

Jai Prakash Vs. the State

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Court : Delhi

Decided On : Apr-20-1988

Reported in : 1989CriLJ1938; 1988(2)Crimes186; 35(1988)DLT182; 1988(15)DRJ81

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 433A

Appeal No. : Criminal Writs No. 461 and 518 of 1987

Appellant : Jai Prakash

Respondent : The State

Judgement :

Charanjit Talwar, J.

1. Jai Parkash, the petitioner herein has filed two writ petitions seeking identical relief. The petitioner is undergoing imprisonment for life having been convicted and sentenced under S. 302 of the Penal Code vide judgment dated the 1st July, 1977. He was about 17 years of age at the time of commission of the offence, i.e., 10th February, 1977. His plea is that being less than 20 years of age at that time, he was entitled to be released and set at liberty within the ambit of sub-para (b) of

paragraph 516-B of the Punjab Jail Manual, as applicable to, Delhi, after completing 10 years of R.I. with period of remissions.

2. In answer to rule nisi, the respondents have filed the affidavit of Shri R. T. L. Disuza, Superintendent, Central Jail No. 2, Tihar, New Delhi. It appears to be the admitted case that the Superintendent Jail had recommended the case of the petitioner for premature release but the Sentence Revising Board in its meeting held on 25th June, 1987 had rejected the same. As the recommendations of the Board have a bearing on the decision of this case, the said minute of the meeting is being quoted :

'Jai Parkash s/o Bhim Singh

The convict was sentenced on 1-7-77 for life imprisonment for killing one Ram Piary with iron rod following a quarrel over a common piece of land known as gitwar. At the time of offence, the convict was 17 years old and was kept at Borstal Jail, Faridkot. The convict has undergone a total sentence of 13 years and 12 days including remissions and under-trial period as on 30-9-86.

The Supdt. of the Jail has recommended his case for premature release although it has also been reported that the convict was punished for committing jail offence on quarrelling with inmates on 9-9-78, 13-3-79, 18-7-79, 19-4-80, 17-9-80, 18-10-80, 8-4-81 and 12-7-81. The police report is not available on record. The learned members of the Board took cognition of heinous nature of crime, i.e., killing of innocent old woman on a very small matter. The Board after considering all the facts and circumstances find that it is not a fit case to be recommended for premature release.'

3. During the course of arguments Mrs. Ahlawat raised an additional plea which was based on a decision of the Supreme Court in *Hawa Singh v. State of Haryana*, : 1987 CriLJ1919 . She urged that it is clear from the minutes of the said Board's meeting that the petitioner who was just about 17 years of age was kept in a Botstal institution after his conviction. His transfer to the Central Jail, Tihar thereafter from Borstal Institution, Faridkot, was not permissible under the law. Mr. Sodhi, learned counsel for the State informed us that the case of the petitioner

was again to be placed before the Sentence Revising Board in its meeting to be held in January, 1988. By a letter of 3rd February, 1988, the Superintendent Jail informed the Registrar of this Court that the petitioner along with 13 other convicts had been ordered to be released as their unexpired portions of sentences were being remitted. Thereafter by a letter of 6th, February, 1988, the Registrar was informed that the addition of the name of the present petitioner in the list of detenus was by way of 'an inadvertent typographical, error'. The minute of the meeting of the Sentence Revising Board held in January, 1988 has not been forwarded to us. Thus, the petition is to be confined to the validity of the reasons of the Board contained in the minute (quoted above).

4. However, before advertng to that aspect, we may note that the argument of Mrs. Ahlawat that the petitioner could not have been transferred from the Borstal institution to the Central Jail, Tihar but instead was entitled to be released forthwith because of the provisions of the Punjab Borstal Act, 1926, no longer survives in view of the judgment of the Supreme Court in Subhash Chand v. State of Haryana, decided on 11th January, 1988 (since reported in : 1988 CriLJ907 wherein Hawa Singh's case (supra) was overruled and it was held that 'The Punjab Borstal Act does not have application to an offence punishable under S. 302 of the Penal Code thereforee, the conclusion in Hawa Singh's case, : 1987 CriLJ1919 is not correct. The petitioner is not entitled to the benefit of the Punjab Borstal Act as he has been sentenced to imprisonment for life for the offence of murder punishable under S. 302, I.P.C. for which the sentence of death is prescribed as an alternative.'

5. It is admitted by the Jail Superintendent in his affidavit that the petitioner was convicted and sentenced on 1st July, 1977, i.e., prior to the enforcement of S. 433-A of the Code of Criminal Procedure. This provision which has been held to be not retrospective enjoins that a person convicted for life imprisonment has to serve 'at least 14 years of imprisonment'. That period obviously would not include the remissions earned by a convict. In the present case, however, the maximum period for which the petitioner can be detained is 20 years inclusive of remissions. It is for that reason that it is stated in the counter-affidavit that as on 30th September, 1987, the unexpired portion of sentence of the petitioner was 5 years

7 months and 6 days. As per the calculations made in the counter affidavit, the total period of sentence, including the under-trial period and the, period of remissions which the petitioner has undergone is stated to be 14 years 4 months and 25 days. The procedure of grant of remissions under the various Jail Manuals has been upheld by the Supreme Court in Maru Ram v. Union of India, : 1980 CriLJ1440 . Paragraph 516-B(a) of the Jail Manual lays down the action to be taken on expiry of 14 years in case of males who are over 20 years of age at the time of commission of the offence. Sub-para (b) of the said paragraph lays down the action to be taken on expiry of 10 years in case of males who are less than 20 years of age at the time of commission of offence. That provision reads as follows :

'Action to be taken on expiry of 10 years - (b) the case of a female prisoner and of a male prisoner under 20 years of age at the time of commission of offence, who is undergoing :-

(i) Imprisonments for life

(ii) Imprisonment/s for life and a term/s of imprisonment.

(iii) Cumulative periods of rigorous imprisonment aggregating to more than 10 years, or

(iv) A single sentence of more than 20 years shall be submitted through the Inspector General of Prisons, Punjab for the orders of the State Government when the prisoner has undergone a period of detention in jail amounting together with remission earned to 10 years.

(v) Notwithstanding anything contained above, a Superintendent, Jail may, in his discretion, refer at any time for the orders of the State Government through the Inspector General of Prisons, Punjab, the case of any prisoner sentenced to imprisonment for life whose sentence might in the Superintendent's opinion be suitably commuted into a term of imprisonment.'

6. It is the above provision which is applicable in the present case. It is admitted by the respondents as is evident from the minute of the Sentence Revising Board that

the petitioner was 17 years of age at the time of commission of offence. Paragraph 516-B read as a whole makes distinction between males who are over 20 years of age and those who are less than that age. Their cases have to be dealt with differently. The case of the petitioner herein was to be put up by the Jail Superintendent for premature release after the expiry of 10 years of sentence including the period of remissions earned by him, but it appears that his case is being equated with those males who come within the purview of sub-para (a) of Paragraph 516-B. Be that as it may, the recommendation of the Sentence Revising Board with which the Administrator of Delhi has agreed for not remitting the unexpired portion of sentence was based only on the fact that an innocent old woman had been killed by the petitioner on a very small matter. It is the gravity of the crime which weighed with the Sentence Revising Board. The recommendation of the Jail Superintendent for premature release of the petitioner was overruled on that very ground. We have held in various cases of similar nature that the recommendations of the Jail Superintendent are of paramount importance while considering the cases for premature release. In Harbhajan Singh v. Lt. Governor of Delhi (Cr. Writ No. 475/87, decided on 3rd March, 1988), reported in (1988) 2 Cri 268 we held that the gravity as such of the offence would not diminish even after the expiry of 20 years of sentence. The circumstances and the motive for the crime would not change. The extent of brutality of the offender is a factor to be kept in mind while considering the case of a convict for pardoning him under the constitutional powers, when the pardon is being sought immediately after the conviction or within 14 years of sentence (with or without remission as the case may be). In a case like the present it has to be dealt with under the procedure of remission and premature release. As noticed above, the guidelines laid down in various remission rules and short sentences provisions, which are provided under the Jail Manual have been upheld by the Supreme Court in Maru Ram's case : 1980 CriLJ1440 subject, however, to the provision of S. 433A of the Code of Criminal Procedure. We may further note that in the counter-affidavit a grievance has been made that the petitioner was punished for committing the jail offences, i.e., quarrelling with inmates on 9 or 10 occasions. The Sentence Revising Board has not taken that aspect into account and rightly so as the 'Note' under the said Paragraph 516-B of the Jail Manual makes it clear that such a jail offence is not to

be kept into view. The note reads :-

'Note - For the purposes of preparing the rolls of prisoners under the above rules sentence awarded to a prisoner for an offence committed while in prison or during suspension of sentence will not be taken into account.'

7. It has been held by this Court in *Dr. N. S. Jain v. Delhi Admn.* reported in (1985) 2 Cri 521, that the recommendations of the Sentence Revising Board which recommendations have been accepted by the Administrator of Delhi are open to judicial review. We have followed that principle in a number of cases. In the present case we hold that the consideration by the Board has not been a valid consideration in law as it was not based upon cogent material. The petitions are allowed. We direct that the petitioner's unexpired portion of sentence be remitted and he be released prematurely from Central Jail, Tihar New Delhi.

8. Petitions allowed.

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