

Abdul Wahid Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-15-1997

Reported in : 1997(3)WLC405; 1997(2)WLN90

Judge : G.L. Gupta and; S.C. Mital, JJ.

Appeal No. : D.B. Civil Writ Petition No. 2063 of 1997

Appellant : Abdul Wahid

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

G.L. Gupta, J.

1. Abdul Wahid convict sent an application to the Supreme Court of India praying for his release on parole. This application was forwarded to this Court by the Supreme Court of India for disposal. By the order dated 15.5.1997 this petition was treated as writ petition.

2. The admitted facts are that petitioner Abdul Wahid was convicted alongwith one Haji Mukhtiyar, who was his father, by the learned Sessions Judge, Jodhpur for the offence of murder committed in the year 1991 and he has yet not been released on parole.

3. The grievance of the petitioner is that he completed five years in the prison and he is entitled for release on parole for 20 days but he has not yet been released. In the reply filed by the State of Rajasthan it has been stated that the case of the petitioner was considered by the District Parole Advisory Committee in its meeting dated 24.2.1997 but keeping in view the adverse police report and non-availability of the report of the Social Welfare Department his request for release on parole was rejected.

4. Mr. Khan contended that parole could be refused only on the ground that the petitioner's conduct in the jail was not good and that as there was no report of the Superintendent of Jail regarding the bad conduct of the petitioner his case for release on parole could not be rejected. He submitted that the action of the Committee in rejecting the parole request is arbitrary and the petitioner has been discriminated with the other convicts who have been released on parole. He pointed out that it was only on the adverse report of the District Magistrate that the parole could be denied but in this case it is not the case of the respondent that the District Magistrate has given adverse report against the petitioner. He invited our attention to Rule 14 of the Rajasthan Prisoners Release on Parole Rules, 1958 (hereinafter referred to as the Rules of 1958) to emphasize that the petitioner was not ineligible for release. Mr. Khan has placed reliance on the case of Smt. Sushila Kanwar v. State of Rajasthan 1994 RCC 564.

5. Mr. Jasmatiya, learned Addl. Advocate General on the other hand contended that the action of the Committee was not arbitrary and on the basis of adverse report of the police the petitioner was denied parole. He submitted that this Court is not justified in going into the sufficiency or otherwise of the material for rejecting the request of parole.

6. We have considered the rival contentions.

7. Rule 3 of the Rules of 1958 provides that a prisoner may submit an application for parole. Rule 4 provides that the Supdt. of Jail will record his remarks on the application about the conduct of the prisoner in jail and would forward the same to the District Magistrate. Rule 5 enables the District Magistrate to consider the application. It is provided that in case after consulting the Probation Officer and if

felt necessary Supdt of Police, the District Magistrate will give his remarks and if he disapproves the release he shall record reasons of disapproval. Under Rule 6 the District Committee considers the matter of release on parole.

8. The Scheme of the Rules of 1958 indicates that the report of the Jail authorities carries considerable weight in granting or refusing parole to the prisoner. If the conduct of the prisoner is not found to be good in the jail that may be a ground for rejecting the request of parole. In the instant case it has not been brought to our notice that the Supdt. of Jail ever gave remarks against the conduct of the prisoner in jail. The remarks of the District Magistrate also carry considerable weight. It has not been brought to our notice that in the instant case after consulting Probation Officer, the District Magistrate recorded his disapproval for the release on parole. It was incumbent for the District Magistrate to consult the Probation Officer of the area. The report of the Advisory Committee indicates that there was no report available of the Social Welfare Department. It is obvious that efforts were not made by the District Magistrate to obtain the report of the concerned Probation Officer before considering the request of release on parole.

9. The above facts clearly indicate that the grounds on which parole could be refused have not been considered by the authorities.

10. Rule 14 envisages the categories of the prisoners who are ineligible to be released on parole. A convict of the offence under Section 302 IPC is also ineligible but at the same time it has been provided that in case of a prisoner under Section 302 IPC the circumstance that the murder was committed for possession of land etc. shall be kept in view and favourably considered for parole. It seems that this aspect has not been considered by the authorities.

11. Two reports of the police dated 9.2.1996 and 2.5.1996 have been brought to our notice to justify the refusal of the parole. Obviously these reports were not made after the first parole became due in the month of August, 1996. Secondly the reports are vague. It may be true that this Court may not go into the sufficiency of the material. for rejecting the request of parole but at the same time when it is found that there was no definite material on record worth considering to refuse the parole it will have to be held that the action of the committee was arbitrary. The

reports are vague in as much as it is stated that it will be dangerous for convict or that it will not be relished by the family of the victim. They are common grounds in each and every case. An attempt has been made in the report dated 9.2.1996 to show that there might be communal tension but there does not appear to be any basis to anticipate such situation. It was frankly conceded at the time of arguments that the murder was not committed as a result of communal problem. As a matter of fact it was due to dispute over the property.

12. The purpose to release a prisoner on parole is to reform him. When prisoners are sent from the jail to the society their conduct is watched and if they give good account of themselves, the rules provide that their sentence may be shortened. The purpose is also to give an opportunity to the prisoner to mix up with the members of his family and the society, so that he may feel that he is also a member of the society. Keeping in view the object of the Rules it will have to be accepted that the refusal of parole should be on clear grounds. The order should not reflect arbitrariness on the part of the authorities. It may be stated that the rules provide safeguards. If a prisoner while on parole, does not show good conduct or commits an offence, the authorities are empowered under Rule 16 to revoke the parole.

13. It is relevant to state that this prisoner has remained on emergency parole due to the death of his father for three days. It is not stated that his conduct during that period was not good.

14. It was brought to our notice by the learned Additional Advocate General that the petitioner is a previous convict of Section 384/511 IPC vide judgment dated 4.2.1994 to show that he is habituated to commit offence. Mr. Khan in reply to this contention submitted a copy of the judgment dated 7.3.1994 whereby the appeal of Abdul Wahid was accepted and he was acquitted of the offence under Section 384/511. No other previous conviction was brought to our notice. Thus, it cannot be said that the petitioner is habituated to commit offence.

15. There is thus no material on record on which the refusal of first parole to the petitioner can be held justified.

16. For the reasons stated above, we allow this petition and direct the authorities concerned to reconsider the matter of grant of first parole to the petitioner in accordance with the Rules of 1958 in the light of observations made above within ten days from today.

17. A copy of this order be sent to the District Magistrate, Jodhpur.

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