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**Mahendra Kumar Vs. Director General Prisons and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/761252](http://sooperkanoon.com/761252)**

**Court : Rajasthan**

**Decided On : May-27-2005**

**Reported in : RLW2005(4)Raj2255; 2005(3)WLC694**

**Judge : V.K. Bali and; Harbans Lal, JJ.**

**Acts : Rajasthan Prisoners Release on Parole Rules, 1958 - Rules 9 and 14; Rajasthan Prisoners Release on Parole Act - Sections 14; [Indian Penal Code \(IPC\), 1860](#) - Sections 121 to 140, 216A, 302, 303, 311, 328, 332, 364, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 413, 455, 458, 459 and 460; [Constitution of India](#) - Article 226**

**Appeal No. : D.B. Civil Writ Petition No. 3278 of 2005**

**Appellant : Mahendra Kumar**

**Respondent : Director General Prisons and ors.**

**Advocate for Pet/Ap. : S.S. Hora, Adv.; Nirmala Sharma, Public Prosecutor**

**Disposition : Petition allowed**

**Judgement :**

**V.K. Bali, J.**

1. Mahendra Kumar the petitioner herein though present writ filed by him under Article 226 of the [Constitution of India](#), seeks his release on parole for a period of twenty days to look-after his ailing wife. He is presently lodged in Central Jail, Ajmer and undergoing sentence of life imprisonment. The order of conviction and sentence was passed against him by the learned Addl. Sessions Judge, Jaipur Fast Track No. 1. Tonk in Sessions Case No. 03/2003 State of Rajasthan v. Mahendra Kumar and Ors. He is in continuous custody since March, 1998. He has undergone actual sentence for a period of over seven years. He applied for first parole for a period of twenty days but his application was rejected for the reason that he had a bad police record. It is the case of the petitioner that he had no adverse record. The Jail Administration, Director, Social Welfare and Village Sarpanch have recommended his release on parole to look- after his wife who is ill and there is nobody to take care of her and his children who are now at the verge of destitution. It is further the case of the petitioner that rejection of his prayer for parole on adverse police record was without basis and was an outcome of mere ipse dixit.

2. Pursuant to notice issued by this Court, respondents have filed reply. The facts as mentioned in the writ petition have not been disputed. It has been averred in the written statement that the petitioner submitted an application to Jail Superintendent, Central Jail, Ajmer for grant of parole of twenty days on the ground to look-after his ailing wife and his children. The Superintendent, Central Jail, Ajmer sent his application to the District Magistrate, Sikar. A report was called for from the concerned authority and the matter was put up before the District Advisory Committee on 22.05.2000. The District Advisory Committee after examining the complete record, nature of the crime, and the report of the Superintendent Police, Sikar, decided not to release the petitioner on parole. A photostat copy of the minutes of the Committee held on 29.03.2005 has been annexed as (Annexure-R1). It is then pleaded that since the petitioner was also convicted under Sections 395/396 IPC; parole to him would be prohibited under Rule 14 of the Rajasthan Prisoners Release on Parole Rules, 1958 (Herein after referred to as 'The Rules of 1958'). From the pleadings made in the written statement, it is apparent that the petitioner is entitled for grant of parole under the provisions contained in Rule 9 of the Rules of 1958. It is also not disputed that his

wife is ill. It is also not disputed that in existing ailing condition of the wife of the petitioner their children are also getting completely ignored as there is no one in the family to look-after them. The relief claimed by the petitioner is however being opposed on two grounds. It is first stated that the Committee considered the grant of parole to the petitioner and rejected the application for the reasons mentioned in the minutes of the Committee. A perusal of the minutes of the Committee would reveal that the Superintendent of Police reported that the wife of the petitioner is sick. It has also been mentioned that the Director, Social Welfare had sent the report wherein it has been mentioned that after verification it was found that the wife of the petitioner is sick and there was also no facility available for looking after her and his children. The co-villagers have also recommended the release of petitioner on parole by mentioning that there was no apprehension of breach of peace. The Sarpanch of Village has also recommended his release on parole. It has also been mentioned that there would be no danger if the petitioner is released on parole. However, keeping in view the report of the Supdt. of Police, Sikar, his request of parole has been rejected. All that has been mentioned in the police report is that one companion of the petitioner is in touch with the petitioner, he has been meeting with the petitioner on various dates which were given in the case. The other ground on which parole of the petitioner has been opposed that he has been involved in a case under Section 395/396 IPC and is not entitled for parole in view of provisions contained in Section 14 of the Rules of 1958.

3. We have heard learned Counsel for the parties and perused the record of the case. The first ground opposing the prayer of the petitioner as mentioned above, cannot sustain at all. Despite favourable recommendations from all relevant quarters parole has been declined on the ground that since one of the companion of the petitioner is in touch with the petitioner and was coming on various dates in hearing of the case, the petitioner cannot be granted parole. The reason declining prayer of the petitioner appears to be wholly unreasonable. A companion of the petitioner meeting him off and on and coming to meet the petitioner on the dates of hearing of the case would not mean that the said companion would be able to look-after the ailing wife of the petitioner and his children. No-one otherwise also can be that much concerned with the welfare of wife and children as the husband himself. The second ground opposing the prayer as mentioned above, is equally

unsustainable. Rule 14 of the Rules of 1958 relied by the State for declining release on parole of the petitioner in so far as the same is relevant reads as follows:

'Rule 14: Ineligibility for release: The following clauses of prisoners will ordinarily not be eligible for release on parole.

(a)...

(b)...

(c)...

(d). Persons who have been convicted for offences under Sections 121 to 140, 216A, 302, 303, 311, 328, 332, 364, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 413, 455, 458, 459 and 460 of the Indian Penal Code 1860.

Unless they have undergone (one fourth) of the sentence including remission and the Superintendent of Jail recommends the case in consultation with the District Magistrate with special reasons therefore, in granting parole to prisoners sentenced under Section 302 IPC, the circumstances of the case under which the murder was committed, such as murder committed for possession of land or over honour of women or as a result of family feuds shall be kept in view and favourably considered for parole.'

4. A perusal of Rule 14 of the Rules of 1958 would clearly manifest that it is ordinarily that a convict shall not be allowed parole on the ground of stipulated in Sub-clause (a) to (d). The word 'Ordinarily' does not mean 'Necessarily'. The language provided in the Rules of 1958 is not mandatory and it is still in the discretion of the concerned authorities to grant parole even though the case of convict may be covered in any of the Sub-clauses mentioned above. That apart, the vigor of Rule is set-off if a person has already undergone one fourth of the sentence Including remission and the Superintendent of Jail recommends the case with the consultation of the District Magistrate with special reasons therefore. The petitioner admittedly has undergone one fourth sentence Including remissions and

the Superintendent, of Police has given reasons which are not at all relevant nor reasonable for rejecting the prayer of parole. No report from the Superintendent of Jail has been obtained. A Division Bench of this Court in the Case of Mohan Lal v. State of Rajasthan, 2002 (2) WLC 484 = RLW 2002(3) Raj. 1921 has held that, the fact that a prisoner is residing in another State would not be an absolute bar for grant of parole. In the case aforesaid, Clause (a) of Rule 14 of the Rules of 1958 was pressed into service in denying the parole to the petitioner.

5. In view of the discussion made above, the writ petition is allowed. Direction is issued to the respondents to release the petitioner on parole for a period of twenty days. The petitioner shall however, be released on parole on furnishing bonds to the satisfaction of Superintendent, Central Jail, Ajmer. The petitioner shall surrender before the Superintendent, Central Jail, Ajmer immediately after expiry of period of parole. The period of parole shall be counted from the date, the petitioner is actually released.

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