

Mohan Lal Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jul-17-2003

Reported in : RLW2004(2)Raj1118; 2004WLC(Raj)UC410

Judge : N.N. Mathur and; K.K. Acharya, JJ.

Acts : Rajasthan Prisons (Shortening of Sentence) Rules, 1958 - Rule 9; Rajasthan Prisons Rules, 1951 - Rule 135; Indian Penal Code (IPC) - Sections 302, 395, 397 and 460

Appeal No. : D.B. Criminal Parole Writ Petition No. 4692 of 2002

Appellant : Mohan Lal

Respondent : State of Rajasthan and ors.

Advocate for Def. : K.R. Bishnoi, Public Prosecutor; A.K. Khatri, Adv.

Advocate for Pet/Ap. : D.N. Yadav, Adv.

Disposition : Petition allowed

Judgement :

Mathur, J.

1. We have heard Mr. D.N. Yadav learned counsel for the petitioner and Mr. K.R. Bishnoi learned Public Prosecutor.

2. The petitioner a life convict voiced his grievances to the effect that inspite of the fact he remained in Jail for more than 14 years the State Government has not considered his case for premature release in right perspective by addressing a letter to Hon'ble the Chief Justice of India. The letter has been transmitted by the Supreme Court under communication dated 22nd October, 2002 to this Court. Instant writ petition has been registered on the said letter. The counter supported by affidavit of Shri S.S. Bissa, Superintendent, Central Jail, Jodhpur reveals that the petitioner was convicted for offence under Section 302, 397, 460 and 395 I.P.C. and sentenced to imprisonment for life. He has served the sentence of 17 years and 6 months. The stand of the State Government is that the petitioner is not entitled to premature release in view of Rule 9 of the Rajasthan Prisons (Shortening of Sentences) Rules 1958 (hereinafter referred to as the Rules of 1958) which provides prohibition to place the cases of the convicts before the Advisory Boards sentenced for the offence involving rape, dacoity and other serious offence. As the petitioner has been convicted for offence of dacoity, his case has not been placed before the advisory Committee.

3. It is contended by Mr. D.N. Yadav learned counsel appearing for the petitioner that the case of the petitioner was required to be considered under Rule 135 of the Rajasthan Prisons Rules, 1951 (hereinafter referred to as the Rules of 1951). It is also submitted that the co-accused, who was also convicted and sentenced for the charge of dacoity namely Peeru Khan has been released, as such it is clearly a case of hostile discrimination. The core question which arises for consideration is as to whether the provision of Rule 135 of the Rules of 1951 is independent of Rule 9 of the Rules of 1958?

4. It is significant to notice that both the Rules have been framed in exercise of powers under Section 59 of the Prisons Act, 1894. The Prisons Act has been enacted to consolidate the law of prisoners confined by the orders of court. The said rule empowers the State Government to frame the rules on the subjects enumerated therein.

5. The State of Rajasthan in exercise of powers conferred by Clause (5) of Section 59 of the Prisons Act, 1894 framed the Rules in the name of The Rajasthan

Prisons (Shortening of Sentences) Rules, 1958. Rule 3 provides for Constitution of Advisory Board headed by the Home Secretary to the Government. Rule 7 casts a duty on the Advisory Board to examine the matters in full and accurate details before recommending shortening of sentence or premature release of prisoners. Rule 7 reads as follows:-

'7. Scrutiny by the Advisory Board.- The Advisory Board before recommending shortening of sentences or premature release of prisoners shall examine the following matters in full and accurate details:-

(a) Circumstances in which offence was committed and the punishment awarded by the Court;

(b) Details of the petitioner's previous history and character in the district where the prisoner was resident;

(c) Prisoner's conduct in the prison and the result of imprisonment already undergone by him;

(d) Opinion of the District Magistrate and the Superintendent of Police of the Districts in which the prisoner was convicted and was resident with special reference to the following points:-

(i) the reaction in the locality, if the prisoner is released prematurely.

(ii) the feelings of the relations of the victim or victims of the offence who suffers at the hands of the accused in case of premature release;

(iii) whether the life of the accused itself will be safe, if he is to be released prematurely;

(iv) any other information material to the case of the prisoner; and

(v) whether the prisoner can be released with safety to the community.

Rule 8 provides prisoners' eligibility for consideration by the Advisory Board. Under sub-clauses (i) & (ii) even habitual criminal under going a substantive sentence is

eligible for consideration of premature release on completion of specified portion of sentence. Similarly under Clause (iii) a prisoner sentenced for more than 14 years is eligible for consideration if he has served out 2/3rd of his sentence including remission. Rule 9 provides types of prisoners whose cases are prohibited from placing before the Advisory Board for consideration of premature release. Rule 9 reads as follows:-

9. Prisoners not eligible for consideration by the Advisory Board.- The Advisory Board shall not consider the cases of following types of prisoners:-

(i) Prisoners convicted of rape, forgery, dacoity or any offence against the State involving violence. For this purpose an offence punishable under Sections 466 to 469 and sections 471 to 474 of the Indian Penal Code shall be deemed to be a variation of the offence of forgery and an offence punishable under Section 396 to 402 of the Indian Penal Code shall be deemed to be a variation of the offence of dacoity and prisoners convicted of these offence as also those convicted of offence punishable under Sections 366, 366A, 366B, 372, 373, 489A, 489B, 489C and 489D of Indian Penal Code shall also be excluded from reference to the Advisory Board.

(ii) Prisoners who are habitual criminals and are homeless or having three or more convictions all of which are such a nature as to justify their classification as 'habitual criminals'.

(iii) Prisoners who are habitual criminals of the 'Goonda class', (iv) Prisoners detained under Preventive Detention Act, 1950.

6. It is worthwhile to mention that though under Rule 8 a prisoner who has been sentenced to imprisonment for life on completion of 2/3rd sentence is eligible for consideration of premature release but his case can not be considered in view of the prohibition provided under Section 433A before completion of 14 years. A Constitution Bench of the Apex Court in Maru Ram v. Union of India (1), has held that Section 433A Cr.P.C. over-rides all other laws which reduce or remit the term of life sentence and mandates that minimum 14 years of actual imprisonment should be undergone by convict where a sentence of life is imposed for a offence

for which death is one of the punishment provided by law and remissions vest no right to release when sentence is for life imprisonment. The Court also reiterated the imprisonment for life lasts until the last breath and whatever be the length of remission earned, the prisoner can claim release only if the remaining sentence is remitted by the Government.

7. Under the constitutional scheme the President is the Chief Executive of Union of India in whom the executive power of the Union vests. Similar the Governor is the Chief Executive of the concerned State and in whom vests the executive power of the State. Articles 72 and 161 vests the clemency power of pardon etc., on the President and the State Government, respectively. This constitutional power would over-ride the statutory power contained in Section 433A of the Code as well as the power conferred by Section 54 & 55, I.P.C. This power can be exercised by the President/Governor only on the advice of the Council of Ministers. In Maru Ram's case the Constitutional Bench recommended for framing of guidelines for exercise of powers under Article 72 & 161 of the Constitution. In the subsequent decision i.e. *Kehar Singh v. Union of India* (2), the Apex Court expressed the view that the language of Article 72 itself provide sufficient guide lines for exercise of power and having regard to its wide amplitude and the status of the function to be discharged thereunder, it was perhaps unnecessary to spell out specific guidelines since such guidelines may not be able to conceive of all myriad kinds and categories of cases which may come up for the exercise of such power.

8. The State of Rajasthan in exercise of powers under Section 59(17) of the Prisons Act, 1894 framed the rules in the name of the Rajasthan Prisons Rules, 1951. The Rules are divided in 27 parts under different headings. Each part is further divided into different sections. Each section provides number of rules. Part XXV is under the heading 'admission, custody, employment, dieting, treatment and release of prisoners.' Part XXV is further divided in three different sections. Rule 135 falls under Section 3rd i.e. 'release of prisoners' (Page 469 Rajasthan Local Laws Vol.XXII). Rules 135 reads as follows-

'135. Release of prisoners under the 14 years rules.- (1) When a prisoner has been sentenced to transportation for life whether or not he has also been

sentenced to a term of imprisonment, or when he has been sentenced to a term of imprisonment or terms of a imprisonment exceeding 14 years, he shall be considered for release as soon as the term already undergone (together with any remission earned under the rules) amounts to fourteen years. His case shall be reported to the Rajasthan Government through the Inspector General with full information regarding the character of his crime, his conduct in prison and the probability of his reverting after release to criminal habits or instigating others to commit crime, in order to enable the Rajasthan Government to decide whether he should be released, and, if so, whether he should be subjected to police supervision or other suitable conditions. If the Rajasthan Government decides that he should not be released, then, after two years from the Rajasthan Government's order his case shall be reported again for further consideration.

(2) The Superintendent of the Jail in which the prisoner is undergoing his sentence shall be primarily responsible for submitting the report under sub-paragraph (1).'

9. Thus, under Rule 135 a prisoner who has been sentenced to imprisonment for life on completion of 14 years is entitled to be considered for release by the State Government. The Rule casts a duty on the Jail authority to report to the State Government through the Inspector General of Prisons the fact that the detainee has completed 14 years of sentence. It is within the discretion of the State Government to release the accused on completion of 14 years of imprisonment. The guide-lines provides consideration of factors viz. the character of the crime committed by the convict, his conduct in prison and the probability of his reverting after release to the criminal habits or instigating others to commit crime. Sub-Rule (2) contemplates consideration of such cases periodically. After two years from the decision of the State Government, the cases are again required to be reported for fresh consideration by the State Government. Thus, Sub-clause (2) of Rule 135 casts a pious obligation on the Superintendent, Central Jail to submit the report as required under subparagraph (1) to the Director General of Prisons and in turn to the State Government. Rule 9 and Rule 135 referred to above came up for consideration before the Division Bench of this Court in *Ram Pratap v. State* (3). This Court vide its judgment dated 9.12.93 held that Rule 135 is independent of Rule 9. A similar view has been taken by another Division Bench in *Kami Dan v.*

State of Rajasthan (4). A careful reading of both the provisions clearly shows that both the provisions are different. Rule 135 of the Rules of 1951 provides for consideration of the case by the Government after completion of 14 years term of the sentence. Such cases are required to be periodically considered after two years as provided under Rule 135(1). It is significant to notice that while the rule does not put blanket ban of not releasing the accused convicted of the charge of rape of dacoity etc. it provides rational guidelines for consideration of every individual case in right perspective. The State is required to take decision keeping in view the relevant factors, i.e. character of the crime, his conduct in prison, chances of reverting to the world of crime after release. Under Rule 9 of the Rules of 1958 the matter is required to be considered by the Advisory Board. The State Government acts only on the advice of the Advisory Board. Rule 9 provides prohibition as to the nature of cases provided therein, which are not required to be placed before the Advisory Board. However, in case of Rule 135 the matter is directly to be considered by the State Government on the basis of the material required by Sub-clause (1) of Rule 135. Thus, we are in agreement with the view taken by both the Division Bench that Rule 9 and Rule 135 operates differently and even if a prisoner is not eligible under Rule 9 of the Rules of 1958, he still could have a case for consideration under Rule 135 of the Rules of 1951. In fact in the instant case the State Government has not disputed this aspect. The decision of the State Government is based only on the basis of one of the item provided under Rule 135 i.e. character of the crime. There is no finding on the other aspects i.e. conduct in prison, chances of reverting to the world of crime. The provision of periodical review suggests that the aspect of convicts' conduct in Jail is of great significance in process of consideration of release under Rule 135. There is always chances of improvement even of a hard core criminal. We must bear in mind that an optimistic and positive approach in life is an asset for oneself as well as others. The power of positive thinking and a positive attitude to life and our own amazing potential can lead us on to achieve great things. It is said:-

'Knowledge becomes wisdom only after it has been put to good use'

High Domns has said:

'A happy person is not a person in a certain set of circumstances but rather a person with a certain set of attitudes.' 'Franco Harris has said: 'How you look at a situation is very important, for how you think about a problem may defeat you before you ever do anything about it. When you get discouraged or depressed, try changing our attitude from negative to positive and see how life can change for you. Remember, you attitude toward a situation can held you to chant it, you create the very atmosphere for defeat or victory.'

10. In view of the aforesaid discussion, we allow the instant petition and direct the State Government the reconsider the case of the petitioner and all such cases afresh under Rule 135 of the Rajasthan Prisons Rules, 1951 in right perspective within a period of two months. A copy of this order may be sent to the Principal secretary, Department of Home, Government of Rajasthan.

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