

Om Prakash Vs State of Rajasthan

Court: Rajasthan High Court

Date of Decision: Jan. 15, 2002

Acts Referred: Constitution of India, 1950 " Article 14, 21

Penal Code, 1860 (IPC) " Section 302

Rajasthan Prisons (Release on Parole) Rules, 1958 " Rule 14

Citation: (2002) 94 FLR 988 : (2002) 2 RLW 712 : (2003) 1 RLW 246 : (2002) 3 WLN 61

Hon'ble Judges: N.N. Mathur, J; Jagat Singh, J

Bench: Division Bench

Advocate: Shambhoo Singh, for Jail Department, for the Appellant;

Final Decision: Allowed

Judgement

Mathur, J.

This writ petition has been registered on a letter of convict Om Prakash Resident of village Kherampura Police Station

Adampur District-Hissar (Haryana). He was arrested in September, 1995. He was tried on the charge for offence u/s 302 I.P.C. Learned

Sessions Judge, Jalore by judgment dated 29.1.1999 convicted him for offence u/s 302 I.P.C. and sentenced to undergo imprisonment for life. He

is presently lodged in Central Jail, Bikaner. He has undergone a sentence of about six years. He submitted an application before the

Superintendent, Central Jail, Bikaner for consideration of his case by Advisory Committee for release on parole. The District Magistrate obtained

the police report from Superintendent of Police and Sub-Divisional Officer, Hissar. The Superintendent of Police has sent an adverse report stating

that if he is released, tension may crop up in the village. The Sub-Divisional Officer has verified that the house of the applicant is required to be

repaired. He has also verified that there is no other member in the family of the applicant to take care of their house. However, the District

Magistrate has expressed that the power of release on parole is with the Director General of Prison under the Haryana Release on Parole Rules.

The Superintendent, Central Jail, Bikaner has furnished the necessary information in prescribed proforma.

2. The application is opposed by Mr. Shambhoo Singh Rathore, learned counsel for the jail department on the ground that in view of Rule 14 Sub-

rule (a) of the Rajasthan Prisoners Release on Parole Rules, 1958 (hereinafter referred to as "Parole Rules") he cannot be released on parole.

Elaborating the argument, it is submitted that a resident of outside the State of Rajasthan confined in jail in State of Rajasthan, falls in the category

of Class of Prisoners who are ineligible for release on parole. Mr. Rathore in all fairness has brought in our notice an unreported judgment dated

27.7.2000 rendered in D.B. Criminal Petition No. 1818/2000 wherein this court has interpreted the word ""ordinarily"" employed in Rule 14 Sub-

rule (a) and held that there is no total prohibition to release a prisoner on parole whose ordinary place of resident is outside the State of Rajasthan.

3. The State of Rajasthan in exercise of powers under Sub-section (6) of Section 401 of the Code of Criminal Procedure has framed the rules

known as Rajasthan Prisoners Release on Parole Rules, 1958. Thus, Rules have been amended from time to time. The parole has been defined u/s

2 Sub-clause (d) which means conditional enlargement of a prisoner from the jail. Clause (f) provides the constitution of Prisoners Parole Advisory

Committee. Sub-clause (g) provides the District Parole Advisory Committee headed by the District Magistrate. Rule 3 provides for application for

release on parole. Rule 9 provides period of parole. The prisoner who has completed with remission, if any, 1/4th of his sentence and subject to

good conduct in the jail, may be released on first parole for 20 days, second parole for 30 days and third parole for 40 days on the condition that

his behaviour has been good during the last parole. Rule 9-A authorise the Superintendent of Jail to grant a parole for a period of seven days

subject to confirmation of Inspector General of Prisons. Such a power can be exercise by the Inspector General of Prisons for a period of 15

days. Rule 10 provides for a gap of 11 months to become eligible for next period. Rule 10-A makes the provision for release of a prisoner in

emergent cases involved in humanitarian consideration viz (1) critical condition on account of illness of any close relations i.e. father, mother, wife,

husband, children, brother or unmarried sister; (2) death of any such close relation; (3) serious damage to life or property from any natural

calamity; and (4) marriage of a prisoner, his/her son or daughter or his/or brothers/sisters in case his/her parents are not alive. Rule 13 speaks that

the grant of parole is regarded as occasion to encourage good conduct. This rule also speaks that parole cannot be claimed as a matter of right.

4. Rule 14 is the relevant provision around which the controversy in the instant writ petition has arisen, hence, the same is reproduced as follows:-

14. Ineligibility for release-The following classes of prisoners will ordinarily not be eligible for release on parole:-

(a) Persons whose ordinary place of residence is outside the State of Rajasthan or who have been convicted by a Court Martial or a Court of

another State;

(b) Persons convicted under the Explosive Substances Act, 1908;

(c) Prisoners who have escaped from the Jail or Police custody or attempted to escape;

(d) persons who have been convicted for offences under Sections 121 to 140, 216A, 302, 303, 311, 328, 332, 364, 386, 387, 388, 389, 392,

393, 394, 395, 396, 397, 399, 400, 401, 402, 413, 455, 458, 459 and 460 of the Indian Penal Code, 1860:

unless they have undergone one fourth of the sentence including remission and the Superintendent of Jail recommends the case in consultation with

the District Magistrate with special reasons therefor. In granting parole to prisoners sentences u/s 302 I.P.C. the circumstances of the case under

which the murder was committed, such as murder committed for possession of land or over honour of women or as a result of family feuds shall be

kept in view and favourably considered for parole.

Thus, Rule 14 provides a class of prisoners who will ordinarily not be eligible to be released on parole. The first category is of the prisoners whose

ordinary place of residence is outside the State of Rajasthan. There is a proviso appended to the Rule which permits to release on parole on

completion of one fourth of the sentence and on the recommendation of the Superintendent of Jail in consultation with the District Magistrate with

special reasons. The Rule, further provides that if a prisoner is convicted u/s 302 I.P.C. the circumstances under which the murder was committed

such as murder committed for possession of land or over honour of women or as a result of family feuds shall be kept in view and favourably

considered for parole.

5. The question of geographical discrimination in the matter of grant of bail came up for consideration before the Supreme Court in *Moti Ram and*

Others Vs. State of Madhya Pradesh, In the said case the accused was denied bail for the reason that he and his estate were in different District. If

he was resident of district in which the offence was committed, there was no problem to release him on bail but since he was not a resident of the

said district, the bail was denied. The court held that it is to be a case of geographical discrimination. The observations of the Court in this regard in

para 32 is extracted as follows:-

To add insult to injury, the Magistrate has demanded sureties from his own district (We assume the allegation in the petition). What is a

Malayalee, Kannadiga, Tamil or Telugu to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair, Pahalgam

of Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a

batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes

sureties from outside or non-regional applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court

district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, sometimes legalistic. Article 14 protects all Indians qua

Indians, within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any

language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the

law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi

will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit

the process of making Indians aliens in their own homeland. Swaraj is made of united stuff.

6. The problem posed is required to be considered from a wider prospective as it involves a human problem. We have observed in number of

cases that State Authorities enters into a long correspondence with the State to which the prisoner belong and ultimately the result is that such

prisoners are deprived of the benefit of provision of parole in comparison with the other local prisoners in the jail. The parole rules provides

consideration of emergent cases involved in humanitarian considerations but it is confined only to the resident of State of Rajasthan as if there can

be no emergent cases for the prisoners, who are residents of outside the State of Rajasthan.

7. A human being continues to have his dignity, self respect and human rights even while under custody, in any form of detention or imprisonment.

The Apex Court in the case of Francis Coralie AIR 1981 SC 746 held that ""Right to live is not restricted to mere animal existence. It means

something more than just physical survival."" The prisoners are also human being. In Sunil Batra Vs. Delhi Administration and Others etc., the Apex

Court discussed in depth and detail the scope of ""prisoner's right"" and their constitutional roots. In Mohammad Giasuddin Vs. State of Andhra

Pradesh, the Apex Court interpreted the Article 14, 19 & 21 of the Constitution of India with respect to the prisoners' right. The Court observed

thus:-

We strongly feel that humanitarian winds blow into this decade when jail reforms from abolition of convicts, customs and conscript labour to

restoration of basic companionship and atmosphere of self respect and paternal touch are on the urgent agenda of the nation. Our prisons should

be correctional houses, not cruel iron aching the soul.

In the case of State of Maharashtra Vs. Prabhakar Pandurang Sangzgiri and Another, the Apex Court person detained under Preventive Detention

Act was not permitted to hand over his "written work" to his wife for publication. The Court held it is a violation of Article 21 of the Constitution of

India. The human rights have been recognised even after the death of prisoner. In the case of P.T. Parmanand Katara v. Union of India, (1995) 3

SCC 248 the court observed that when a person is executed with death penalty and Doctor gave a certificate of death and dead body not lowered

even after half an hour after the certificate of death was issued was found to be a case of violation of Human Rights. In Sanjay Suri and Another

Vs. Delhi Administration and Another, the Apex Court held that the prison authority should change their attitude towards prisoners and protect

their human rights for the sake of humanity.

8. The right to parole comes from humanitarian jurisprudence which is much above the Human Rights. Thus, in our view Rule 14 Sub-rule (a)

which prohibits release of a prisoner who is resident of outside the State of Rajasthan in comparison to local prisoners on parole makes a

discrimination on the geographical ground and as such it is per se discriminatory. Thus, the Rule 14 Sub-rule (a) only to the extent "Persons whose

ordinary place of residence is outside the State of Rajasthan" is ultra vires of the Article 14 and 21 of the Constitution of India. The authorities

while considering the case of prisoner whose ordinary place of residence is outside the State of Rajasthan can enquire into the conduct of the

convict more intensively but with the sense of urgency and within the stipulated period. Reasonable conditions can be imposed for the return of the

convict to jail to serve out the remaining part of the sentence.

9. Consequently, this writ petition is allowed. The Rule 14 Sub-rule (a) to the extent indicated above is struck down. The authorities are directed

to consider the case of the petitioner afresh within a period of four weeks from the date of receipt of the writ and report back to this Court.