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(1983) 05 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Writ No. 138 of 1983

Peter Gill	APPELLANT
Vs	
State of Punjab and Another	RESPONDENT

Date of Decision: May 12, 1983

Acts Referred:

- East Punjab Children Act, 1949 - Section 27, 34, 34(1)
- Penal Code, 1860 (IPC) - Section 302

Citation: (1984) 1 ILR (P&H) 122 : (1983) 85 PLR 754

Hon'ble Judges: Madan Mohan Punchhi, J

Bench: Single Bench

Advocate: V.K. Jindal and Jatin Salwan, for the Appellant; D.S. Keer, for A.G., for the Respondent

Final Decision: Allowed

Judgement

Madan Mohan Punchhi, J.
This petition for habeas corpus has been filed by Peter Gill who was convicted u/s 302, Indian Penal Code while he was a child. The offence was committed on 21st April, 1976 and the Petitioner on that date was 14 1/2 years old. The Sessions Judge, convicting him for the offence, referred the case of the Petitioner to the State Government u/s 34 of the East Punjab Children Act, 1949 (hereinafter referred to as the Act). The State Government,--vide order dated 19th May, 1980, directed that the Petitioner be detained in Borstal Jail, Faridkot, separate from other prisoners and hardened criminals till he attained the age of 21 years. The Petitioner on the attainment of 18 years of age filed Criminal Writ petition No. 113 of 1981 in this Court challenging his detention after that date. His prayer was rejected by J.M. Tandon, J., on 21st August, 1981. Now, on the attainment of 21 years of age, he has again approached this Court praying that his period of detention having expired, he be set at liberty forthwith.

2. The Joint Secretary to Government, Punjab, Department of Welfare, has filed a return on behalf of the State. The material facts, as alleged by the Petitioner, have not been denied. It is stated therein that the Petitioner was ordered to be detained in the Borstal Institute and Juvenile Jail up to 21 years. But no orders of detention not exceeding the maximum period of imprisonment, to which the Petitioner could have been sentenced for the offence committed, have been passed. Stress has been put on the fact that the conviction of the Petitioner would have normally attracted on him imprisonment for life and as such he, having committed an offence of a serious nature, was not entitled to be released on the'' attainment of 21 years of age. In the additional affidavit filed today, the stand taken is slightly modified. It is maintained that youthful offenders, after the attainment of 21 years of age as a matter of policy, are to be put in normal jail on passing suitable orders about their further detention. The Government maintains that the Petitioner was sentenced to imprisonment for life for the offence he committed and thus his detention for a life term was perfectly justified. Reliance was placed on Annexures R-l and R-2 whereunder the Government has ordered that Peter Gill can no longer be detained in Borstal Jail, he having attained 21 years of age and suitable orders about his further detention are required to be passed well in time; and further on 30th July, 1982, Peter Gill was ordered to be sent to another jail in the State on 4th August, 1982 and his case for premature release was advised to be sent if the convict has become eligible for premature release.

3. Having heard the learned Counsel for the parties on the subject, it seems to me that the stance adopted by the State is utterly unconvincing. Section 34 of the East Punjab Children Act, 1949, is explicit in terms and may well be reproduced here:

34. (1) When a child is found to have committed an offence of so serious a nature that the Court is of opinion that no punishment which, under the provisions of this Act, it is authorised to inflict is sufficient, the Court shall order the offender to be kept in safe custody in such place or manner as it thinks fit and report the case for the orders of the State Government.

(2) Notwithstanding the provisions of Section 27, the State Government may order any such child to be detained in such place and on such conditions as it thinks fit and while so detained the child shall be deemed to be in legal custody:

Provided that no period of detention so ordered shall exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed.

4. When a youthful offender suffers a trial, the Court trying him passes on order of conviction. In the instant case, concededly, the order of conviction u/s 302, Indian Penal Code, is there against the Petitioner. Thereafter the East Punjab Children Act, 1949, makes in roads to the sentencing powers of the Court. None of the choices given to the Court under the Indian Penal Code, i.e., of imposing death penalty or sentencing the offender for life imprisonment, car; be adopted. Thus, the case of the child is reported for

orders to the State Government u/s 34(1) of the aforesaid Act. Now, it is for the Government to order as to where should the child be detained. The only limit to the power being that the period of detention as ordered by the Government cannot exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed. Thus, in the instant case, Peter Gill could not have been detained for a period longer than life imprisonment. It is noticeable that the Court has no choice in the matter of imprisonment after recording conviction u/s 302, Indian Penal Code, which has to be life imprisonment, but the detaining Government u/s 34 of the Act has a choice to order detention for a lesser period than life imprisonment. - And that choice necessarily has to vary from case to case depending upon the facts and circumstances relating to the offender as also his antecedents and the circumstances in which the offence came to be committed. These factors are merely illustrative and cannot be said to be exhaustive. But the point which I wish to emphasize here is that the State Government has to pass orders when the matter is reported to it for determining the period of detention. By no means, can it be said that if the Government passes an interim detention order for the youthful offender to be detained in a particular institution uptil the attainment of 21 years of age, further order of detention in another institution cannot be passed. Such an order can certainly be passed but prior to the expiry of the interim order of detention, in order to maintain continuity.

5. In the instant case, concededly, no such order has been passed for further detaining the Petitioner after he attained 21 years of age. It is being treated as a routine that he has been sentenced to life imprisonment and he is a life convict liable to be put in jail and his case to be considered for premature release under paragraph 516-B of the Punjab Jail Manual. I fail to see how that paragraph could be attracted unless the convict has undergone some actual sentence. As said before, sentencing powers are only with the Courts and not With the Government. As at present advised, I am of the view that the concept of premature release would be alien to the spirit of Section 34 of the Act. Thus, it seems to me that the detention of the Petitioner in jail after 4th August, 1982, the detention being authorized uptil that date, is without any authority of law. Consequently, he is to be set at liberty forthwith and I order accordingly.

6. For the foregoing reasons, this petition is allowed but without any order as to costs.