

Azim Shah and ors. Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Aug-26-1981

Reported in : 1982CriLJ1135

Judge : H.G. Mishra and ; R.K. Vijayvargiya, JJ.

Appellant : Azim Shah and ors.

Respondent : State of Madhya Pradesh

Judgement :

H.G. Mishra, J.

1. This petition is by the six convicts praying for their release on the ground that they have undergone fourteen years imprisonment, having been sentenced to undergo life imprisonment on the dates specified in column No. 3 of their petition, ranging between 24-7-1972 to 17-7-1976.

2. The petition is resisted by the respondent-State on the grounds that the petitioners are not entitled to the benefit of the ratio of Mohan Singh v. State of M. P. (1980 Jab LJ 746 :1981 Cri LJ 147) because the sentence undergone by them as on 26-1-1978 was below fourteen years, including the remissions allowed to them and that the sentence having been awarded prior to insertion of Section 433A by Code of Criminal Procedure (Amendment) Act No. 45 of 1978, imprisonment for life means imprisonment for rest of the life of the convict and that after completion of fourteen years sentence, the matter has to be placed before the State Government for proper orders, as envisaged by Rules 358 and/or 698, as the case may be. Accordingly, the petitioners have no right to maintain the petition for their release straightway in this Court.

3. Having heard the petitioners and Shri Jaisingh, Adv. who was requested by this Court to appear as an amicus curiae and Shri S. Kulshreshtha, Dy. Government Advocate for the State, we are of the opinion that the petitioners are not entitled to issuance of a writ directing their release, but only to issuance of a direction to the respondent-State to consider their case as envisaged by Rules 358 and/or 698 made in exercise of powers conferred by Section 50 of the Prisons Act No. IX of 1894, known as Jail Manual and in the manner indicated therein.

4. It is not in dispute between the parties that the petitioners had not undergone fourteen years sentence, including the remissions allowed to them as on 26-1-1978. Accordingly, they are not entitled to the benefit of the Notification No. 4531/17(E)/271/78/21/X-G, issued by the State Government Under Section 432(1) of the Code of Criminal Procedure, 1973.

5. In view of this factual position, the ratio of Mohansingh's case 1981 Cri LJ 147) (Madh Pra)(supra, does not govern the situation. By. Section 32 of the Amendment Act No. 45 of 1978. Section 433A was inserted in the Code of Criminal Procedure with effect from 17-12-1978. According to Section 433A, 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 provided by law, or where a sentence of death imposed on a person has been commuted Under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment. (Emphasis supplied). The aforesaid provision has been held to be prospective in its operation by their Lordships of the Supreme Court in Maru Ram v. Union of India : 1980CriLJ1440 . Every person who has been convicted by the sentencing Court before December 18, 1978, shall be entitled to the benefits accruing to him from the Remission Scheme or short sentencing projects as if Section 433A did not stand in his way.- (See para 55 of Maru Ram's case 1980 Cri LJ 1440)(supra).

6. Now, the conviction of the accused-petitioners being prior to insertion of S.. 433A in the Code of Criminal Procedure, the concept of 'imprisonment for life' remains as it was before 17-12-1978. Rule 2(h) of the Jail Manual of this State defines the term 'sentence of imprisonment for life' as under :

R. 2. In these rules, unless the context otherwise requires,-(h) Sentence of imprisonment for life' shall be deemed to mean imprisonment for twenty years-

Rule 358, which is placed in Part IV (Admission, Custody, Employment, Dieting, Treatment and Release of Prisoners) placed in Chapter II, reads as under :

R. 358. - (1) When a prisoner has been sentenced to imprisonment for life whether or not he has also been sentenced to a term of imprisonment, or when he has been sentenced to a term of imprisonment exceeding 14 years, he shall be considered for release as soon as the term already undergone (together with any remission earned under the rules) and such other special remission if any as have been granted by the Government in celebration of any public event amounts to fourteen years. His case shall be reported to the State Government through the Inspector-General with full information regarding the character of his crime, his conduct in prison and the probability of his reverting after release to criminal habits or instigating others to commit crime, in order to enable the State Government to decide whether he should be released and if so, whether he should be subjected to police supervision or other suitable conditions. If the State Government decides that he should not be released, then after two years from the State Government's order his case shall be reported again for further consideration.

(2) The Superintendent of the Jail in which the prisoner is undergoing his sentence shall be primarily responsible for -submitting the report under Sub-rule (1).

Now, Rule 698, which is placed in Part XI (Remissions and Reduction of Sentences) provides that :

R- 698.- (1) Where the sentences are to run consecutively and their aggregate is more than 20 years, the State Government may review the case prior to the prisoner's completing 20 years including remission. If the State Government considers that it is a fit case for remission they may remit the unexpired sentences Under Section 401 of

the Code of Criminal Procedure, 1898. If the appropriate Government for the purposes of remission is the Central Government, a suitable recommendation shall be made to the Central Government. 'Life convict' means a person sentenced to imprisonment for life.

(2) The case of life convicts and of all prisoners sentenced to more than 14 years' imprisonment or imprisonment for life and imprisonment for terms exceeding in the aggregate 14 years shall, when the terms of imprisonment undergone, together with a remission earned under the rules, amounts to 14 years, be submitted for the orders of the State Government.

7. Construing the aforesaid provisions as well as the provisions placed in Rules 359, 717 and 718 of the Rules, this Court in the case of *Kanhaiyalal Vaidya v. State of M. P.* (1973 Jab LJ 451) has observed thus :

Rule 2(h) of the rules framed Under Section 59 of the Prisons Act, 1894, only says that for the purposes of the rules framed under the Act, a sentence of imprisonment for life has to be calculated as an imprisonment for 20 years and it is precisely on the basis of this calculation that for the purposes of Rules 358, 359, 698, 717 and 718 of the rules that an officer in charge of the jail in which the prisoner is confined, has to determine as to whether the prisoner, has or has not undergone a sentence of 14 years inclusive of the remission earned by him. No other interpretation can be put to the provisions of Rule 2(h) of the rules framed under the Act. AIR 1981 SC 600:1961(1) Cri LJ 736) relied on.

It has also been observed in the case of *Kanhaiyalal Vaidya* (1973 Jab LJ 451)(supra) as under :

The case of a life convict, who has undergone a particular sentence of imprisonment has to be submitted to the State Government for orders for consideration Under Section 401, Criminal Procedure Code and it is only when the State Government remits the remaining part of the sentence that a life convict can be prematurely released otherwise under the sentence awarded to him he has to remain as a prisoner for the remaining part of his life.

The view taken by this Court in the aforesaid case is in line with the law laid down in *State of M. P. v. Ratan Singh* AIR 1976 SC 1562 : 1976 Cri LJ 1192. After construing the provision placed in Section 57 of the Indian Penal Code, 1860, and Section 401 of the Code of Criminal Procedure, 1898, and the various provisions placed in the Jail Manual, the position governing the situation has been laid down thus (para 9 :

From a review of the authorities and the statutory provisions of the Code of Criminal Procedure, the following propositions emerge :

(1) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence Under Section 401 of the Code of Criminal Procedure.

(2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner;

(3) that the appropriate Government which is empowered to grant remission under Sec 401 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor State and not the transferee State where the prisoner may have been transferred at his instance under the Transfer of Prisoners Act; and

(4) that where the transferee State feels that the accused has completed a period of 20 years it has merely to forward the request of the prisoner to the concerned State Government, that is to say, the Government of the State where the prisoner was convicted and sentenced and even if this request is rejected by the State Government the order of the Government cannot be interfered with by a High Court in its writ jurisdiction.

8. In this view of the matter the report in the cases of convicts like the petitioners has to be submitted for orders to the State Government and on perusal of the report, the State Government has to exercise its discretion in the matter as envisaged by the aforesaid rules, placed in the Jail Manual- Admittedly, in this case the report, as contemplated by the rules (Rules 358 and/or 698, does not appear to have been submitted to the State Government for necessary orders. Before the State Government exercises its discretion in the matter, the petitioners cannot be permitted to approach this Court straightway for soliciting their release. Needless to observe that in case the State Government does not exercise its discretion in a judicial manner or acts arbitrarily or acts in a manner which is discriminatory and/or violative of any provision of the Statute or the Constitution of India, the extraordinary jurisdiction vested in this Court may be invoked.

9. An attempt to rely on the decision of this Court in *Karansingh v. The State of M. P.* (Misc. Petn. No. 272 of 1981, decided on 18-8-1981) was made to solicit a direction of their release. The observations relied on for the purpose are in para 4 of the decision, which are as under :

Now, it is not disputed by Shri Surjeet Singh that the sentence for life imprisonment was made for U years prior to the insertion of the aforesaid provision.

The decision in *Karansingh's case supra*) turns on the concession made by the learned Government Advocate appearing in that case. Accordingly, it is decision on a concession. As such, it cannot act as a precedent. The concept of 'sentence for life imprisonment' accordingly cannot be taken to have been laid down in the case of *Karansingh (supra)* and its connotation has to be taken as discussed above.

10. Before parting with the case we have to record our thanks for the invaluable assistance rendered by Shri Jaisingh, Advocate in deciding the case.

11. In view of the discussion aforesaid, the petitioners are not entitled to a writ, order or direction directing their release. The State Government is, however, directed to get report from the authorities concerned as expeditiously as possible, as envisaged by the appropriate rules and pass necessary orders without loss of time they deem fit in accordance with the rules applicable to the situation. The petition is, therefore,

dismissed.

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