

Hom Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-22-1992

Reported in : 1993CriLJ2892

Judge : R.R.K. Trivedi and ;S.K. Verma, JJ.

Acts : Uttar Pradesh Prisoners' Release on Probation Act, 1938 - Sections 2 and 8; Indian Penal Code (IPC) - Sections 148, 149, 302 and 323; [Constitution of India](#) - Article 226; Uttar Pradesh Prisoners' Release on Probation Rules, 1938 - Rule 3

Appeal No. : Civil Misc. Writ Petition No. 35954 of 1992

Appellant : Hom Singh

Respondent : State of U.P.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Dileep Kumar, Adv.

Disposition : Petition dismissed

Judgement :

R.R.K. Trivedi, J.

1. By means of this petition legality of the order dated 28-5-1992 passed by the learned Sessions Judge, Etawah, has been questioned by the petitioner. By the

aforesaid order, bail granted to petitioner on 21-5-1986 in pursuance of the order dated 11-7-1984 of the Hon'ble Supreme Court has been cancelled and the petitioner has been directed to be taken into custody for serving out the sentence.

2. Facts necessary for appreciating the controversy involved in the present writ petition are that petitioner Horn Singh was tried, convicted and sentenced to life imprisonment in Sessions Trial No. 74 of 1973, under Section 302/149, 323/149 and 148, I.P.C., by order dated 30-7-1973, passed by Sessions Judge, Etawah. The aforesaid order became final to the petitioner and he was transferred to Central Jail, Fatehgarh for serving out the sentence on 22-4-1979 from Etawah District Jail. Petitioner filed Writ Petition No. 2778 of 1983 before Hon'ble Supreme Court. The writ petition of the petitioner along with a bunch of petitions was decided on 11-7-1984 with a direction to the State Government to decide the application of petitioner for release on licence, within a period of five months and if the application is not disposed of within the aforesaid period, the petitioner shall be released on bail to the satisfaction of the concerned District and Sessions Judge, who shall satisfy himself that the application of the petitioner has actually not been disposed of within the time limit specified above. The order also directed that in case of application being rejected, it shall be open to the State Government to move an application before the concerned District and Sessions Judge for cancellation of the bail. The order dated 11-7-1984 passed by the Hon'ble Supreme Court is being reproduced below :-

'In the above Writ Petitions the cases of the petitioners for release under the U.P. Prisoners' Release on Probation Act, 1938 have already been considered by the State Government and postponed for observing further conduct in ail. Their cases would be reconsidered after the expiry of the period for which they have been postponed. A writ of mandamus to be issued to the State Government to consider and dispose of their applications for release after the expiry of the postponed period. If for any reasons the applications are not disposed of within a period of five months after the expiry of the period for which they have been postponed the petitioners are directed to be released on bail to the satisfaction of the concerned District and Sessions Judge who shall satisfy himself that the applications have not been disposed of within the time limit specified above. In case of real hardship

bail may be granted on execution of personal bond.

In the event of the applications being ultimately rejected by the State Government it will be open to the State Government to move the concerned District and Sessions Judge for cancellation of bail and the persons will be at liberty to challenge the order of rejection, if so advised, in the concerned High Court. The writ petitions are disposed of accordingly.'

3. In pursuance of the aforesaid order, petitioner was released on bail on 21-5-1986 from Central Jail, Fatehgarh. State Government moved an application on 5-3-1992 for cancellation of the bail of the petitioner stating that his application under Section 2 of the Uttar Pradesh Prisoners' Release on Probation Act, 1938 (hereinafter referred to as the Act) had been rejected on 26-7-1986 and the petitioner is not entitled to remain on bail and the bail may be cancelled. On this application a notice was issued to the petitioner from the date 1-4-1992. The learned Sessions Judge, Etawah, after hearing both the parties, has cancelled the bail by order dated 28-5-1992 and has directed the petitioner to be taken in to custody and for being committed to jail to serve out the sentence passed against him. Aggrieved by this order, the petitioner has approached this Court under Article 226 of the Constitution.

4. We have heard learned counsel for petitioner and learned Standing Counsel and also perused the record. Learned counsel for petitioner has made following submissions for challenging the impugned order :-

(i) That the order dated 26-7-1986 passed by the State Government is not the final disposal of the application of the petitioner as its consideration has been postponed for one year. As the application has not yet been finally disposed of as directed by Hon'ble The Supreme Court and the application is surviving, the bail granted to the petitioner could not be legally cancelled. Learned counsel for petitioner has placed reliance on judgment of the learned single Judge of this Court dated 3-5-1988 in Criminal Misc. Application No. 2951 of 1988 which has been filed as An-nexure VI to the writ petition.

(ii) That though the application of the petitioner under the Act was rejected on 26-7-1986 the application for cancellation of bail has been moved by the State Government after about six years and after such a long time there is no justification for sending the petitioner to jail.

5. We have considered the submissions made above. From a perusal of the application moved by the petitioner in Form A, under Section 2 of the Act, it appears that it was moved on 15-2-1985. This date is mentioned against the thumb impression of petitioner in the column meant for his declaration that he shall follow the conditions if released on licence. The form was received in the office of the District Magistrate on 15-3-1985, it was forwarded by the District Magistrate on 11-3-1986 and the Probation Board made its recommendation on 30-5-1986. Thereafter the application was rejected by the State Government on 26-7-1986, by the order which has also been mentioned in the application Form A and is being reproduced below:

^ftyk eftLVsV rFkk ftykizkscs'ku vf/kdkjh us cUnh dh eqDrh dk fojks/k fd;k g SA cUnh }kjk izLrkforvfHkHkkod mi;qDr ugha gS vr,o cUnh dh eqDrh fnukad 26&07&1986 dksfopkjsijkUr vLohdkj dj nh xbZ rFkk ;g fu.kZ; fy;k x;k fd ,d o'kZ vifjgkjltk Hkksxus ds i'pkr ftyk eftLVsV @ izkscs'ku cks MZ dh ouhu lLrqfr lfgr fopkjfd;k tk;sxkA**

6. The order of the Supreme Court relied on by the petitioner and filed as Annexure II to this writ petition, appears to be communication by Assistant Registrar of Hon'ble Supreme Court. This letter bears the date 11-7-1984. It shows that the order in Writ Petition No. 2778 of 1983 must have been passed by Hon'ble Supreme Court prior to 11-7-1984. From a close scrutiny of the documents filed as Annexures II and V to the writ petition, it appears that the application of the petitioner in Form A for release, under Section 2 of the Act, was not even pending on the date when order of the Hon'ble Supreme Court was passed. His application is dated 15-2-1985 and it was received in the office of the District Magistrate on 15-3-1985, i.e. after the orders of the Hon'ble Supreme Court. The petitioner thus secured his release on bail on 21-5-1986 by placing wrong facts. This conduct on the part of the petitioner is sufficient to reject this petition. However, considering

the question involved in this petition, we have thought it proper to consider and decide the points argued on behalf of the petitioner.

7. Considering the first submission first, we are of the opinion that the order dated 26-7-1986 disposed of the application of the petitioner finally in clear terms. It was not kept pending as argued by the learned counsel. Under the Act, the release on licence is contemplated under Section 2 while release on account of remittance of the sentence is contemplated under Section 8 of the Act. Rule 3 of the U.P. Prisoners' Release on Probation Rules, 1938 provides classes of prisoners who shall be ineligible for release under the Act. Clause 3 (c) reads as under :-

'those whose application for release other than an application under Section 8 of the Act, been on a previous occasion rejected by the State Government.'

8. The effect of clause (c) of Rule 3 is that once the application of the petitioner, under Section 2 of the Act, moved in Form A was rejected by order dated 26-7-1986, he became ineligible for being released and his application could not survive any more. A close scrutiny of the latter part of the order dated 26-7-1986 makes it clear that after serving out the sentence for one year, the fresh recommendations of the District Magistrate and the Probation Board shall be considered by the State Government under Section 8 of the Act.

9. The learned counsel for the petitioner, however, placed strong reliance on the judgment of the learned single Judge dated 3-5-1988, filed as Annexure VI to this writ petition. From the order passed by the State Government rejecting the application for release which was in question before the single Judge, it appears that the decision of the application was postponed for two years and in the circumstances, it was held that it could not amount to disposal of the application in Form A. In our opinion, the order of the State Government passed on the application of the present petitioner is very clear in terms and does not keep the application pending as found by the learned single Judge in the case before him. There is yet another reason for not accepting the submission made on behalf of the petitioner. Hon'ble Supreme Court in its order clearly contemplated that the petitioner shall be at liberty to challenge the order rejecting his application for release before the High Court. The order rejecting the application was passed on

26-7-1986 but the petitioner has not challenged the same nor did he surrender for serving the sentence for one year as contemplated in the order. The order has become final against him. The petitioner has not challenged the order even after service of the notice given to him on the application moved by the State Government for cancellation of his bail. In these circumstances, as the petitioner felt satisfied with the order and he failed to challenge the same before this Court or before any other authority, the submission made on behalf of the petitioner cannot be accepted on the ground that the application has not been disposed of finally.

10. So far as the second submission made on behalf of the petitioner on ground of delay in moving the application for cancellation of bail we are of, opinion that the submission cannot be accepted. It is true that the State authorities could not move swiftly after rejecting of the application of the petitioner on 23-5-1986. It is very sad on the part of the public functionaries to cause such a delay in such important matter. A person convicted of a heinous offence had been allowed to remain outside prison for such a long time but on account of this negligence and callous action on the part of the public authorities, advantage cannot be claimed by the petitioner. One way petitioner can also be blamed for this long delay as he never bothered himself about the fate of his application nor did he challenge the order dated 23-5-1986 when it came to his knowledge. The petitioner was set free in pursuance of the order of Hon'ble Supreme Court and it could be reasonably expected from him to take care of his application and the orders passed thereon. In our opinion, the petitioner can also be equally blamed for this delay and he cannot be absolved of the responsibility to serve out the remaining part of the sentence. He can be exempted from serving out the sentence only in accordance with law for which he is not entitled at the moment.

11. For the reasons recorded above, in our opinion, this writ petition has no force and is accordingly rejected. The petitioner shall be taken into custody for serving out the sentence as directed by the learned Sessions Judge, Etawah, by order dated 28-5-1992.

12. A copy of this judgment shall be sent by the office to the Home Secretary of State of U.P., to the Inspector General of Prisons, U.P. and to the Director General

of Police, U.P., for necessary action and to get scrutinised all the cases of such release on the basis of the orders of the Hon'ble Supreme Court.

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