

(1984) 04 PAT CK 0041

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 348 of 1983

Umesh Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-04-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 54, 55, 55A

Citation : (1984) PLJR 724

Hon'ble Judges : S.S. Sandhawalia, C.J.; P.S. Sahay, J; N.P. Singh, J

Bench : Full Bench

Advocate : Braj Kishore Prasad, Promod Kumar Singh, Yogesh Chandra Varma, Gopal Shankar and Mrs. Anjana Prakash, for the Appellant; Narendra Kumar Sinha (S.C.V) and Devendra Prasad Sinha, for the Respondent

Judgement

S.S. Sandhawalia, C.J.—The meaningful question referred for an authoritative decision has been formulated in the terms following by the Division Bench:--

Whether an accused who was below 20 years of age on the date of commission of the offence, on the date of his conviction can be released after completion of 10 years of imprisonment (inclusive of remissions), although he has been sentenced to imprisonment for life, in view of the decision of the Supreme Court in the case of Shri Niwas and Others Vs. Delhi Administration and Others, even in absence of any rule or decision of the State Government in this regard?

Equally at issue is the correctness of a line of precedents within this Court, answering the question aforesaid in the affirmative. The facts giving rise to the question are not in dispute and lie in a narrow compass. Umesh Prasad Singh, writ petitioner; claim to have been born in his native village at Painal, on the 31st of January, 1959, and, at the material time, was a student of the local High School at the village aforesaid. He, alongwith his father, brother and other agnates of his family, was brought to trial before the court of session on the charge of murder for an occurrence on the 6th of July, 1975. He, was convicted

on the said charge and sentenced to death along with his brother, whilst the rest were convicted and sentenced to imprisonment for life by the judgment of the First Additional Sessions Judge, Patna, dated the 31st of March, 1977. On appeal, this High Court, by its judgment dated the 26th of November, 1977, upheld the conviction of the writ petitioner, but did not confirm the death sentence and commuted the same to a sentence of life imprisonment. The writ petitioner had surrendered on the 11th of July, 1975, before the Sub-divisional Judicial Magistrate, Dinapore, and, both as an undertrial prisoner and subsequently as a convict, had remained in custody. Thereafter, on the 12th of November, 1982, the petitioner addressed a communication to the Inspector General of Prisons, Bihar, claiming that since at the time of the commission of the offence, he was below 20 years of age and had undergone ten years of sentence, including remissions, he was entitled that the remaining part of his sentence be remitted. Later, on the 21st of September, 1983, the Superintendent, Bankipore Central Jail, Patna, where the writ petitioner was confined, recommended the petitioner's case for premature release, as his conduct in the jail was wholly satisfactory and that there was no grievance of any other kind against him (vide Annexure "7" to the writ petition) However, the writ petitioner was not released from custody. He then preferred the present writ petition to seek the necessary relief.

2. In the counter-affidavit filed on behalf of the respondent State the factual matrix has not been disputed. It is, however, pointed out that the writ petitioner, being a life convict, is not entitled to the benefit of the set off contemplated by section 428 of the Code of Criminal Procedure for the period during which he remained as an under-trial prisoner and consequently as yet he has only undergone. Imprisonment of nearly 7 years on the 9th of March, 1984. It is then the case of the respondent State there is no provision whatsoever in the Bihar and Orissa Jail Manual for the release of a life convict earlier than completion of 14 years" imprisonment inclusive of remissions earned and particular reliance is placed on Rules 527, 528, 529 and 710 of the Manual aforesaid. It is also averred that there is no provision either, in pari materia or even remotely corresponding to Rule 516-B of the Manual for superintendence and Management of Jails in Punjab (hereinafter referred to as "the Punjab Jail Manual"), and, it is expressly averred that the said Manual is applicable to the Jails in the Punjab and Haryana as also in the Union Territory of Delhi. Consequently, the firm stand taken is that in view of the absence of a provision similar to the Rule 516-B of the Punjab Jail Manual, and, on the other hand, the specific rules of the Bihar and Orissa Jail Manual, 1928, the writ petitioner, having not as yet completed 14 years of imprisonment, is thus wholly disentitled to a premature release.

3. When the present writ petition originally came up for hearing before the Division Bench on the 24th of January, 1984 learned Counsel for the writ petitioner placed basic reliance on Shri Niwas and Others Vs. Delhi Administration and Others, and the judgments of this court purporting to follow the same, in (1) Awadhesh Singh and another v. The State of Bihar and others (Criminal Writ

Jurisdiction Case No. 517 of 1982--decided on the 27th July, 1983, (2) Ranjit Kumar Singh v. The State of Bihar and others (Criminal Writ Jurisdiction Case No. 222 of 1983--decided on the 29th August, 1983). (3) Ramnath Prasad v. The State of Bihar and others (Criminal Writ Jurisdiction Case No. 135 of 1983--decided on the 9th November, 1983), and, (4) Harendra Singh v. The State of Bihar and others (Criminal Writ Jurisdiction Case No. 406 of 1983--decided on the 12th January, 1984).

4. The Bench, in its reference order, however, took the view that the observation in Shri Niwas and others v. The Delhi Administration (*supra*) was made primarily in the context of Rule 516B of the Punjab Jail Manual and not purport to lay down as law that any and every convict for life imprisonment, if he was below 20 years of age on the date of the commission of the offence, would be entitled to be released after completion of 10 years of imprisonment even in the States where no similar provision like Rule 516B aforesaid was in force. Apparently doubting the aforementioned judgments of this Court, the writ petition has been referred to a larger Bench and that is how the matter is before us.

5. As earlier, so before us the whole gamut of the argument of Mr. Braj Kishore Prasad, learned counsel for the writ petitioner, is rested on a hypertechnical reliance on the solitary opening paragraph of the judgment in Shri Niwas's case (*supra*). Pinning himself upon the said observation with total literality, he submitted that dehors any statutory provisions or Prisons Rules the final Court has therein laid down as an inflexible law that all convicts sentenced to life imprisonment, who were below the age of 20 years at the time of the commission of the offence, are mandated to be released on undergoing 10 years of imprisonment inclusive of remissions. Counsel fell back on Article 141 to submit that this was the law declared by the. Supreme Court and, therefore, inflexibly binding. In nutshell, the stand is that the final Court has laid down a general dictum for the whole of the country irrespective of the variations in the local laws or the respective Jail Manuals or governmental instructions in this regard. Indeed, the right of the convicts to be released on the completion of the terms of imprisonment specified above was pointed out as a twinkling star far above the horizon of any statutory provisions.

6. I may at the very outset regret my inability to endorse so doctrinaire a stand. Way back in *Quinn v. Leathern* (1901 App. Cas. 495) Lord Halsbury had succinctly pointed out that every judgment must be read as applicable to the particular facts proved, or assumed to be proved and further that a case is only an authority for what is actually decides and not what may seem to follow logically from it. Following the same with express approval it has been further observed in *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, that what is of the essence in a decision is its ratio and not every observation found therein and equally it is not a profitable task to extract a sentence here and there from a judgment and to build upon it. It is, therefore, well settled that a precedent is not to be read in total isolation of the facts in which it is inlaid and

more so beyond the parameters of the statutory provisions which provide its foundational base. It is in this context alone that one has to view the observation in paragraph 1 of Shri Niwas's case (supra).

7. Since the whole argument turns on the said observation, it is not only apt but indeed necessary to notice the same in extenso:

In the following writ petitions No. 915, 917, 921 to 929 and 934 to 938 of 82 the cases of these petitioners were recommended for release by the Superintendent of Jail on their completion of 10 years imprisonment inclusive of remissions since each one of them was aged below 20 years at the date of the commission of the offence. From the affidavit in reply which has been filed in these matters it appears clearly that the only ground on which their release orders have not been passed and consideration of their cases has been deferred is that the Sentence Revision Board is yet to ascertain the date of birth and the proof of each one's age at the date of the commission of the offence. We are informed that the material in this respect would obviously be lying with the jail authorities, first the judgment of the trial court where the age must have been mentioned and secondly when these convicts were admitted to jail the doctor under Rule 101 must have noted the age of each one of them. We, therefore, feel that there is no sufficient reason why their cases for release should not have been disposed of by now. We, therefore, issue a mandamus directing that all the above petitioners should be forthwith released. In case on ascertainment of the proof of age it is discovered in the case of any one of them that he was not below 20 years of age at the date of the commission of the offence, it will be open to the Delhi Administration to move the Court in that behalf when appropriate orders may be passed.

Now it seems manifest from the above and indeed it was the admitted position that the aforesaid observation was with regard to the convicts where the appropriate Government was the Delhi Administration. The respondent State in paragraph 7 of its counter-affidavit has categorically averred that the Punjab Jail Manual is in terms applicable in the Union Territory of Delhi as it admittedly is in the States of Punjab and Haryana. The relevant Part of Rule 516B of the Punjab Jail Manual, which is patently attracted to the situation, is in the following terms:

516-B. (a) With the exception of females and of males who were under 20 years of age at the time of commission of offence, the case of every convicted prisoner sentenced to:--

- (i) Imprisonment/s for life.
- (ii) Imprisonment/s for life and a term's of imprisonment.
- (iii) Cumulative periods of rigorous imprisonment aggregating of more than 14 years or
- (iv) a single sentence of more than 20 years:

(a)..... "

(b) the case of a female prisoner and of a male prisoner under 20 years of age at the time of commission of offence, who is undergoing--

(i) Imprisonment/s for life.

(ii) Imprisonment/s for life and a term/s of imprisonment.

(iii) Cumulative periods of rigorous imprisonment aggregating to more than 10 years.

(iv) A single sentence of more than 20 years shall be submitted through the Inspector-General of Prisons, Punjab, for the orders of the State Government when the prisoner has undergone a period of detention in jail amounting together with remission earned to 10 years.

(v) Notwithstanding anything contained above, a Superintendent, Jail may, in his discretion, refer at any time, for the orders of the State Government through the Inspector-General of Prisons, Punjab, the case of any prisoner sentenced to imprisonment for life whose sentence might in the Superintendent's opinion he suitably commuted into a term of imprisonment.

Now on a plain reading of the language of Rule 516-B aforesaid, it seems to be manifest that the observation of their Lordships in paragraph 1 of Shri Niwas's case (supra) was directly related and linked with the statutory provisions thereof. The language employed is indeed merely a paraphrase of the provision of Rule 516-B. It is with relevance to the said provision only that the brief observation in the peremptory order of their Lordships can be read to give its meaningful import. I am unable to hold that this observation can be torn out of context or divorced from the foundational statutory base of Rule 516-B of the Punjab Jail Manual on which alone they are rested. This appears to be more so from the emphasis placed on the factum of age of the convict being 20 years at the time of the commission of the offence and his having undergone 10 years' imprisonment inclusive of remissions.

8. Yet again their Lordships in terms referred to Rule 101 which mandates that the Doctor would note the age of each one of the convicts when they are admitted to jail. This provision concededly again forms part of the Punjab Jail Manual. Therefore, when reference was made to Rule 101 of the Punjab Jail Manual it follows that the reference with regard to 10 years of imprisonment inclusive of remissions and the age of the convict being 20 years at the time of the commission of the offence equally pertains to Rule 516-B of the Jail Manual. Indeed, this reference provides a further clue to the uncalled for riddle which learned counsel for the writ petitioner, Mr. Braj Kishore Prasad sought to weave ground that brief observation.

9. Yet again it also calls for pointed notice that the order in paragraph 1 of Shri Niwas's case (supra) was expressly hedged in by the conditions that the convicts

should be inflexibly proved to be below 20 years of age at the date of the commission of the offence. Their Lordships in terms held that if it was discovered that any one of them did not satisfy the condition (obviously spelt out in Rule 516-B of the Punjab Jail Manual), it would be open to the Delhi Administration to move the Court in that behalf for appropriate orders of reversal. It is thus plain that the order even when passed was either conditional if not somewhat interim or interlocutory in nature. The attempt of learned counsel for the writ petitioner to read too much into the same as being a inflexible declaration of law of general nature appears to me as an exercise in futility.

10. Nor can, the observation in Shri Niwas's case be read in isolation or in conflict with the earlier case of a larger Bench in Kartar Singh and Others Vs. State of Haryana, which was also presided over by V.D. Tulzapurkar, J. Therein his Lordships speaking for the Court repeatedly and expressly referred to Rule 516-B of the Punjab Jail Manual which undisputedly holds sway in the said two States. A reference to that judgment also throws a flood of light on the observation in Shri Niwas's case (supra) which proceeds on the inarticulate premise of the provisions of Rule 516-B within which it was rendered.

11. For all the aforesaid reasons, I do not and indeed cannot read the observation in Shri Niwas's case (supra) independently of Rule 516-B of the Punjab Jail Manual or to hold that, dehors the statutory provisions, and in a total vacuum, the final Court has legislated that all life convicts who are under 20 years of age on the date of the commission of the offence would be automatically mandated for release at the moment when they complete ten years of imprisonment including remissions if so recommended by the Superintendent of the Jail concerned. I would recall that we had pointedly pressed Mr. Braj Kishore Prasad whether, in the absence of any statutory provisions, he could, on principle (apart from precedent) advocate the proposition which he had canvassed with considerable ingenuity. With illimitable candour he conceded that his argument purports to flow only from the judgment in Shri Niwas's case (supra) and not on any other premise, principle or logic.

12. Even otherwise, the stand taken on behalf of the writ petitioner seems to be in headlong conflict with the relevant provisions of the Criminal Statutes and equally runs counter to a long line of precedents of the final Court itself which still hold the field. A reference to sections 54, 55, 55A and 57 of the Indian Penal Code would indicate that the appropriate Government alone may commute the sentence of death and imprisonment for life for any other punishment provided by the Code and further that in calculating remission of the terms of punishment, imprisonment has to be reckoned as equivalent to imprisonment for 20 years. Again section 432 of the Code of Criminal Procedure confers on the appropriate Government the power to suspend or remit sentences. Sub-section (5) thereof empowers such appropriate Government to make general rules or special orders or directions with regard to suspension of sentences and the conditions on which the petitions should be presented and dealt with. Section 433, which is in line

with the corresponding provisions of the Indian Penal Code, vests the appropriate Government with powers to commute sentence. The recently inserted provision of section 433A (by Act 45 of 1978) indicates restrictions on the power of remission or commutation where sentence of imprisonment for life has been imposed. Similarly section 59 of the Prisons Act lays down in terms that the power of remission vests in the State Government or the appropriate Government and from that fountain head Jail Manuals, statutory instructions or circulars are then issued by the authority to make such provisions. From the plethora of these provisions in the larger scheme of the Statute it seems to emerge that commutation, suspension and remission in sentence is by statute vested in the appropriate Government subject to procedural limitations and statutory safeguards spelt out therein.

13. In the context of the fact that the writ petitioner was sentenced to death which was later commuted to imprisonment for life, which sentence as yet enures, it has to be recalled that the final Court in *Gopal Vinayak Godse Vs. The State of Maharashtra and Others*, has observed as follows:

A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation of imprisonment for the whole of the remaining period of the convicted person's natural life.

Again:

Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The rules framed under the Prisons Act enable such a prisoner to earn remissions--ordinary, special and State--and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is only for the particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate the time of his death. That is why the rules provide for a procedure to enable the appropriate Government to remit the sentence under S. 401, of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under S. 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release.

The aforesaid ratio has undisputedly held the field and the most recent decision of the final Court in affirmation thereof is in the following terms in *Naib Singh Vs. State of Punjab and Others*,

Having regard to the aforesaid discussions, none of the grounds on which the petitioner's claim to immediate release rests can be held to be valid and, therefore, in the absence of any order of commutation having been passed either u/s 55 I.P.C. or section 433(b) of Cr.P.C. 1973, the petitioner is not entitled to be released.

14. Lastly the argument of Mr. Braj Kishore Prasad that Article 14 and the vice of discrimination would be attracted because of the fact that certain youthful convicts within the jurisdiction, where the Punjab Jail Manual holds sway, would be treated more favourably than those in Bihar has only to be noticed and rejected. As already noticed, section 432(5) of the Code of Criminal Procedure 1973 and other Acts vest the power in the State Government to make rules or give statutory directions or instructions to the State Government within their own jurisdiction. Merely because all such rules or statutory directions and instructions are not in pari materia or wholly identical in import, do not, in my view, render them in any way discriminatory. Law enacted in the plenary jurisdiction of the legislature or the statutory rules framed within the parameters of the powers conferred by a statute would not infract Article 14 or to be deemed discriminatory merely because they are in any way different or less liberal than those framed by a different legislature or enacted by way of subordinate legislation. It appears to me that the contention on the ground of discrimination is being advanced more by force of habit than on a sound legal footing and has consequently to be rejected.

15. It remains to advert to the four Division Bench cases of this Court referred to earlier in paragraph 4. It would suffice in this context to notice the first judgment in these series, namely. Criminal Writ Jurisdiction Case No. 517 of 1982 decided on the 27th of July, 1983. A perusal of somewhat brief order in the case leaves no manner of doubt that the issue was hardly agitated or debated on principle or precedent before the Bench. In fact the point that the judgment in Shri Niwas's case (supra) was rested on Rule 516-B of the Punjab Jail Manual was not even raised, far from being considered. In this context it seems to have been assumed, if not conceded, that the same was relevant or covered the issue. What appears to have influenced the Division Bench primarily was the fact that despite six opportunities having been given to the respondent State to decide the case of the writ petitioners, which was said to be under consideration, they did not do so and did not even extend the courtesy of informing the Court whether any decision had even been taken in the matter or not. It was in this context and without considering the specific issues which have been adverted to above that the Division Bench on the line of Shri Niwas's case (supra) issued a conditional order of release directing that if it was found that any one of the petitioners was not below 20 years of age at the date of the commission of the offence it would be open to the State Government to move the Court afresh in that behalf for appropriate orders. With respect it appears that in the absence of the point being specifically raised and the lack of adequate assistance thereon, the import of the observation in Shri Niwas's case (supra) was not correctly appreciated. With the

greatest deference it does not lay down the law correctly and has to be overruled. It is unnecessary to advert individually to Criminal Writ Jurisdiction Case Nos. 222 of 1983, 135 of 1983 and 406 of 1983, which either expressly follow or have the same tenor as the judgment in Awadhesh Singh's case (supra). For identical reasons with due deference I would feel compelled to overrule them as well.

16. To finally conclude:

The answer to the question formulated at the very outset is hereby rendered in the negative. It is held that in the absence of any rule or specific decision of the State Government in this regard, a life convict below the age of 20 years on the date of the commission of the offence has no inflexible right to be released on the completion of 10 years of imprisonment inclusive of remissions. The Division Bench judgments of this Court, referred to above, holding to the contrary do not lay down the law correctly and are hereby overruled.

17. Now in the light of the above, in the present case it is common ground that no provision in pari materia with Rule 516-B of the Punjab Jail Manual exists in the present statute in force in the State of Bihar. If at all, the somewhat corresponding provision is that of Rule 529 of the Bihar and Orissa Jail Manual. The relevant part of this somewhat exhaustive Rule is in the following terms:

529. The sentences of long term prisoners including those sentenced to transportation for life, or for a definite term, can also be revised by Government at the recommendation of the Boards of Visitors and the following orders have been issued by the Government on the subject:--

(i) Long term prisoners are confined in the Central Jail at Buxar, Bhagalpur, Gaya and Hazaribagh and in the district jail at Cuttack and the Boards of Visitors of those jails only are empowered to make recommendations for the revision of sentences of prisoners.

(ii) The Board of Visitors shall consider only such cases as are placed before it by the Superintendent of the Jail, and the case of no prisoner shall be sent up by the Superintendent unless he has served half the period of his sentence in the case of a non-habitual prisoner and two-thirds of it in the case of a habitual prisoner. This period will include the remissions which the prisoner has earned, but not the remissions granted in celebration of public events. The minimum period served, including remissions, must not be less than five years.

But the case of prisoners sentenced to transportation for life, shall be placed by the Superintendent before the Board after they have served 11 years including remissions earned-provided their crime was not of a calculated or deliberate nature and was not carried out with great brutality and their conduct in jail has been almost uniformly good.

(iii).....

(iv).....

(v).....

(vi).....

(vii) It is entirely within the discretion of the Government to accept or not the recommendation of the Board.

It is the admitted position that neither in the aforesaid rule nor in any other of Bihar and Orissa Jail Manual is there any provision dealing particularly with cases of life convicts below the age of 20 years at the time of the commission of an offence or any fixed period of 10 years of imprisonment which they may have undergone including remissions. Indeed in cases where the crime was of a calculated or deliberate nature and was carried out with brutality, the beneficial provisions of Rule 529 may altogether be excluded. Equally it is manifest from the rule that the revision of the sentence of life convicts is to be done on the recommendation of the Board of Visitors within the parameters of the conditions prescribed by Rule 529. What, however, calls for notice is that even this recommendation of the Board of Visitors is in no way binding and sub-rule (vii) of Rule 529 in terms states that it is entirely within the discretion of the Government alone to accept or not to accept the recommendation of the Board. When the statute itself provides that the grant or refusal of remission is entirely in the discretion of the State Government then clearly enough any mandamus to exercise such a power is uncalled for and seeking such a relief would be crying for the moon in the legal world. It is well settled that a mandamus lies only to enforce a clear and statutory duty imposed by law with a corresponding right in the petitioner to claim the same. Therefore, the Bihar and Orissa Jail Manual admittedly in force within the State does not give the least foot-hold to the present writ petitioner for a relief of the nature to which he lays claim. In the result, the present writ petition is without merit and is hereby dismissed.