

(1980) 02 KAR CK 0031
In the Karnataka High Court
Case No : WP 3565/79

Venkateshwara Rao

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-02-1980

Acts Referred:

Karnataka Prison Rules, 1974 — Rule 68

Citation : (1980) 2 KarLJ 55

Hon'ble Judges : Swami, J

Judgement

1. The petitioner, who is undergoing imprisonment for life in the Central Jail, Bangalore, in pursuance of the order of conviction and sentence passed against him for the offence punishable under S. 302 of the IPC, has moved this Court under Art. 226 of the Constitution for a direction to the respondents to consider his request for his immediate release under Rule 68 of the Karnataka Prison Rules, 1974 (hereinafter referred to as "the Rules").

2. The case of the petitioner is that he has not been keeping good health and the Medical Officer of the Central Jail, Bangalore, has certified that he is dangerously ill and that he is likely to die if he remains in confinement, therefore, he filed an application before the State Government under Rule 68 of the Rules for his immediate release and that application of the petitioner was referred to the authorities concerned under the Rules, namely, the District Magistrate and the Superintendent of Central Prison, Bangalore, who have no objection for releasing the petitioner, but the State Government has taken a view that in view of the medical report submitted by the Medical Board, the petitioner cannot be considered to be a person dangerously ill and as such there is no case for premature release of the petitioner.

3. The State Government has also filed the statement of objections taking the same stand. During the pendency of the writ petition, the State Government was also directed to get the petitioner examined once again. Accordingly, the petitioner was examined by the Medical Board on 2-1-1980. The Board opined

that the condition of the petitioner is as follows:

"Sri Venkateswara Rao was examined by the Medical Board including Orthopaedic Specialist on 2-1-1980. On examination we found Sri Venkateswara Rao has evidence of Diabetes Mellitis, hypertension (160/60) and evidence of old Myocardial Infarction, and Osteoarthritis of Lumbo-sacral spines. However, his general condition is satisfactory. E.C.G. shows no evidence of any fresh. Ischemic changes There is no evidence of any serious complication.

Please note the patient was examined by the Medical Board on 13-6-1979. His condition is almost same since the last examination, except that he has now evidence of Osteoarthritis of the Lumber Spine.

This does not require hospitalisation or immobilisation, could be treated by medical line of treatment."

4. Sri H. Subramanya Jois, the learned Counsel appearing for the petitioner, submitted that as per Rule 68 of the Rules, it is only the certificate issued by the Medical Officer of the Jail that alone should be taken into account and not the opinion expressed by the Medical Board-Therefore, it was submitted that in view of the medical certificate issued by the Medical Officer of the Jail, the petitioner is entitled for a premature release. The ultimate decision on the question as to whether the convict should be prematurely released or not has to be taken by the State Government and that decision has to be arrived at on the basis of the medical opinion. The certificate issued by the Medical Officer of the Jail only enables the petitioner to move the State Government for his premature release. The State Government need not base its decision only on the certificate issued by the Medical Officer of the Jail. For the purpose of arriving at a decision as to whether the convict should be prematurely released under Rule 63 of the Rules, it is always open for the State Government to seek the opinion of the Medical Board which consists of expert doctors in various specialities. Merely because there is a certificate issued by the Medical Officer of the Jail in terms of Rule 68 of the Rules, the State Government is not precluded from getting the convict examined by the Medical Board in order to satisfy itself that there is a case of premature release When once a person is convicted and sentenced to undergo an imprisonment for life for the offence punishable under S. 302 of the I.P.C. as per the provisions contained under Sec. 433-A of the Code of Criminal Procedure, 1973, the convict has to undergo an imprisonment for 14 years and such person shall not be released from prison unless he had served at least fourteen years of imprisonment. Therefore, unless it is established beyond controversy by the medical opinion that the prisoner is dangerously ill and that his illness has not been purposely caused or aggravated by the prisoner himself and that his illness whether caused by imprisonment or not, will be so aggravated by further detention to render his early death likely and that the prisoner will have a reasonable chance of recovery if released, the State Government cannot be directed to release the prisoner prematurely. Therefore, the contention of the learned Counsel that in view of the certificate issued by the Medical Officer of the

Jail the petitioner ought to have been released prematurely cannot be accepted. However, from the Medical Report of the Medical Board it is clear that the petitioner is suffering from cardiac Ischemia. In view of this even though as per the medical report the petitioner may not be entitled for premature release under Rule 68 of the Rules, but, nevertheless, this is a case in which the petitioner is required to be examined at certain intervals by a competent doctor.

Therefore, while rejecting the writ petition it is sufficient to observe that the State Government shall see that the petitioner is examined thoroughly by a competent doctor, apart from the medical officer of the Jail once in four months for a period of one year and if during such examination, it is found that the petitioner is dangerously ill, it is open for the petitioner to renew his request for premature release.

With these observations, this writ petition is rejected.