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Court : Rajasthan

Decided On : Jul-19-1989

Reported in : 1989WLN(UC)427

Judge : M.B. Sharma, J.

Appeal No. : S.B. Civil Writ Petition No. 2266 of 1989

Appellant : Barkat Ali

Respondent : State of Rajasthan

Judgement :

M.B. Sharma, J.

1. The accused petitioner as per the letter cum petition which has been treated as writ petition, was convicted Under Section 302 IPC on 16th October, 1982, and was sentenced to imprisonment for life. An appeal was filed by him and that too was dismissed by the High Court, Jodhpur. and petitioner is presently undergoing sentence in Central Jail Jaipur, The Special Leave Petition is said to be pending before the Supreme Court. The petitioner seeks release on parole for a period of 60 days to enable him to repair his Kachha House which was said to have been damaged by rain during last year.

2. The contention of the learned Counsel is that the petitioner is entitled to be released on parole on humanitarian ground to enable him to repair His house. It appears from the writ petition that the petitioner has been released on emergency parole on as many as three occasions during the year 1983 and 1988. According to the petitioner his conduct during the period to which he was released on parole, was good.

3. The learned Counsel for the petitioner has drawn my attention to Rajasthan Prisoner Release on Parole Rules, 1958 (for short the Rules). Rules were framed by the State Government in exercise of the powers conferred by Sub-section (6) of Section 401 Cr.P.C. A perusal of the Rules will show that Rule 9A is in respect of the release on emergency parole in emergent cases. Power is vested in the Superintendent Jail and a Prisoner can be released on parole for a period of seven days subject to confirmation by the Inspector General of Prisons, and for a period of not more than 15 days by the Inspector General of Prisons. Rule 10 provides that no second and subsequent release on parole shall be made unless 11 months have elapsed from the date of the expiry of the period of release on parole immediately preceding. Rule 10A provides that notwithstanding the provisions of Rules 9 & 10 in emergent cases, involving humanitarian considerations (i) critical condition on account of illness of any close relations i.e. father, mother, wife, husband, children, brother or unmarried sister; (ii) death of any such close relation; (iii) serious damage to title or property from any natural calamity, a prisoner other than those falling in any one or more of the clause mentioned in Rule 14 could be released on parole for a period not exceeding 7 days by the Superintendent of the Jail and for a period not exceeding 15 days by the Inspector General of Prisons on such terms and conditions as they may consider necessary to impose for the security of the prisoner including a guarantee for his return to the Jail, acceptance or execution whereof would be condition precedent to the release of such a prisoners on parole. Rule 14 makes a prisoner convicted under Section 302, IPC unable to release on parole unless they have undergone 3/4 sentence including the remission and the Superintendent of Jail recommends the case in constitution with the District Magistrate with special reasons thereof. A perusal of the certificate said to have been issued by the Sarpanch, Gram Panchayat, Sardargarh will show that Barkat Alt's house was damaged due to rains in the month of May, 1989,

when generally in the month of May, there was no rains. It is not for this court to enquire into the matter as alleged as to whether the house of the petitioner was damaged in the rainy season or not. An application may be made under the Rules before the competent authority who may enquire into the matter and pass necessary orders.

4. In the case of Gurdeep Cagga v. Delhi Administration 1987 Cr. LJ 1419, it was said that there do not appear to be any rules for release of & person on parole and High Court can give direction to Delhi Administration. In a case of release on parole of the prisoners including the life convicted the prisoners or the prisoners who had already undergone 2/3 of sentence, the Delhi High Court gave directions to consider training the rules for release on parole for a month every year. Learned counsel also referred to the case of Baru Ram v. Union of India : 1980 CriLJ1440 and more so its para 68 & 72. It was a case where the court was dealing with Section 433A. of Cr.P.C. The court made some observations in para 68 for crime control too.

5. The court observed in para 72 sub para (12) that penal humanitarianism and rehabilitative desideratum warrant liberal parole, subject to security safeguards and other humanizing strategies for inmates so that the dignity and worth of the human person are not desecrated and making mess jails entropoid zoos. Human rights awareness must infuse institutional reform and search for alternatives. Thus, it can be said that there must be some rules in existence for liberal grant of parole and parole should be liberally granted to the prisoner. The rules as appears were framed in the year 1958 and we are in the year 1989 and it can be said that almost 31 years have passed since the rules were framed. The Government there fore, should consider framing new rules or for amending the same for shortening of the sentences or for release of convicted prisoners on parole.

6 In the instance case I have already stated earlier that the petitioner has already been granted parole three times. He should apply afresh to the concerned authorities for release on parole on the ground that this property has been damaged. His application shall be considered and if he files the application stating the fact that his house was damaged then parole should be granted to the

petitioner to enable him to reconstruct or repair his damages house in case the authorities are satisfied about the truth of damage of the house.

7. I do not like to interfere in the case but with the above observation it is hereby directed that if the petitioner applies for release on parole within two weeks to the concerned authorities, the authorities shall consider his application in the light of the rules and on humanitarian consideration to enable the petitioner to construct or repair his house. A copy of the order may be given to learned Counsel for the petitioner free of costs and copy may be sent to Superintendent, Central Jail, Jaipur.

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