.- A prisoner, who has completed with remission, if any (one-fourth) of his sentence and subject to good conduct in the Jail, may be released on 1st parole for 20 days including days of journey to home and back, and for 30 days on 2nd parole provided his behaviour has been good during the 1st parole and for 40 days on third parole provided his behaviour has been good during the second parole. If during the third parole also the prisoner has behaved well and his character has been exceedingly well and if the prisoner's conduct has been such that he is not likely to relapse into crime, his case may be recommended to the Government through the State Committee for permanent release on parole on such conditions as deemed fit by the Superintendent Jail and the District Magistrate concerned; the chief condition among them being that if the prisoner while on parole commits any offence or abets, directly or indirectly, commission of any offence, he has to undergo the unexpired portion of the sentence in addition to any sentence imposed upon him by reason of such an offence. In case the permanent release on parole is rejected, the prisoner will be eligible for release on parole for 40 days every year subject to the same conditions for the remaining of his sentence:

Provided that cases of prisoners who have been sentenced to imprisonment for life, for an offence for which death penalty is one of the punishments provided by law or who have been sentenced to death but this sentence has been commuted u/s 433 of Code of Criminal Procedure into one of life imprisonment shall not be placed before the State Committee for permanent release on parole unless he has served 14 years of imprisonment excluding remission, but including the period of detention passed during enquiry, investigation or trial. Such prisoners

may be released on parole for 40 days every year for the remaining period of their sentence subject to the conditions stated above.

9. As per Rule 9 of the Rules of 1958, a prisoner who has completed with remission, if any, one-fourth, of his sentence and is of good conduct in the jail, can be released on paroles, which are first parole for 20 days, second parole for 30 days and third parole for 40 days. As per Rule 10, second and subsequent parole can be granted only after 11 months have elapsed from the date of the expiry of the period of release on parole immediately preceding. Rule 9 itself also provides that after three paroles, the case of prisoner can be considered for release on permanent parole. However, a special proviso has been made under Rule 9 to deal with subject of permanent parole for the person who has been sentenced to imprisonment for life and the proviso requires that for once becoming eligible for permanent parole, he should serve 14 years of imprisonment excluding remission but including period of detention passed during enquiry or trial. Therefore, the prisoner's case can be considered for release on first parole for 20 days, second parole for 30 days and third parole for 40 days if he has completed with remission, if any, 1/4th of his sentence subject to his good conduct in the jail. As per Rule 10 of the Rules of 1958, second and subsequent release on parole can be made only if 11 months have elapsed from the date of expiry of the period of release on parole immediately proceeding. As per plain reading of the rule, if the prisoner has availed the benefit of three paroles and his conduct has been found to be exceedingly well and his conduct has been found to be of such nature that he is not likely to relapse into crime, then his case can be recommended to the State through the State Committee for permanent release on parole, however, on the condition which may be prescribed by the Superintendent of jail and the District Magistrate concerned. It is provided in the Rule 9 itself that the main condition which may be imposed for release of the prison on permanent parole shall be that if the prisoner while on parole commits any offence or abets, directly or indirectly, commission of any offence, he has to undergo the unexpired portion of the sentence imposed upon him by reason of his commission of offence committed during probation period. It will be worthwhile to mention here that it is specifically provided in Rule 9 itself that in case permanent release on parole prayer of a prisoner is rejected, then the prisoner becomes eligible for release on parole for 40 days every year for remaining period of his sentence. Meaning thereby, a prisoner whose character has not been found exceedingly well even then he can be released on parole for 40 days every year after rejection of his prayer for permanent parole.

10. The proviso to Rule 9 provides that the prisoners who have been sentenced to imprisonment for life, for an offence for which death penalty is one of the punishments provided by law or who have been sentenced to death but this sentence has been commuted u/s 433 of Code of Criminal Procedure into one of life imprisonment, shall be entitled for consideration of his case for permanent release on parole after he has served out 14 years of imprisonment excluding remission but including the period of detention passed during enquiry,

investigation or trial. Meaning thereby serving of sentence of 14 years in such cases is mandatory requirement for consideration of permanent parole.

11. Rule 9A of the Rules of 1958, in addition to above regular period, provides for release of prisoner on parole in case of any emergency, obviously, like death in family, on occasion of marriage of daughter etc. However, that is not controversy in these matters. But Rule 10A requires references which further specifically provides that prisoner can be released on parole on humanitarian consideration like (1) critical condition on account of illness of any close relations, i.e. father, mother, wife, husband, children, brother or un-married sister; (2) death of any such close relation; and (3) serious damage to life or property from any natural calamity; (4) marriage of a prisoner, his/her son or daughter or his/her brothers/sisters in case his/her parents are not alive and this parole can be granted by the Superintendent of Jail for 7 days and for 15 days by the Inspector General of Prisons/District Magistrate.

12. As per Rule 11, a prisoner's release on parole except permanent release, the prisoner is required to remain under supervision of a guardian approved by the State Committee/District Committee who shall report any breach of the conditions of parole to the District Magistrate concerned and as per Sub-rule (b) of Rule 11, in case of permanent release on parole, the prisoner remains under the supervision of the probation officer and this supervision continues for the unexpired period of sentence allowed to be spent on parole. As we have already noticed that parole is serving the remainder of a sentence outside the prison, as per general definition of parole but Rule 12 of the Rules of 1958 specifically provides the period for which a prisoner stays on parole under Rule 9, without violating the conditions laid down for the purpose, shall be treated as imprisonment served by him. Except parole under Rule 9, all other kinds of parole shall be treated as sentence suspended, as specifically provided by Rule 12.

13. Rule 13 of the Rules of 1958 says that "the grant of parole should be regarded as occasion to encourage good conduct and it shall not be claimed by prisoners as a matter of right." There is no dispute that parole cannot be claimed as a matter of right but we are concerned with the aim of parole benefit to the prisoners. Rule 13 as well as various judgments on the point have laid down that parole is granted to the prisoners to encourage their good conduct and the Division Bench in the case of *Buddhi v. State of Rajasthan and Anr.* 2005(10) RDD 4380 noticed that what the Hon"ble Supreme Court has held, which is as under:

The purpose of parole is threefold: firstly, the use of parole as a motivational force for reforming the prisoners. Secondly, to keep the family ties intact as the family ties are likely to be broken because of the long periods of incarcerations. Thirdly, to slowly draw the misled soul back into the folds of the society. Since, punishment should be more reformatory and less retributive, the role of parole as a reformatory measure has to be acknowledged. By denying parole at the drop of

a hat is to ignore the importance of parole in the jail administration.

14. In the case of Pappu Khan v. State of Rajasthan and Ors. 2005(10) RDD 4057 (Raj.) (DB) importance of the parole has been considered in detail and therefore we need not to address more on the issue whether parole is beneficial legislation or not because this issue is no more res integra . Issue before us is that consequence of not availing the benefit of parole by the prisoner.

15. In the case of Maru Ram and Others Vs. Union of India (UOI) and Others, Hon"ble the Supreme Court observed even in case of conviction of commission of heinous offence, the jail administration should liberally give the benefit of parole. It will be worthwhile to mention here that when Section 433A in the Code of Criminal Procedure was inserted, its validity was challenged, as it provided for serving for at least 14 years imprisonment before which the class of prisoners canbe released and the matter came up before the Constitutional Bench of the Hon"ble Supreme Court in Maru Ram's case (supra). The issue for prescribing punishment to the offenders and its purpose have been considered in detail. In the present matter we are not concerned with the legality and the validity of Section 433A of the Code of Criminal Procedure, as this issue is not involved and as already settled by the law laid down by the Hon"ble Apex Court but we are benefited by this judgment in arriving at a decision on the question of law we have formulated. In Maru Ram's case, Hon"ble the Supreme Court in para 40 observed as under:

We feel that correctional strategy is integral to social defence which is the final justification for punishment of the criminal.

And since personal injury can never psychically heal, it is obdurate obscurantism for any legislative criminologists to reject the potential for prisoner re-socialisation from the calculus of reformatory remission and timely release.

(Emphasis supplied)

and thereafter in the same para, it has been observed as under:

We need not tarry long to tell the truth that every sinner has a future, given the social chance, and every prisoner a finer chapter as a free person, given the creative culturing of his psychic being.

(emphasis supplied)

16. Then observed in para 42 as under:

A Judicial journey to the penological beginning reveals that social defence is the objective. The triple purposes of sentencing are retribution, draped sometimes as a public denunciation, deterrence, another scary variant, with a Pavlovian touch, and in our era of human rights, rehabilitation, founded on man's essential divinity and ultimate retrievability by raising the level of consciousness of the criminal and society. We may avoid, for the nonce, theories like "society prepares the crime, the criminal commits it;" or that crime is the product of social excess"

or that "poverty is the mother of crime".

(emphasis supplied)

17. Hon"ble the Supreme Court further in Maru Ram's case observed in para 45 as under:

The mood and temper of our Constitution certify that arbitrary cruelty to the prisoner and negative attitude to reformation of the individual are obnoxious. Even the recent ruling in Bachan Singh on the vires of death penalty upholds this high stance.

(emphasis supplied)

18. Then observed in para 46 as under:

Human dignity, emphasised in the Preamble, compassion, implicit in the prescription of fair procedure in Article 21, and the irrationality of arbitrary incarceratory brutality violative of Article 14 invest the demand for a reformatory component in jail regimen with the status of a constitutional requirement. We need not prolong the judgment by substantiation of this proposition because the learned Solicitor-General, with sweet reasonableness and due regard to the precedents of this Court, has not disputed that reform of the prisoner is one of the major purpose of punishment.

(emphasis supplied)

and ultimately, while concluding and giving finding in in sub-paras (12), (13) and (14) of the above judgment held as under:

(12) In our view, penal humanitarianism and rehabilitative desideratum warrant liberal paroles, subject to security safeguards, and other humanizing strategies for inmates so that the dignity and worth of the human person are not desecrated by making mass jails anthropoid zoos. Human rights awareness must infuse institutional reform and search for alternatives.

(13) We have declared the law all right, but law-in-action fulfils itself not by declaration alone and needs the wings of communication to the target community. So, the further direction goes from this Court that the last decretal part is translated and kept prominently in each ward and the whole judgment, in the language of the State, made available to the inmates in the jail library.

(14) Section 433A does not forbid parole or other release within the 14-year span. So to interpret the Section as to intensify inner tension and intermissions of freedom is to do violence to language and liberty.

(emphasis supplied)

19. Therefore, the purpose for penal provision and approach in the matter of parole has been well explained almost 20 years ago.

20. After considering the law on parole and aims and objects behind making provision for release of prisoner on parole, we are of considered opinion that non-availing of three paroles or any of these paroles by the prisoner itself is not a ground for refusal of permanent parole. Our view finds support from the judgments referred above that normally there cannot be punishment for not availing the benefit under the beneficial legislation unless so is provided by law. It is also settled law that if the punishment is not provided for not taking benefit of law then the court cannot and should not prescribe and give punishment to any person who has not availed the benefit of beneficial law. Therefore, if prisoner who failed to avail the benefit of first parole, second parole and third parole, at the most, cannot get the benefit of first parole, second parole and the third parole by virtue of expiry of term of his sentence and he cannot claim any compensation for non-releasing of such prisoner on parole because of his own fault or because of the lapses on the part of the jail administration, if it is there. So far as permanent release on parole is concerned, it cannot depend upon the prisoner's availing or non-availing the benefit of first, second and third parole and the prisoner can show his behaviour while serving sentence in prison to be of standard on the basis of which, the prisoner can be released on permanent parole which may be of such standard as it would have been of the standards if prisoner would have been released on parole and lived outside the prison where he may have shown while on parole. In such cases the prisoner's character and conduct within jail will be relevant. In case, he because of his ignorance or because of lapse on the part of jail authorities of not bringing in the knowledge of the prisoner about his right under Rule 9, missed the opportunity to avail the benefits of first, second and third or any of the above parole but not because of his fault then such person can not be denied the benefit under the Rules of 1958. The prisoner whose case has been considered for release on parole and if is found not eligible for grant of parole, his case stands on different footing.

21. It is true that as per Rule 3, application is required from the Petitioner for his release on parole and Rule 3 is very relevant and is required to be quoted here. Rule 3 of the Rules of 1958 is as under:

3. Application for release on parole.- A prisoner sentenced to imprisonment for not less than one year may, subject to exceptionally good behaviour, be allowed by the Superintendent of Jail, in which he is confined, to submit application for parole in triplicate in Form 1.

22. Rule 3 of the Rules of 1958 says that application for release on parole is required from the prisoner who has been sentenced to imprisonment for not less than one year. But Rule 9 is required to be given effect to by the jail authorities by keeping in mind that the prisoner is in disability and is under the care of the said authorities. The aim and object behind framing the Rules of 1958 are very important because of simple reason that after the life, the liberty is most important right of a person and if one is entitled to or can be given liberty even for short period, then such liberty cannot depend upon procedural formalities of

moving application and seeking liberty, particularly when liberty has been taken away of such person (though, in accordance with law) or is under control of some authority who has lawful right to restrict the liberty of a person as in the case, after conviction of a person. It is more important because of the reason that in spite of the fact that persons are lodged in prison because they committed crime and some of the crimes may be of very heinous nature and the law framers were conscious of the fact that some offenders may not be lightly released on parole, yet they made provision in the Rules of 1958 by enacting Rule 14 by using liberal language for release of offenders who have committed heinous crimes and provided that the classes of prisoners mentioned in Sub-clauses (a) to (d) ordinarily will not be eligible for release on parole. The law framers have not prescribed total ban on the release on parole of prisoners who have committed heinous offences referred under Clauses (a) to (d) under Rule 14. This also suggests towards the intention of the law framers that even the penal law should be reformatory in nature so as to reform the person and to achieve the object of law to punish the offender with clear aim and object to reform the offender so that he can adjust and settle in the society again and may be given more opportunities to interact with his family members and society.

23. At this juncture, we may again observe that the prisoners lodged in the jail and have served sentences of 14 years and of more period and are not seeking even benefit of parole of first, second and third then this can be only because of the ignorance of prisoners about their right under Rules of 1958, as No. one would waive his benefit of liberty. These prisoners are required to be given legal aid by the jail authorities themselves. The State Legal Services Authority and the authorities under the State Legal Services Authority are also making efforts to see that prisoners may during serving their sentences, may get opportunity to re-settle in the society. In spite of the observations of the Hon'ble Supreme Court in the cases of Inder Singh and Another Vs. The State (Delhi Administration), Maru Ram and Others Vs. Union of India (UOI) and Others, Rama Murthy Vs. State of Karnataka, , Division Bench judgments of this Court delivered in the cases of Budhi v. State (Supra) and Pappu Khan v. State of Rajasthan and Ors. (supra) and earlier judgment of this Court delivered in the case of Lakkhi and etc. Vs. State of Rajasthan and Another, we found that several prisoners are still lodged in the jail even when they have served out requisite sentence of 14 years without getting a single parole what to say of second, third and more paroles and have also served sentences of about or even more than 20 years and that is because of reason that the prisoners yet are not aware about their right to benefit under the Rules which were framed almost more than half century ago, in the year 1958.

24. We may observe here that it is the duty of the jail authorities to maintain the complete record of the prisoners so that their cases for release on parole may be considered by the jail authorities by initiation of proceedings for the prisoners suo motu and if needed, it is duty of the the jail authorities to obtain the application of the prisoners for their release on parole and the jail authorities

should not wait for the prisoners to initiate the proceeding under the rules after completion of his requisite serving of his sentence of requisite period for grant of first, second and third parole and ultimately, for grant of permanent parole as well as consider the cases of prisoners for release on permanent parole in consonance with observations above and where case requires for premature release of the accused under the Rajasthan Prisons (Shortening of Sentences) Rules, 1958, then to initiate proceedings for premature release so that it can be considered by the appropriate authorities in accordance with the laws applicable to the cases.

25. Consequently, all these writ petitions are allowed and it is directed that:

(1) the cases of the Petitioners/prisoner who have served requisite period of sentence and are eligible for consideration for release on permanent parole under the provisions of the Rules of 1958, their cases may be considered by the Respondents and if they are found eligible for grant of permanent parole, they be released on permanent parole irrespective of the fact whether Petitioners have availed the benefit of first, second and third parole or any of above paroles. This order has no application to the cases where any of the parole prayer has been rejected by the competent authority. Such person's prayer for release on permanent parole be considered on its own merit.

(2) In case prayer for permanent parole of any of the Petitioners/prisoner is rejected on its merit after taking care of the observations made in this judgment then such Petitioner's/prisoner's prayer for release on parole for 40 days, every year, may be considered by the Respondents on merit of each case .

(3) The Respondents are directed to see that prisoners lodged in jail be made aware about the Rules of 1958 and about their right for release on first, second and third parole.

(4) The Respondents are further directed to see that parole prayers may not be rejected on flimsy grounds for which the Respondents' competent authority may look into the observations made above in this judgment as well as in earlier judgments delivered by the courts and also should take care that ineligible person may not be released on paroles. The Respondents are required to examine each individual case of prisoner and while doing so should look into the judgment/order passed in the case of such individual to find out whether there is any order passed by the court for serving of minimum actual sentence by such prisoner and also look into the fact whether while delivering judgment it has been observed that Petitioner should not be released on parole at all.

(5) The Respondent-State is directed to give benefit of Rajasthan Prisoner (Shortening of Sentence) Rules, 1958 to the eligible persons whenever the prisoners became eligible for the relief under the Rules of 1958 if after consideration of individual's case, the prisoner is found eligible for grant of benefit under the Rules.

(6) The Respondents and in particular the Jail Authorities who are otherwise bound to maintain the record of the prisoner should carefully not only keep the record of the prisoners, but should make appropriate entries in the record of making the prisoners aware of the benefits for which they may be entitled to under the above parole rules and shortening of sentence rules.

(7) The copy of the order may be sent to the Principal Secretary, Home, Government of Rajasthan, Jaipur as well as Director General (Prisoner), who may in turn, issue appropriate instructions to the concerned jail authorities.