

Arjun Vs. State Of Karnataka And Ors

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Court : Karnataka Kalaburagi

Decided On : Jul-26-2023

Judge : Suraj Govindaraj

Appeal No. : WP 201808/2023

Appellant : Arjun

Respondent : State Of Karnataka And Ors

Judgement :

- 1 - NC:

2023. KHC-K:5815 WP No.201808 of 2023 R IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH DATED THIS THE26H DAY OF JULY, 2023 BEFORE THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ WRIT PETITION NO.201808 OF2023(GM-POLICE) BETWEEN: ARJUN S/O LAKKAPPA HURAKANNAVAR, AGED ABOUT40YEARS, OCC: PRISON, R/O CTP NO.762, CENTRAL JAIL, KALABURAGI, AS PETITIONER IS IN CUSTODY, REPRESENTED BY HIS FATHER, LAKKAPPA NEELAPPA HURAKANNAVAR S/O NILLAPPA HURAKANNAVAR, AGED ABOUT77YEARS, R/AT MUDENUR VILLAGE, RAMDURG TALUK, BELGAUM DISTRICT-598335. PETITIONER (BY SRI. GIRISH M. PATIL, ADVOCATE) AND:

1. STATE OF KARNATAKA REPRESENTED BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF LAW, JUSTICE AND HUMAN RIGHTS, BENGALURU-

560001.

2. STATE OF KARNATAKA REPRESENTED BY ITS UNDER SECRETARY, DEPARTMENT OF HOME, PRISON AND CINEMA, BENGALURU-560001.

3. THE DIRECTOR GENERAL POLICE AND INSPECTOR GENERAL OF PRISONS, - 2 - NC:

2023. KHC-K:5815 WP No.201808 of 2023 SHESHADRI ROAD, BENGALURU-560001.

4. THE CHIEF SUPERINTENDENT OF CENTRAL PRISONS CENTRAL JAIL NATIONAL HIGHWAY218 KALABURAGI, KALABURAGI DISTRICT-585308. RESPONDENTS (BY SRI SHIVAKUMAR R. TENGLI, AGA FOR R1 TO R4) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT OR

ORDER

AS PER ANNEXURE-F, QUASH THE

ORDER

DATED1503.2023 BEARING NO.KEKAKA/NYAVI-1/762/2023 AS ISSUED BY THE RESPONDENT NO.4 AND DIRECT RESPONDENT NO.4 TO CONSIDER THE REQUEST MADE BY THE PETITIONER TO EXTEND REMISSION AND RELEASE HIM FROM CENTRAL PRISON, KALABURAGI ON PAROLE FOR90DAYS IN ACCORDANCE WITH LAW AND ETC. THIS PETITION COMING ON FOR

ORDER

S, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 The petitioner is before this Court seeking for the following reliefs: a. Issue Writ of Mandamus or any other appropriate Writ or Order as per Annexure-F, quash the order dated 15.03.2023 bearing No.KEKAKA/Nyavi- 1/762/2023 as issued by the

respondent No.4 and direct to respondent No.4 to consider the request made by the petitioner to extend remission and release him from Central Prison, Kalaburagi on parole for 90 days in accordance with law. b. Issue any other Writ or Order or Direction that deems fit to grant in the circumstances of the case in the interest of justice and equity.-. 3 - NC:

2023. KHC-K:5815 WP No.201808 of 2023 2. The petitioner was convicted in S.C.No.50/2018 by the First Additional District and Sessions Judge, Bagalkot, for offenses under Sections 143, 147, 148, 504, 324, 326, 302 r/w Section 149 of the Indian Penal Code, 1860 (IPC for short) for life imprisonment. Aggrieved by the same, the petitioner has filed an appeal in Criminal Appeal No.100002/2021 which is pending before this Court at Dharwad Bench. The bail application which had been filed in the said matter has been rejected.

3. The petitioner being in custody from 06.04.2018 had submitted an application on 07.12.2022 to the Jail Authorities for his release on parole by giving various reasons. The said application for parole was rejected on 15.03.2023 on the ground that a Criminal Appeal filed by the petitioner is pending as also a bail application is pending. It is aggrieved by the same that the petitioner is before this Court.-. 4 - NC:

2023. KHC-K:5815 WP No.201808 of 2023 4. Sri.Girish M. Patil, learned counsel for the petitioner would submit that the petitioner's right to file an appeal having been exercised, the authorities cannot deny parole merely because he had exercised such right of appeal and as such, he submits that the Endorsement dated 15.03.2023 at Annexure-F is required to be quashed and a direction to be issued to the authorities to release the petitioner on parole.

5. Sri Shivakumar R. Tengli, learned Additional Government Advocate appearing for the respondents submits that in terms of sub-clause (i) of Clause (j) of sub-rule (2) of Rule 191 of the Karnataka Prison Rules, 1974 (Rules, 1974 for short), in the event of any case pending before the Court, the applicant would not be eligible for consideration of parole. The said rule has been subsequently amended on 16.05.2022 by inserting the words "or bail applications" which would make an applicant ineligible for consideration of parole when an appeal - 5 - NC:

2023. KHC-K:5815 WP No.201808 of 2023 is pending or a bail application is pending. On these grounds, he submits that the rejection of the parole application being in terms of the rules, the petition making out no grounds is required to be dismissed.

6. Heard Sri.Girish M.Patil, learned counsel for the petitioner and Sri Shivakumar R. Tengli, learned Additional Government Advocate for the respondents and perused papers.

7. The short question that arises for determination in the present matter is whether an application for Parole can be rejected merely because an Appeal has been filed or a bail application is pending consideration?.

8. Clause (j) of sub-rule (2) of Rule 191 of Rules, 1974 prior to the amendment is reproduced hereunder:

"191. Release under Section 56.- (2) (a) to (i) xxxx (j) The following shall be the eligibility conditions for release of prisoners on ordinary parole:- - 6 - NC:

2023. KHC-K:5815 WP No.201808 of 2023 (i) A prisoner who has been classified as habitual criminal for the purpose of these rules and who has had more than three convictions or against whom cases are pending before courts (for offences punishable with death or imprisonment for more than 7 years) shall not be eligible for parole. (ii) At the time of release the prisoner must have served on half of his sentence including remission, or a period of not less than two years of sentence including remission, whichever is less and there should be a gap of six months between two paroles. (iii) His conduct in prison has been good.

9. The amendment carried out to sub-clause (i) of Clause (j) of sub-rule (2) of Rule 191, is as under:

"in clause (j) a. in sub clause (i) after the words "against whom cases" the words "or bail applications" shall be inserted and b. the words and brackets "(for offences punishable with death or imprisonment for more than 7 years)" shall be omitted.

10. By virtue of both the rule and the amended rule, an application for parole filed by a convict in custody can be rejected initially when the cases are pending, subsequently, by way of amendment where the bail applications are pending. In my considered opinion, a - 7 - NC:

2023. KHC-K:5815 WP No.201808 of 2023 case pending would not take into consideration an appeal, because an appeal is filed in furtherance of a conviction. It is on such conviction and being in custody, that a parole application is filed, the cases which are pending mentioned in Clause (j) has to be read ejusdem generis in association and conjunction with the earlier words which relate to a prisoner who has been classified as habitual criminal and had more than three convictions or against whom cases are pending, that would only mean cases other than the case in which the accused has been convicted are pending.

11. In the event of there being any other criminal cases against the accused, the same could be taken into consideration by the prison authorities for rejection of the parole application. The word "cases" as afore observed in my opinion, cannot include an appeal filed from an order of conviction. This I say so for the reason that if such an interpretation as contended by - 8 - NC:

2023. KHC-K:5815 WP No.201808 of 2023 learned Additional Government Advocate is accepted, then it would result in a situation where a person convicted of an offence if files an application for parole without filing appeal, his application would be considered. But, merely because, a convict has filed an appeal, his application would stand rejected due to the filing of an appeal.

12. This would amount to a fetter being imposed by the executive under a subordinate legislation on a right to file an appeal by a convict which can never be the case, more so, when the right to file an appeal in terms of conviction is a right guaranteed under Article 21 of the Constitution of India. The Apex Court as also this Court provides legal aid and legal assistance to a convict to file an appeal under the aegis of the Legal Service Authority, be it either the National Legal Service Authority or the Concerned State Legal Service Authority. On the one hand, when filing an appeal on a conviction being - 9 - NC:

2023. KHC-K:5815 WP No.201808 of 2023 recognized to be a right guaranteed under the Article 21 of the Constitution of India which is supported by the Courts, on the other hand, the executive seeking to restrict the exercise of such right by imposing a fetter of not considering an application for parole, if an appeal is filed would act contrary to and is an antithesis to Article 21 of the Constitution.

13. Thus, for both the above reasons, I am of the considered opinion that the word "cases" which is used in sub-clause (i) of clause (j) of sub-rule (2) of Rule 191 of Rules 1974, can only mean cases other than the case where the accused has been convicted and would not include an appeal from the case where an order of conviction is passed.

14. Insofar as the further contention that the parole application has been rejected on account of pendency of a bail application, there may be some substance, in considering the pendency of a bail application while considering an application for - 10 - NC:

2023. KHC-K:5815 WP No.201808 of 2023 parole, inasmuch as, if a bail application were to be allowed, the question of grant of parole would not arise. It is only when a bail application is rejected, the question of considering a parole application would arise. Thus, even where a bail application is rejected, the application for parole would have to be considered in terms of the applicable law and if no grounds are made out entitling the applicant to be released on parole, the said application could be rejected, otherwise, the same would have to be allowed.

15. In that view of the matter, I pass the following

ORDER

i. The Writ Petition is partly allowed. ii. The relief sought for is moulded, the endorsement issued by the fourth respondent dated 15.03.2023 at Annexure- F, is hereby quashed. The matter is remitted to the fourth respondent to - 11 - NC:

2023. KHC-K:5815 WP No.201808 of 2023 reconsider the application for parole in terms of the above observation and in accordance with law, within fifteen days from the date of receipt of a certified copy of this order. iii. It is made clear that this

Court has not made any observation as regards the entitlement or not of the petitioner for parole. This Court has only made observation on the eligibility of the petitioner to file an application for parole. iv. The learned Additional Registrar (General) is directed to forward a copy of this order to the Director General of Police, Bengaluru, for onward distribution to the concerned authorities. A translated copy of the above order in Kannada shall also be so forwarded. Sd/-
JUDGE NB List No.:

1. SI No.: 1

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