
(1998) 06 KAR CK 0065
In the Karnataka High Court
Case No : Writ Petition No. 43838 of 1995

V. Shafeeque Ahmed

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 15-06-1998

Acts Referred:

Constitution of India, 1950 — Article 161, 226
Criminal Procedure Code, 1973 (CrPC) — Section 433 A
Mental Health Act, 1987 — Section 27

Citation : (1998) CriLJ 4480 : (1998) ILR (Kar) 3048

Hon'ble Judges : R.P. Sethi, C.J;M.B. Vishwanath, J

Bench : Division Bench

Advocate : Hasmath Pasha, for the Appellant; A.V.S. Reddy, Additional G.A., for the Respondent

Final Decision : Allowed

Judgement

M.B. Vishwanath, J.—In this writ petition (PIL) the petitioner has been convicted and was undergoing sentence of life imprisonment. The petitioner has since been released from the prison after completing his sentence.

2. The petitioner has prayed that he and his coprisoners, who fall within the following categories, should be directed to be released by means of an appropriate writ:

- 1) All convicted male prisoners sentenced to imprisonment for life even who are governed u/s 433-A of the Code of Criminal Procedure, and who have completed 10 years of sentence.
- 2) All convicted female prisoners sentenced to imprisonment for life, who have completed 8 years of sentence.
- 3) All convicted female prisoners sentenced to imprisonment for life, who are aged 65 years and above and who have completed 8 years of sentence.

4) All convicted prisoners who are either blind or suffering from -deadly diseases like cancer, AIDS, etc, and who have been recommended to be released on medical advice and who have completed a sentence of 5 years of imprisonment.

3. From the nature of the prayers made, it is clear, the petitioner has prayed that the male prisoners sentenced to imprisonment for life should be released after completion of 10 years of sentence, and if they are female prisoners, they should be released after completion of 8 years of sentence. His further prayer is that the female prisoners sentenced to imprisonment for life who are aged 65 years and above and who have undergone 8 years of sentence should be released. The petitioner has prayed that convicted prisoners who are blind or suffering from deadly diseases should be released after they have undergone 5 years of imprisonment, if they have been recommended to be released.

4. Article 161 of the Constitution clearly says that the Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

5. So it is for the Governor, on the recommendations of concerned authorities, to deal with remissions or respites of punishment or to commute the sentence. This Court cannot usurp the power of the Governor in a petition under Article 226 of the Constitution.

6. Section 433-A of the Code of Criminal Procedure says that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments according to law, ... such person shall not be released from prison unless he had served at least fourteen years of imprisonment. We have set out above the prayers-1 to 4. The petitioner has prayed that the term of imprisonment prescribed as per Section 433-A of the Cr.P.C. should be further reduced. This would be asking this Court to legislate and amend Section 433-A of the Cr.P.C. This cannot be done by this Court.

7. The learned Counsel for the petitioner set store by Maru Ram and Others Vs. Union of India (UOI) and Others, . We are unable to understand how this authority helps the petitioner. On the contrary, it goes against the petitioner. The Supreme Court has been pleased to affirm the current supremacy of Section 433-A over the Remission Rules and short-sentencing statutes made by the various States. The Supreme Court has been pleased to make it clear that the rules of remission may be effective guidelines of a recommendatory nature, helpful to Government to release to prisoner by remitting the remaining term.

8. The learned Government Advocate has made available to the Court the Karnataka Prison Manual, 1978 and the Karnataka Prison Rules, 1974.

9. Both the Manual and the Prison Rules are exhaustive and there is no scope for this Court to issue guidelines to the Government. We may add that whether in cases of this nature this Court can issue guidelines, as prayed for by the

petitioner, is highly debatable. We need not pronounce on this point in this PIL.

10. The learned Counsel for the petitioner relied on Section 27 of the Mental Health Act, 1987 (Central Act) to impress upon us the nature of admission and detention of mentally ill prisoners. This provision contemplates that a direction should be issued for the reception of a mentally ill prisoner into any psychiatric hospital, etc. It is not for this Court to issue directions as contemplated u/s 27 of the Mental Health Act in view of the Karnataka Prison Manual, 1978 and the Karnataka Prison Rules, 1974.

11. For the aforesaid reasons, we are of the opinion, there is and substance in the PIL. Accordingly it is dismissed.