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Court : Rajasthan

Decided On : Dec-11-1984

Reported in : 1985(1)WLN57

Judge : S.N. Bhargava and; D.L. Mehta, JJ.

Appeal No. : D.B. Cr. Misc. Application No. 569 of 1984

Appellant : Ramju

Respondent : The State of Rajasthan

Disposition : Petition dismissed

Judgement :

D.L. Mehta, J.

1. This is a third bail application moved by the accused-petitioner before this Court.

2. Heard learned Counsel for the accused-petitioner and the learned Public Prosecutor for the State and also perused the record of the case. We find no force in the application for suspension of sentence. The application is, therefore, rejected.

3. Mr. Rao, appearing on behalf of the accused petitioner, submits that the case may be heard out of turn and he prays that the case may be listed either in the month of January or February, 1985.

4. We have inherited the concept of equality from our past heritage and it has not been borrowed from any western civilisation. The concept of equality which we have inherited from the past has been enshrined in the Constitution of India. In the Preamble of the Constitution, we have pledged to secure social, economic and political justice equality, equality of status and opportunity. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Thus, equality is a fundamental right guaranteed under the Constitution. Under Article 21 of the Constitution liberty to the citizens has been granted and is a fundamental right.

5. The question arises whether the Courts are equally treating the persons equally situated or not. Further more, we the guardian of liberty will have to take note that the liberty of the citizen is not crushed by our whims.

6. This is the practice of the courts that whenever a request is made for early hearing of the case out of turn, it is accepted while rejecting the application for suspension of sentences. The parties who engage counsel with long purse pray to the Court for preparation of paper book out of turn and the prayer is granted and as soon as the preparation of the paper book is complete within a short space of a month or two, then a further prayer is made that the case may be taken out of turn. It has become the practice of this Court to grant such prayers.

7. We, the Judges, are on trial. Millions of down trodden people who are looking to the affairs of the Court, feel that the Courts are meant for the rich and not for the poor. We are on trial and we are facing the trial in the dock of the millions of down-trodden, deaf and dumb citizens. There is a general verdict that the rich people engage a good lawyer as they are in a position to make heavy payment to the Advocates. The people having long purses and having vocal advocates pray to the Court to get their cases decided at the earliest and it is generally accepted.

8. Today, in the cause-list we find that the appeals which were instituted in the year 1980 are pending and most of the appellants in these cases are persons who are not in a position to engage a lawyer and who have been provided Legal aid by the Court. If the Courts cannot decide the innocence or the guilt of the persons who are behind the bars for years together, then, in fact we are not imparting justice. Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty without following the procedure established by law. If the procedure established by Law is violative of the principles of natural justice or equality then it is no procedure and it will tantamount to denying the liberty to a citizen in the guise of the so-called procedure. The object of Article 21 is to prevent the encroachment upon the personal liberty by any of the wings of the state, save in accordance with law & in conformity with the provisions thereof There is no doctrine of State Necessity in India'. In Article 21, the word 'law' has been used in the sense of State made or enacted law and not as equivalent of law in abstract or general sense embodying the principles of natural justice. The expression, 'procedure established by law' means the procedure prescribed by law of the State but it should not be unfair or unreasonable. Law would not include mere executive or departmental instructions which have no statutory force, but would include intra vires or regulations made in exercise of the statutory powers, inherent powers of the High Courts or the Supreme Courts which have force of law. It is the procedure of law which directs that the persons who are behind the bars since 1980, or prior to that, should get the decision about their innocence or guilt and the persons who have just come to the Court in the year 1983 or 1984 should not be given priority in the matter of disposal of their cases and thereby providing them the facility of getting the decision on the point of their innocence or guilt.

9. The people who are appellants before the Courts and who are behind the bars and whose sentence has not been suspended are the persons of the same class and are situated equally. We can have a reasonable classification under the law and we can see that the persons who are behind the bars and whose appeals are pending should be given priority and the appeals of these persons whose sentences have been suspended should be heard later on as the question of infringement of liberty is not involved But to say that we will hear the appeals of 1983-84 first & we direct the Registry that the appeals of 1983 and 1984 should be

listed as first case will result in discrimination against those persons who are behind the bars since 1980 and who are not in a position to engage a senior lawyer who can come before the Court and get the prayer of early hearing accepted. It is expected that there should be equality before law and to direct that the case of 1984 should be fixed for hearing as first case, may be in the month of January or February, 1985, will tantamount to denial of justice to the persons whose appeals are pending since the year 1980, or prior to that. Every one of us knows that there is a dearth of judges and there is no regular criminal bench. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of law within the territory of India. It is the general principle that first come first served and the persons who are behind the bars and whose sentences have not been suspended should be served first and in this class of persons there should not be any discrimination between one and another. First come should be served first. If we hear the appeals of the person who has preferred the appeal in the year 1984 and is behind the bars will amount to denial of hearing of appeal of the present who are behind the bars for the last number of years. The appeals of 1980, or even prior to that, are pending before this Court. People have a right to ask us, why we are giving priority to those who have preferred appeals in the year 1984? The people who have preferred appeals in the year 1980 have a right to ask the Court why this Court is discriminating between the persons of the same class. Their grievance is that the persons having the long purses get the relief from the Court out of turn, though they come within the same class of appellants who are behind the bars. For this reason, we are of the view that no departure could be made in the matter of hearing of the appeals of the convicts whose sentences have not been suspended. All the similarly situated persons should be taken as one class and their appeals should be heard on the basis of date of institution or on the basis of the date from which they are behind the bars as under-trial prisoners, or as convicts.

10. For the reasons mentioned above, we are not in a position to accept the prayer made by the learned counsel for the accused petitioner. We, however direct that all the convicts appellant whose sentence have not been suspended should be treated at par and their cases should be listed for hearing either on the basis of the date of institution of the appeals before this Court or on the basis of the period

spent in jail as under-trials prisoners as well as the period spent after conviction and during the pendency of the appeals.

11. A copy of this order may be sent to the Registrar for perusal of Hon'ble the Chief Justice.

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