

Rattan Kumar Vs. State

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Court : Delhi

Decided On : Mar-25-1988

Reported in : ILR1988Delhi222

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

Acts : [Probation of Offenders Act, 1958](#) - Sections 14 and 17; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 360, 432, 433 and 433-A; [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

Appeal No. : Criminal Writ Petition Nos. 508 of 1987 and 517 of 1987

Appellant : Rattan Kumar

Respondent : State

Advocate for Pet/Ap. : S.T. Singh, Adv

Judgement :

Charanjit Talwar, J.

(1) The petitioners in the two separate writ petitions are seeking directions to the State for their premature release as according to them they have already undergone over 14 years rigorous imprisonment. Their plea is that their cases have been recommended by the Jail Superintendent within the ambit of paragraph 516-B of the Punjab Jail Manual and hence they are entitled to be released

forthwith.

(2) Rattan Kumar is the petitioner in Criminal Writ Petition No. 508/87. Vijay Singh who was a co-accused with him in the murder case has filed a separate petition which has been numbered as Criminal Writ Petition No. 517/87. They were found guilty of the offence under Section 302 read with Section 34, Indian Penal Code and were sentenced to life imprisonment vide judgment dated the 6th January, 1977. As they were convicted prior to the enforcement of Section 433-A of the Code of Criminal Procedure, they do not have to mandatorily undergo 14 years actual rigorous imprisonment. As per the counter-affidavits filed by the respondents, Rattan Kumar has undergone a total period of sentence of 16 years 4 months and 14 days. This period includes remissions earned by him for good conduct. As on 30th September, 1987, the unexpired portion of sentence in his case was 3 years 7 months and 16 days. Vijay Singh has undergone total period of sentence including remissions of 15 years 11 months and 11 days as on 30th September, 1987. His unexpired portion of sentence was 4 years and 19 days, as on that date. As per the provisions of Paragraph 516-B of the Punjab Jail Manual, their cases for premature release were put up before the Sentence Revising Board Along with the recommendations of the Superintendent, Jail, Tihar. The Board in its meeting held on 25th June, 1987 considered the cases of the petitioners but did not recommend the same. A copy of the minutes of the meeting of the Board has been annexed with the returns. The reasons for rejecting them are as follows : 'Rattan Kumar s/o Balram The convict Along with two of his accomplices namely Vijay Singh and Laxmi Narain, killed Smt. Kesra Devi by strangulating her with the motive of stealing of her ornaments. It was the case of robbery-cum-murder. The case of his co-accused Vijay Singh s/o Ram Narain, is placed at Sr. No. 22 of this agenda. The convict was 22 years old at the time of offence. He has undergone a sentence of 14 years 11 months and 18 days including remissions and undertrial period as on 30-9-86. The Jail authorities have recommended his case on the grounds that he has shown improvement in his conduct and promoted as convict night watchman. The local police have strongly opposed the release on the grounds that there is an apprehension of breach of peace. The Chief Probation Officer has also not recommended the release on the same grounds as the police have mentioned. 225 In view of the facts and circumstances of the case, the Board

feels that the case of convict Rattan Kumar s/o Balram is not a fit case for recommending his premature release. Vijay Singh s/o Ram Narain The convict is a co-accused of Rattan Kumar s/o Balram whose case has been considered at Sr. No. 21 of this agenda. The facts of the case are common. The convict was 23 years old at the time of offence. He has undergone sentence of 14 years 4 months and 21 days including undertrial period and remissions as on 30-9-86. The Jail authorities have recommended his release on the ground of satisfactory conduct of the convict. The local police has strongly opposed his release apprehending breach of peace in the locality. The recommendation of the Chief Probation Officer is not in favor of the release. In view of the above facts and circumstances the Board feels that the case of the convict Vijay Singh s/o Ram Narain, is not a fit case for premature release.'

(3) The Administrator of Delhi has agreed with the recommendations of the Board. The petitioners are challenging the; decision of the Board. It is urged in the petitions that 'rich and influential convicts have managed to attain their freedom by various means but a poor common convict like the petitioner is forced to suffer in silence.' From the record it seems that rule nisi was issued in Rattan Kumar's case (Cr. Writ 508/87) but in the other case of Vijay Singh (Cr. Writ 517/87) only notice to the State to show cause why rule nisi be not issued was ordered. Arguments in these two cases were also heard Along with other similar petitions, a number of which already stand decided We issue rule D.B. in Cr. Writ No. 517/87 also.

(4) This judgment disposes of both the petitions as common questions arise for consideration.

(5) We have held in various cases that the recommendations of the Jail Superintendent are of paramount importance in considering the cases for premature release. That is our interpretation of the scope of paragraph 516-B of the Punjab Jail Manual Admittedly that condition is fulfilled in the present petitions. It is clear from the minutes of the 'meeting of the Board (quoted above) that the cases of the petitioners were not recommended for premature release because (1) the Probation Officer has opposed the same and (2) the local police have also not recommended their release. Their reasons being that it would lead to

apprehension of breach of peace in the locality. We will firstly deal with the question whether the report of the Probation Officer in case of a convict who is undergoing life imprisonment and has completed over 14 years rigorous imprisonment can be made the basis for rejection of the Jail Superintendent's recommendations by the Board or the authority acting within the purview of Sections 432 and 433 of the Code of Criminal Procedure.

(6) We are informed that Chief Probation Officer is a member of the Sentence Revising Board. His views in each case are to be given due weight but can those over-ride the recommendations of the Jail Superintendent under whose custody a convict has remained for over 14 years. The legal position is that his 'report' cannot be considered as if it is made under the Probation of Offenders Act. Section 14 of the [Probation of Offenders Act, 1958](#) lays down duties of the Probation Officer. That Section reads :

'14. Duties of Probation Officer :- A Probation Officer shall, subject to such conditions and restrictions as may be prescribed :- (a) inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the Court in determining the most suitable method of dealing with him and submit reports to the court; (b) supervise probationers and other persons placed under his supervision and, where necessary, endeavor to find them suitable employment; (c) advise and assist offenders in the payment of compensation or costs ordered by the court; (d) advise and assist in such cases and in such manner as may be prescribed, persons who have been released under Section 4; and (e) perform such other duties as may be prescribed.'

(7) Section 17 of the said Act empowers the State Government with the approval of the Central Government to make rules to carry out the purposes of that Act. The object of the Act is to prevent the conversion of youthful offenders into criminals as a result of their association with hardened criminals of matured age. It embodies humanitarian approach of reformation. The Act does not apply to persons who have been held guilty of having committed the offences punishable with death or imprisonment for life. The duties as enumerated above, including the duty of

supervision is qua. the probationers who have been released or are intended to be released under the Probation of Offenders Act or under Section 360 of the Code of Criminal Procedure. At this stage the petitioners cannot be considered to be youthful offenders or adolescents. They have already completed over 14 years rigorous imprisonment including the period of remissions. They have not been in touch with the society for such a long time. We have not been told as to how a Probation Officer acting as a 'Probation Officer' appointed under the said Act is empowered to oppose the cases of such like convicts for premature release, which cases were recommended by the Jail Superintendent. It is possible for the Probation Officer to say that a probationer's rehabilitation in society is difficult or that he would not be able to assist him (the life convict) in the event of his premature release after 14 years of sentence. That eventuality would not materially change after the expiry of about four more years, i.e., the unexpired portion of the sentences and especially so in the case of poor men. We say four years, as within the ambit of remission schemes and policy under the provisions of the Punjab Jail Manual, the maximum sentence which a life convict is to undergo is 20 years with remissions. It is for that reason that in the return the respondents have shown the unexpired portions of sentence of the petitioners as being 3 years 7 months and 16 days and 4 years and 19 days respectively. The circumstances and the motive for the offence for which these petitioners were convicted would not change after the expiry of that period. Neither would the social environments and the conditions for rehabilitating them in the society improve.

(8) We find from the minutes that the Probation Officer has agreed with the local police who have opined that the release of the petitioners would lead to apprehension of breach of peace. That seems to be the sole ground on which he is opposed to their release. That seems to us to be a law and order problem with which the Probation Officer cannot be said to be concerned. We may add that we are confining our observations only to the cases of life convicts and not to the cases which fall within the purview of the Probation of Offenders Act or under Section 360 of the Code of Criminal Procedure. therefore, in the cases of life convicts, discreet enquiries by the Probation Officer (in his capacity as a member of the Board) regarding the offenders' character and antecedents and social environmental conditions might become necessary and given freightage but

certainly not his opinion as given in the present cases. We hold that the opinion of the Chief Probation Officer which has weighed with the Sentence Revising Board is not at all cogent. The decision of the Sentence Revising Board while keeping that opinion in view is thus vitiated.

(9) Now to deal with the report of the local police regarding their apprehension that premature release of these petitioners would result in breach of peace. By keeping the petitioners whose cases admittedly have been strongly recommended by the Jail Superintendent in confinement for about 3-4 years, i.e., the unexpired portions of their sentence, would also be of no help to the society as this apprehension would most probably continue to prevail. It cannot be said that retribution is the only aim of the society. The relations and friends of the deceased would not forget in these 3-4 years that the present petitioners had committed the dastardly crime. It is because of the gravity of the offence that they were sentenced to life imprisonment. In a number of cases we found that the convicts who are similarly situate as the present petitioners, were ready even to leave Delhi, some of them atleast for the unexpired portions of their sentences. Even these petitioners would be asked not to reside in the locality where the crime was committed for the next 3-4 years. That would in our view meet the ends of justice. In case the petitioners are not seen in that locality where the relations of the deceased live, there would be hardly any ground for apprehension of breach of peace. Any how the law and order situation has to be controlled under various provisions of law by the local police authorities and the administration.

(10) We hold that the decision of the Sentence Revising Board which is open to judicial review, is to be set aside as it is based on invalid grounds. We accept the petitions and direct the release of the petitioners subject, however, to their furnishing a bond in the sum of Rs. 5,000 with a surety in the like amount to the satisfaction of the Jail Superintendent, for maintaining peace and good behavior for the next three years.