

Khet Singh and ors. Vs. State and ors.

Khet Singh and ors. Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/772549

Court : Rajasthan

Decided On : Mar-19-2001

Reported in : 2007(3)WLN13

Judge : Bhagwati Prasad, J.

Appeal No. : S.B. Civil Writ Petition Nos. 4213, 4214, 4467, 4650, 4651 and 4652 of 2000

Appellant : Khet Singh and ors.

Respondent : State and ors.

Judgement :

Bhagwati Prasad, J.

1. Heard.

2. These bunch of cases are being decided by a common judgment because the questions raised in all the writ petitions are of common origin and broadly to the same effect.

3. The petitions have been filed by the prisoners convicted under the Narcotic Drugs and Psychotropic Substances Act. The grievance of the petitioners is three fold. First is that the petitioners case is not being considered by the respondent State for granting parole under the Rajasthan Release of Prisoners on Parole

Rules, 1958 as amended by the Rajasthan Release of Prisoners on Parole Rules, 1990 (hereinafter referred to as 'the Rules'). According to the learned Counsel for the petitioners, the parole has been defined in Rule 2(d), which reads as under:

'Parole' means suspension of sentence of a prisoner under these Rules;

4. Learned Counsel for the petitioners has placed reliance on Rule 9 which speaks of the eligibility for the grant of parole. Rule 9 reads as under:

A prisoner who has completed with remission, if any, (one-fourth) of his sentence and subject to good conduct in the Jail, may be released on 1st parole for 20 days including days of journey to home and back, and for 30 days on 2nd parole provided his behaviour has been good during the 1st parole and for 40 days on third parole provided his behaviour has been good during the second parole. If during the third parole also the prisoner has behaved well and his character has been exceedingly well and if the prisoner's conduct has been such that he is not likely to re-lapse into crime, his case may be recommended to the Government through the (State Committee) for permanent release or parole on such conditions as deemed fit by the Superintendent Jail and the District Magistrate concerned; the chief condition among them being that if the prisoner while on parole commits any offence or abets, directly, or indirectly, commission of any offence, he has to undergo the unexpired portion of the sentence in addition to any sentence imposed upon him by reason of such an offence. In case the permanent release on parole is rejected, the prisoner will be eligible for release on parole for 40 days every year subject to the same conditions for the remaining period of his sentence.

5. The learned Counsel for the petitioners further places reliance on Rule 12 wherein it has been provided that the period for which a prisoner stays on parole Under Rule 9, without violating the conditions Laid down for the purpose, shall be treated as imprisonment served by him. All other kinds of parole shall be treated as sentence suspended.

6. The learned Counsel for the petitioners draws distinction about other kinds of parole and a parole granted Under Rule 9. The case of the learned Counsel for the petitioners is that according to the respondents, parole cannot be granted to the

petitioners because Under Section 32-A of N.D.P.S. Act it is provided that no sentence awarded to an accused shall either be suspended, remitted or commuted. According to the learned Counsel for the petitioners, grant of parole to the petitioners is neither commutation, suspension or remission and, therefore, act of the respondents in not considering the case of the petitioners for grant of parole is per se without jurisdiction and a mandamus is required to be issued to the respondents for considering the case for the purposes of grant of parole.

7. Per contra, learned Additional Advocate General canvassed that a Division Bench of this court in 'Pana Chand v. State of Rajasthan' reported in R.L.R. 2000 Part-2 Vol. 33 Page 317 has considered the case of grant of parole to the accused persons convicted under the N.D.P.S. Act and stated that the case of the convicts under N.D.P.S. Act cannot be considered for the purposes of grant of parole. On being pointed out that this case interpretes the un-amended provisions of 'the Rules' which have been amended by notification of the State Government dated 15.10.1990. Learned Additional Advocate General fairly concedes that law Laid down in Pana Chand's case (supra) will not govern the present facts as the Division Bench of this Court was considering the repealed provisions of 'the Rules'. Learned Additional Advocate General had nothing to canvass except that looking to the background in which N.D.P.S. Act was enacted, the accused persons should not be permitted to be considered for parole.

8. I have considered the rival submissions. Ex. 2 on record, a letter of the State Government shows that the State Government is considering the question of amendment of 'the Rules'. The letter referred is regarding communications originating in January, 1999, April 2000, May, 2000 and we are in April, 2001. Learned Additional Advocate General is not in a position to say that any amendment in 'the Rules' as contemplated in Ex.2 has been effected. That being the position, it cannot be said that there is any legislation today which is against the consideration of the case of the petitioners for grant of parole. The law as it stands today and as contained in 'the Rules' clearly states that parole means a conditional enlargement of prisoner from jail and if such enlargement is ordered as permissible Under Rule 9 then such enlargement cannot be considered to be suspension, remission or commutation of sentence. That being the position, the

mischief of Section 32-A of N.D.P.S. Act cannot be brought into force.

9. The Hon'ble Supreme Court in 'Dadu @ Tulsidas v. State of Maharashtra' 2000(6) Page 746 has considered the implication of Section 32-A of the N.D.P.S. Act and stated that:

Parole is not a suspension of the sentence. The convict continues to be serving the sentence despite granting of parole under the Statute, Rules, Jail Manual or the Government orders. 'Parole' means the release of a prisoner temporarily for a special purpose before the expiry of a sentence, or the promise of good behaviour and return to jail. It is a release from jail, prison or other internment after actually been in jail serving part of sentence.

10. Considering the provisions of 'the Rules' as they exist today and the law laid down by the Hon'ble Supreme Court in the case of Dadu v. State of Maharashtra, this court feels that there is no impediment wherein it can be said that the petitioners cannot apply for grant of parole. The respondents shall consider the case of the petitioners for grant of parole. It would then be for the authorities under 'the Rules' to consider whether the petitioners are entitled and are eligible in terms of 'the Rules' for grant of parole or not. Therefore, a direction is issued to the respondents to consider the case of the petitioners for grant of parole.

11. The second aspect raised by the learned Counsel for the petitioners pertains to the consideration of the case for grant of facility to the petitioners to serve out their sentence in Open Air Jail Camps. According to the learned Counsel for the petitioners these convicted accused persons are entitled to be sent to Open Jail Camps whose case is covered under Rajasthan Prisoners Open Air Camp Rules, 1972 (hereinafter referred to as 'the Rules of 1972'. According to the learned Counsel for the petitioners, there is provision contained in Rule 3 of the Rules of 1972 wherein in-eligibility for admission to Open Camps has been referred. The case of the petitioners is not covered by the in-eligibility defined in Rule 3 of the Rules of 1972. The case of the petitioners is that they are eligible Under Rule 4 of the Rules of 1972 to be considered for the same.

12. Per contra, the Additional Advocate General canvasses that there was a circular issued by the State earlier for considering these convicts for Open Air Jails and remission etc. but now that circular has been withdrawn vide Ex. 2. These circulars clearly state that Open Air Camps cannot be assigned to the convicts serving out sentence awarded to them under N.D.P.S. Act and thus, the petitioners case should fail on this count alone.

13. I have considered the rival submissions. The circulars are administrative in character. They have not been issued under the authority of Rules of 1972 which governs the assignment of Open Air Camps to the petitioners. The law governing the case is contained in the Rules of 1972. Under Rule 3 of the Rules of 1972 the in-eligibility of conviction under N.D.P.S. Act has not been included. For the consideration of the application of the petitioners, thus, there is no impediment. That being the position, the circulars cannot be pressed into service against the petitioners. The case of the petitioners has to be considered in accordance with 'the Rules'. Rule 4 clearly permits that the case of eligible persons be considered. That being the position, the State cannot deny the consideration of their case for being assigned to Open Air Camps. That being the position, a direction is issued to the State to consider the case of eligibility of the petitioners for being assigned to the Open Air Camps in accordance with the Rules of 1972.

14. The learned Counsel for the petitioners has also raised third aspect which relates to the grant of remission. Learned Counsel for the petitioners state that commission of crime relating to the petitioners is prior to promulgation of Section 32-A of the N.D.P.S. Act and the learned Counsel for the petitioners state that Section 32-A of N.D.P.S. can be held to be prospective and not retrospective. That being the position of law, he canvassed that the case of the petitioners should be considered by the respondents for remission in terms of law governing the convicts. The petitioner places reliance on the case of 'Waisuddin v. State and Ors.' reported in 1995 A I H C 2692 wherein a Division Bench of Delhi High Court has held that:

Section 32-A is not applicable to offences committed prior to its enforcement. Section 32-A is prospective in its operation. It applies to a case where offence has

been committed after its enforcement.

15. The Additional Advocate General, appearing for the State, has not been able to controvert the position of law. In view of the provisions of law, the point raised by the learned Counsel for the petitioners is liable to be allowed and the cases of such convicts which fall within the aforesaid category, namely, where the offence has been committed prior to the promulgation of Section 32-A of N.D.P.S. Act has to be considered for remission in accordance with law.

16. While parting with the case, it is important to note here that it has been canvassed on behalf of the State that the Court should take care of the changed circumstances in the society and take cognizance of the fact that the convicts of serious offences like N.D.P.S. should not be granted parole. The argument is strange and speaks of the inefficiency of the State to meet out the responsibilities on it. If the State feel that such persons are not entitled then they have the arm to legislate on the point. A failure on the part of the State to rise to the occasion and amend the laws cannot be canvassed before the court as a social necessity. The state is required to show the will and power to curb the activities against which the learned Advocate General wants this court to act. It is expected that State would not bank upon the courts for discharging such functions which the State is required to do. With the hope that if any legislation is considered fit to be brought in then, State will do so and not waste years as is evident in the statement contained in Ex. 2.