

Rajendra Kumar Vs. State Govt. of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Jul-07-1994

Reported in : 1995CriLJ303

Judge : U.L. Bhat, C.J., ;M.V. Tamaskar and ;N.P. Singh, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 428; Madhya Pradesh Prisoners' Release on Probation Act, 1954 - Sections 2, 3 and 9; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 401, 428, 433A, 432(2) and 433 ; Utter Pradesh Prisoners' Release on Probation Act, 1938; Madhya Pradesh Prisoners' Release on Probation Rules, 1954 - Rules 3, 4, 5 and 6

Appeal No. : M.P. No. 1457 of 1994

Appellant : Rajendra Kumar

Respondent : State Govt. of Madhya Pradesh and ors.

Advocate for Pet/Ap. : S.L. Saxena, for Amicus Curiae, ;Dilip Naik, Dy. A.G.

Judgement :

ORDER

1. The Order of the Court was delivered by U.L. Bhat, C.J. This case has been referred to a Full Bench by Division Bench at Gwalior in view of conflict between Division Bench decisions of this Court in Ramsewak v. State of M.P., (1993) 2 MPJR 111 (FB). Bankar v. State of M.P., MP No. 2 of 1987: (1988 MPLJ 369) and

Tularam v. State of M.P., MCC No. 339 of 1990: (1991) 2 MPWN 53. Since none appeared for the petitioner, we heard learned Government Advocate and Shri S.L. Saxena who assisted the Court.

2. Petitioner was convicted by the Sessions Court, Gwalior under Sections 302, I.P.C. on 23-2-1988 and sentenced to undergo imprisonment for life. He was an under-trial prisoner from 1-10-1985 to 9-10-1986 (one year and 8 days). Thereafter, he underwent the sentence from 23-2-1988 till the date of filing of the petition on 19-7-1993 (5 years, 4 months and 26 days). He earned remission of 2 years and 3 months. The total of these periods would be 8 years, 8 months and 24 days. It appears that he was on interim bail for 3 months and 3 days. According to the petitioner, he has thus undergone sentence of 8 years, 4 months and 24 days till date of petition and eligible to be released on licence by the State Government under Rule 4 of the M.P. Prisoners' Release on Probation Rules, 1954 (for short the Rules), read with Section 2 of the M.P. Prisoners' Release on Probation Act, 1954 (for short the Act).

3. The bone of contention in this case is whether in considering the eligibility of the person for consideration for release on licence, besides the period of sentence actually undergone after the date of conviction, period of under-trial detention which may be set off under Section 428 of the Code of Criminal Procedure (for short the Code) could also be reckoned. There is no dispute that the period of remission cannot be reckoned as the rules stand at present.

4. The Act was enacted to provide for release of certain persons on conditions imposed by the State Government. Section 2 declares that notwithstanding anything contained in Section 401 of the Cr. P.C., 1898 (corresponding to Sec. 432 of the Cr. P.C., 1973), where a person is confined in a prison under a sentence of imprisonment and it appears to the Government from his antecedents and his conduct in the prison that he is likely to abstain from crime and lead a peaceable life if he is released from prison, the Government may, by licence, permit him to be released on condition that he be placed under the supervision or authority of a Government Officer or of a person professing the same religion as the prisoner or such institution or society as may be recognised by the

Government for the purpose, provided such other person, institution or society is willing to take charge of him. Section 3 states that licence under the provisions of Section 2 shall be in force until the date on which the person released would, in execution of the order of warrant authorising his imprisonment, have been discharged from prison had he not been released on licence or until the licence is revoked whichever is earlier. Section 4 enjoins that the period during which a person is absent from prison by a licence which is in force, shall be reckoned as part of the period of imprisonment to which he was sentenced for purposes of computing the amount of remission of sentence which might be awarded to him under any rules in force relating to such remission. Under Section 7, Government has power to revoke the licence. Section 8 empowers the Government to remit whole or part of the sentence on certain conditions. Under Section 9, Government may make rules in regard to various aspects including classes of offenders who may be conditionally released and the period of imprisonment after which they may be released and for carrying into effect the purposes of the Act.

5. The Rules have been framed by virtue of the power vested in the State Government under Section 9 of the Act. Rule 3 enumerates the classes of prisoners who shall not be released under the Act. The enumeration does not include persons convicted under Section 302, I.P.C. and hence the provisions of the Act and the Rules would be applicable to such convicts. Rule 4 declares that any prisoner other than those specified in Rule 3 who has served one third sentence of imprisonment or a total period of five years without remissions, whichever is less, may be released by Govt. on licence. Rule 5 provides, inter-alia, that remission already earned by the prisoner shall be counted as imprisonment served by him and sentence of imprisonment for life shall be reckoned as 20 years. Rule 6 deals with procedure for release. After the prescribed procedure is followed, the government may pass such order as deemed proper. It is the guardian's duty to see that conditions of the licence are fulfilled. The Rules also provide for revocation of licence under the recommendation of the District Magistrate, after observing due procedure.

6. The earliest decision adverted to in the order of reference is one dated 27-1-1987 in Bankar's case. The petitioners in those cases completed more than six

years' imprisonment including the period of remission and under-trial period. Before the amendment of Rule 4 of the Rules with effect from 12-6-1989, as the rule originally stood, the period of five years was to be reckoned with remissions. By the 1989 amendment, the word 'with' has been substituted by the word 'without'. Learned Single Judge upheld the claim by eligibility mainly relying on the decision of Division Bench in Nainram v. State of M.P., 1987 MPLJ 685: (1987 Cri LJ 1981) and the directions given by the Supreme Court in Bhimbhu's case, W.P. No. 320 of 1985, and other connected cases. Nainram's case arose under the Prison Rules relating to pre-mature release of prisoners sentenced to undergo life-imprisonment and who have under-gone 15 years of sentence including remissions and has no bearing on the question under consideration, we shall advert to Bhimbhu's case later.

7. The next decision is in the case of Ramsewak who was under-going imprisonment for life. He underwent actual imprisonment of 4 years, 1 month and 7 days as on the date of the petition. The Division Bench held that the period of remission cannot be reckoned in view of amendment to Rule 4 of the Rules. The Bench also held that the period of under-trial detention cannot be regarded as period in which sentence was served. The petitioner in that case relied on the decision in Rameshwar Prasad v. State of M.P., 1986 MPLJ 1 (DB), in support of his contention that the under-trial detention period should also be reckoned. Rameshwar Prasad, undergoing life imprisonment completed 15 years of sentence including remissions and under-trial detention period. The State Government on the occasion of the Independence Day of 1984 granted special remission to prisoners who had under-gone 15 years of sentence. The Government order specifically mentioned that the period of under-trial detention has to be excluded but the remission granted has to be included for reckoning the period of imprisonment already under-gone. The Division Bench noticed the decision of the Supreme Court in Bhagirath v. Delhi Administration, AIR 1985 SC 1050: (1985 Cri LJ 1179), over-ruling the earlier decision in Kartar Singh, AIR 1982 SC 1439: (1982 Cri LJ 1772) to hold that sentence of imprisonment for life is a sentence for a term of imprisonment and a person so sentenced is entitled to set off period of under-trial detention subject to provisions of Section 433A and provided the competent authority passes the Order under Section 432(2) or

Section 433 of the Code. The Division Bench held that the Government Order directing exclusion of period of under-trial detention in computing the period of detention undergone is contrary to Section 428 of the Code and is bad. The Bench in Ram Sewak's case held that the decision in Rameshwar Prasad's case has no application to a case under the M.P. Act and Rules since it does not lay down that under-trial detention period shall be treated as sentence served by the prisoner and Rule 4 of the Rules speaks of serving sentence of a particular period and does not refer to under-trial detention period.

8. The Order in Tularam v. State of M.P., MCC No. 339 of 1990 (MP) assumes that under-trial detention period has to be taken into consideration, without discussing the law on the subject.

9. We are not in this case concerned with the effect of Section 433A of the Code, that is because, the Act and the Rules deal with release of convict persons on licence and such release is not remission of punishment under Section 432 of the Code or commutation of sentence under Section 433 of the Code. Provisions of the Act and the rules enable limited enlargement on licence and the period of licence will be regarded as legislatively sanctioned imprisonment of a less and liberal type and such licenced enlargement will be reckoned as imprisonment for computing period of sentence undergone (see observations in Maru Ram v. Union of India, AIR 1980 SC 2147 Para 72: (1980 Cri LJ 1440) with reference to U.P. Prisoners' Release on Probation Act, 1938).

10. The decision in this case has to rest entirely on the scheme and the provisions of the Act and the Rules. The preamble of the Act is to provide release of certain prisoners on conditions imposed by the Government. Section 2 empowers the Government to release by licence prisoners undergoing sentence of imprisonment in certain circumstances. Rule 4 which deals with eligibility for release states as follows:--

Save the prisoners specified in Rule 3 any other prisoner who has served one-third of his sentence of imprisonment or a total period of five years with remissions, whichever is less may be released by the Government on licence.

In order to acquire eligibility, the prisoner should have served 1/3rd of his sentence of imprisonment or a total period of five years without remission, whichever is less. The view taken in Ram Sewak's Case is that under-trial detention period is not the same as the period of sentence undergone and, therefore, the former cannot be reckoned for the purpose of computing the latter. Section 428 of the Code mandates set-off of under-trial detention period against the term of imprisonment imposed. For certain purposes, Section 428 of the Code is applicable to prisoners sentenced to imprisonment for life also.

11. In *Government of Andhra Pradesh and Anr. v. A.V. Rao*, AIR 1977 SC 1096: (1977 Cri LJ 935) the question arose whether the benefit of remission system under the Prisoners Act, 1894 would be available to a prisoner for the period during which he was in jail as under-trial prisoner before conviction. The High Court held that remission is available with regard to period of under-trial detention period. The Supreme Court held that Section 428 of the Code only provides for set off, it does not do away with the difference in the two kinds of detention namely, under-trial detention and imprisonment on sentence and does not put them on the same footing for all purposes, that the Prison Act does not confer any right on the prisoner to claim remission, the question of remission is entirely within the province of the government and remission cannot be earned the period of under-trial detention period.

12. In Writ Petition Criminal No. 1128 of 1983 and connected petitions *Sukhdas Hansda v. State of U.P.*, considering the cases of prisoners sentenced to life imprisonment who had undergone imprisonment for a period which together with period of remission earned by them exceeded 14 years, Supreme Court held that for purposes of considering whether the cases of those prisoners should be examined for premature release under the relevant provisions of the W.B. Jail Manual, there was no reason why the period of imprisonment undergone by them as under-trial prisoners should not be taken into account. This decision was approved by Constitution Bench in *Bhagirath v. Delhi Administration*, AIR 1985 SC 1050: (1985 Cri LJ 1179).

13. In Bhimbhu's case, the prisoners had undergone period of imprisonment required for eligibility, taking into consideration remissions and under-trial periods. But their applications had not been forwarded to the District Magistrate concerned. The Supreme Court held that the petitioners were entitled to be considered for release on licence under the Act and directed the Superintendent, Jail to forward their application and directed I.G. Prisons to consider the applications within a period of six months. This decision was rendered before the amendment to Rule 4 of the Rules substituting the words 'with remission' by the words 'without remission'. But the decision to the effect that under-trial period is to be reckoned stands. The view is supported by the decision of the Supreme Court in Sukhdas Hansda's case. It is true that Section 428 of the Code does not totally do away with the difference in two kinds of detention, namely under-trial detention and detention after conviction. The provision for set-off of the period of imprisonment required to be undergone applies in the generality of cases and is of some consequences even in a case of sentence of imprisonment for life. To the extent of set-off, the sentence is deemed to have been undergone. A broad view has to be taken in interpreting Rule 4 of the Rules taking into consideration the significant purpose underlying the Act. It could not have been the intention of the rule-making authority to deny the benefit to an accused who either did not seek bail or could not obtain favourable order on his bail application or could not furnish necessary security required by the Court while extending the benefit to accused who have been successful in securing a bail. The decision of the Supreme Court in A.V. Rao's case (1977 Cri LJ 935) relates to earning remission on under-trial detention period. It will not affect the reasons we have adverted to and the decision of the Supreme Court in Bhimbhu's case. It is unfortunate that the decision in Bhimbhu's case and Bankar's case were not brought to the notice of the Bench which decided Ram Sewak's case. We hold that under-trial detention period has to be reckoned for the purpose of deciding eligibility under Rule 4 of the Rules. The decision in Ram Sewak's case does not lay down the correct law.

14. We dispose of the petition directing the Superintendent of Prison in which the petitioner is committed to forward petitioner's application for release on licence to the appropriate authority within one month from today. If the application has been forwarded already, we direct the respondents 1 to 3 to treat the petitioner as

eligible and have his application considered on merits.

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