

(1992) 02 CAL CK 0039
In the Calcutta High Court
Case No : F.M.A.T. No. 446 of 1992

The State of West Bengal and Others	APPELLANT
Vs	
Chandra Nath Banik	RESPONDENT

Date of Decision : 28-02-1992

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Prisoners Act, 1900 — Section 31A, 31A(1), 31B, 31B(2), 31C
Prisons Act, 1894 — Section 45, 46

Citation : (1992) CriLJ 2209 : 96 CWN 516

Hon'ble Judges : N.P. Singh, C.J.; Tarun Chatterjee, J

Bench : Division Bench

Advocate : S.C. Ukil, Government Pleader, L.C. Bihani and Suchandra Mukherjee, for the Appellant; Bholanath Sen, Milan Mukherjee, Amalesh Roy and Raja Tarafdar, for the Respondent

Final Decision : Allowed

Judgement

N.P. Singh, C.J.—This appeal has been filed on behalf of State of West Bengal and its authorities for setting aside the Judgment and Order dated 20th January, 1992 passed by a learned Judge of this court on a writ application filed on behalf of the writ petitioner-respondent.

2. When the application filed on behalf of the appellant-State for staying operation of the judgment and order under appeal was taken up for hearing, learned counsel appearing for both the parties suggested that the appeal itself be treated as on day's list for hearing and be disposed of along with the application for interim relief. Accordingly, the appeal taken up for hearing along with the application for interim relief.

3. The writ petitioner-respondent (hereinafter referred to as the respondent) was an accused for having committed a pre-planned brutal murder of his daughter-in-law one Debjani. After trial he was sentenced to death which was confirmed by this High Court as well as by the Supreme Court on appeal filed on behalf of the

respondent against the judgment of this court. We are informed that later an application was filed on behalf of the respondent for substituting the sentence of death by a sentence of imprisonment for life. The Supreme Court, because of lapse of time, passed an order substituting the sentence of death by a sentence for imprisonment for life. The said decision of the Supreme Court is reported in 1987 Cal Cri LR (SC) 152 (Chandra Nath Banik v. State of West Bengal).

4. While undergoing sentence of imprisonment for life, the respondent made an application before the Commissioner of Police, Calcutta for releasing him on parole. That prayer was rejected on mentioning several grounds including that the respondent had been convicted in connection with a preplanned and brutal murder of daughter-in-law which amounted to a heinous act.

5. Thereafter the aforesaid writ application was filed before this court for quashing the order passed by the Commissioner of Police, Calcutta and for a direction that the respondent, be released on parole.

6. The learned trial Judge by the order which is the subject-matter of the appeal, after quashing the order passed by the Commissioner of Police, gave the following direction :

"Accordingly, after hearing the rival submissions of the parties, I am of the view that the writ petitioner should be released on parole, at least for a period of two months, following the decision in the case of Inder Singh (supra). Accordingly, I direct the respondents, including the Inspector General of Prisons, West Bengal, to pass necessary order in the said regard forthwith, preferably within a week from communication of this order."

Pursuant to the order aforesaid, the respondent was released on parole on 28th January, 1992.

7. The learned Government Pleader, appearing on behalf of the appellant-State, while questioning the validity of the order aforesaid placed reliance on Section 31A of the Prisoners Act, 1900 as amended by West Bengal Act XIII of 1955 (hereinafter referred to as the Act). The relevant part of the said section is as follows :

31A. Temporary release of prisoners.--(1) The State Government or such authority as the State Government may empower in this behalf may subject to the provisions of this part and to such conditions as may be prescribed by rules made u/s 31C, at any time, release temporarily for a period not exceeding one month excluding the time required for journey from and to the prison, any prisoner who, having been sentenced to imprisonment for a term of more than two years, has actually undergone imprisonment for not less than one year :

Provided that before a prisoner is released under this sub-section he shall have to execute a bond with or without sureties as the State Government or other authority making the order of release may determine, for good behaviour during the period of release and for observing the conditions of the release :

Provided further that a prisoner who has previously been temporarily released under this sub-section shall not again be so released Unless after his return to prison from the last temporary release there shall have elapsed --

(a) in the case of a prisoner sentenced to imprisonment for a term of less than five years, a period of one year, or

(b) in the case of a prisoner sentenced to imprisonment for a term of five years or more, a period of two years...."

It was pointed out that in view of Section 31A(1), the respondent could not have been released for a period "exceeding one month" even while exercising power under Article 226 of the Constitution.

8. It appears that the learned trial Judge has directed the release of the respondent on parole for a period of two months on the basis of the judgment of the Supreme Court in the case of Inder Singh and Another Vs. The State (Delhi Administration), In that case Mr. Justice Krishna Iyer, while hearing the SLP against conviction and sentence of imprisonment for life passed against two boys -- one aged 16 years and the other barely 20 years -- observed as follows (at page 768 of Cri LJ) :

In this view, we direct the State Government to issue appropriate instructions to the jail authorities to give these two prisoners treatment which is not likely to degrade or offend dignity and decency but uplift and elevate. Work has a curative property but the kind of work assigned must be satisfying not degrading. The Medical Officer concerned will also be consulted on the proper prescription in this behalf. Furthermore, if the behaviour of these two prisoners shows responsibility and trustworthiness, liberal, though cautious, parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up. After every period of one year, they should be enlarged on parole for two months. (Emphasis added). Interviews by family members must be afforded as often as are sought. Useful crafts must be taught inside prison and studies encouraged. The Sessions Judge whose sentence we uphold, shall make jail visits to ensure compliance with these directions. Article 21 of the Constitution is the jurisdictional root for this legal liberalism. The State Government will take proper steps to comply with this crucial command. With these broad obligations cast on the State and the Superintendent, we dismiss the special leave petition.

It need not be pointed out that the aforesaid direction to enlarge the two convicts on parole for two months after every period of one year was given in the background of Article 21 of the Constitution. From that it is further apparent that no statutory provision like Section 31A was required to be taken into consideration for passing any order in respect of release of a convict who is undergoing a sentence of imprisonment for life, on parole. On behalf of the respondent reference was made to the judgment of the Supreme Court in the case of Maru Ram and Others Vs. Union of India (UOI) and Others, where Mr. Justice Krishna Iyer in connection with Section 433A of the Code of Criminal

Procedure pointed out as follows :

There was some argument that Section 433A is understood to be a ban on parole. Very wrong. The section does not obligate continuous fourteen years in jail and so parole is permissible. We go further to say that our Prison Administration should liberalise parole to prevent pent-up tension and sex perversion which are popular currency in many a penitentiary (see Sethna, "Society and the Criminal" Tripathi Publications, 4th Edn., p. 296.")

It need not be pointed out that in the aforesaid judgment direction was given to release on parole which obviously means in accordance with any statutory provision if any such provision is in force. In the instant case in view of Section 31A fixing the time limit for temporary release of a convict undergoing sentence, according to us, the learned trial Judge should not have directed the release of the respondent for a period of two months on parole. It is well-known that any statutory provision cannot curtail or override the power vested in the High Court under Article 226 of the Constitution, but at the same time it is also equally well settled that while exercising power under Article 226 of the Constitution, High Court should not pass any order superseding any statutory provision or in conflict with any statutory provision specially when it is in the nature of an Act.

9. It may be mentioned that during the hearing of the appeal, learned counsel appearing for the respondent has submitted that the authorities of the State are not following the procedure prescribed in the rules framed u/s 31C of the Act in respect of the respondent while he is under custody and as such it was open to the learned trial Judge to allow the respondent to remain on parole for a period exceeding one month.

10. Our attention was also drawn to the fact that the aforesaid writ application had been filed on 11th May, 1990 and for one reason or other remained pending before different learned Judges of this Court and ultimately the said writ application was disposed of on 20th January, 1992 directing release of the respondent on parole for a period of two months and as such the appeal court should not interfere with the said order.

11. No doubt, it is unfortunate that an application for release on parole has remained pending for a period of one and half year but that shall not be a ground for fixing a period different than one fixed by the legislature in Section 31A of the Act saying that the period for temporary release shall not "exceed one month".

12. Accordingly, the appeal and the application for interim relief are allowed. The judgment and order dated 20th January, 1992 directing release of the respondent on parole for a period of two months is modified to the extent that the period of parole shall be one month from the date of the release of the respondent. As already mentioned above, the respondent was released on parole on 28th January, 1992 and he has already completed the period of one month. In view of the order passed above the respondent shall surrender in accordance with Section 31B of the Act which is as follows :

31B. Surrender by prisoner after release period.-- (1) On the expiry of the period for which a prisoner is released under Sub-section (1) of Section 31A, he shall surrender himself to the officer-in-charge of the prison from which he is released.

(2) If a prisoner does not surrender himself as required by Sub-section (1), he may be arrested by any police officer without a warrant and shall be remanded to undergo the unexpired portion of his sentence (the period of release not being counted towards the total period of his sentence) and shall also be punishable u/s 46 of the Prisons Act, 1894 (IX of 1894), as if he had committed a prison offence referred to in Section 45 of that Act."

Accordingly, if the respondent does not surrender, it will be open to the authorities concerned to act in accordance with Sub-section (2) of Section 31B of the Act.

There will be no order as to costs.

Tarun Chatterjee, J.

13. I agree.