

Shakuntala Devi Vs State

Court: Delhi High Court

Date of Decision: Dec. 6, 1995

Acts Referred: Constitution of India, 1950 Article 14

Citation: (1995) 4 AD 1049 : (1996) 36 DRJ 545 : (1997) 1 RCR(Criminal) 646

Hon'ble Judges: M.S.A. Siddiqui, J; A.B. Saharya, J

Bench: Division Bench

Advocate: Raman Sawhney, D.C. Mathur, R.M. John and P.S. Sharma, for the Appellant;

Judgement

M.S.A. Siddiqui, J.

(1) Petitioner, a lifer (to use jail jargon) now lodged in the Tihar jail, has moved this petition seeking her release on parole on the following

grounds, namely;

A)that she is an old lady of 74 years and a patient of diabetes,

B)that her health is deteriorating as the food, which is being provided to her, is not diabetes oriented;

C)that she has a keen desire to meet her family members and last parole had been granted to her some 14 months before;

D)that she had applied to the Delhi Administration for being released on parole but no response has been received from it so far.

(2) The Delhi Administration has responded through counsel and contended that prayer of the petitioner had been considered and rejected on the

following grounds:-

THE prisoner is a bride-burning case accused who was sentenced to death by the trial court but reprieved to life by the Supreme Court. Almost

from the beginning she has been paroled regularly every year and mostly for 3 to 6 months at a time. Since 1989, she had two years and one

month of parole, twice by the Delhi Government, and six times by the Hon'ble Court. As the convict's medical condition is stable and a laser

operation has already been performed on her eyes, there is no reason for further parole. If the circumstances change, the competent authority may

consider the case of convict afresh.

(3) Admittedly, the petitioner has undergone a sentence of more than 7 years and she was paroled last on 20th May, 1994 by this Court on

medical ground. It is significant that the Deputy Secretary (Home) has unequivocally stated in his affidavit dated 27.10.1995 that the petitioner's

prayer for grant of parole had been recommended by the jail superintendent and the Deputy Commissioner, South, West Distt, Delhi, had no

objection for grant of parole to The petitioner from law and order point of view. He further stated in his affidavit that:-

THAT the jail Medical Officer has reported that the convict is a case of Diabetes Mellitus. Due to this she has eye problem and severely it is

(infection of the vulva). Her latest blood sugar is 245 mg% (R). Guru Nanak Eye Centre's doctor has not yet given any date of operation also

since her sugar is not controlled it is not possible to perform operation at this stage. General condition of the patient is not satisfactory. That the Jail

Medical Officer, in his latest report dated 4.10.95, has further stated that the convict Shakuntia Devi wife of Sri Niwas is a patient of Diabetes -

Hypertension c- coronary ailing disease. For diminution of vision, instead of operation, she was treated c Laser technique. Her vision has improved

after this. General condition of the patient is stable. Now operation is required at present.

(4) A few preparatory observations are necessary before we test the impugned order of the Delhi Administration on touchstone of Articles 14 and

21 of the Constitution. Under our Constitution, deprivation of personal liberty as penal policy is purposive because the imprisonment of the criminal

is sanctioned as a measure of social defense and individual rehabilitation. The focus of interest in penology is the individual and the goal is salvaging

him for society. Time and again the Apex Court has held that all aspects of criminal justice fall under the umbrella of Articles 14, 19 and 21 of the

Constitution. Further the Apex Court has sought to humanise prison administration to some extent through its various pronouncements and it has

also laid great emphasis on the right of a prisoner to the integrity of his physical person and mental personality. The Apex Court views sentencing

as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the

offender as a measure of social defense. This compassionate outlook is reflected in the decisions rendered by the Apex Court in Sunil Batra Vs.

Delhi Administration and Others etc., , Sunil Batra Vs. Delhi Administration and Others etc., ; Kishore Singh Ravinder Dev and Others Vs. State

of Rajasthan, ; Rakesh Kaushik Vs. B.L. Vig, Superintendent, Central Jail, New Delhi and Another, ; Charles Sobraj Vs. Supdt. Central Jail,

Tihar, New Delhi, ; T.V. Vathees-Wardn Vs. State of Tamil Nadu. Since the rationale of court sentence is social in defense coupled with personal

correction, it is the continuing responsibility of the Court to ensure that the penological purpose of sentence is not defeated by the prison

administration and the prison system responds to the purpose of sentence.

(5) In Poonam Lata Vs. M.L. Wadhawan and Others, , it has been held by their Lordship that;

RELEASE on parole is a wing of reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful

citizen.

IN Inder Singh and Another Vs. The State (Delhi Administration), , the Apex Court has devised another humanising strategy, viz, a guarded parole

release every year atleast a month, punctuating the total prison term, for maintaining his family ties. A prisoner cannot maintain his family ties by

living in a small world of his own cribbed, cabined and confined within the four walls of the prison. In the case of Inder Singh (supra), their

lordships directed that:-

.....If the behavior of these two prisoners shows responsibility and trustworthiness, liberal though cautious, parole will be allowed to them so that

their family ties may be maintained and inner tensions may not further buildup. After every period of one year, they should be enlarged on parole

for two months....."

THEIR lordships further added that ""Article 21 of the Constitution in the jurisdiction root for this legal liberalism.

THE decision in Inder Singh's case has a message of compelling force and relevance to the prison pathology. A logical consequence of this

decision is that parole has become an integral part of our criminal justice. We may add here that regardless of the crime a man may commit, he still

is a human being and has human feelings also. Therefore the nature and length of sentence or the magnitude of the crime committed by the prisoner

are not relevant for the purpose of grant of parole.

(6) It has to be borne in mind that the exercise of all administrative power vested in public authority must be informed by both relevance and

reason, relevance in relation to the object which it seeks to serve and reason in regard to the manner in which it attempts to do so. Therefore, in

construing the question of grant of parole to a prisoner, the Government in the scheme of the prison administration must take a constructive and

purpose oriented approach, and exercise its beneficent jurisdiction wisely. In such matters, the representation made by the prisoner must be

construed liberally and not technically so as to frustrate or defeat the therapeutic treatment, hospital setting and correctional goals.

(7) It is well settled that Article 14 strikes at arbitrariness in administrative action and ensures fairness and equality of treatment. The Apex Court

has observed in E.P. Royappa Vs. State of Tamil Nadu and Another, , ""from a positive point of view, equality is antithetic to arbitrariness. Any

administrative action that is arbitrary must involve the negation of equality. A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., . No

doubt, the grant of parole is essentially an executive function. If the Court finds that any Governmental action in rejecting the grant of parole to a

prisoner has the effect of suffocating the Article 14 or Article 21 of the Constitution, then the court must act, will act to restore the rule of law and

respect the residuary fundamental rights of an aggrieved prisoner.

(8) On a perusal of the impugned order, it appears that the Delhi Administration was influenced by the nature of the sentence awarded to the

petitioner, the magnitude of the crime committed by her and the duration of the period of parole granted to her earlier, in rejecting her prayer for

grant of parole. As we said earlier, the nature of the sentence or the magnitude of the crime committed by the prisoner are not relevant for the

purpose of grant of parole. It is significant that the affidavit filed by the Deputy Secretary (Home) clearly indicates that the behavior of the petitioner

shows responsibility and trustworthiness. It also shows that the petitioner is a "patient of diabetes, hypertension, coronary ailing disease and her

blood sugar is 245 mg.% (R)." It is beyond the pale of controversy that last parole was granted to the petitioner some 14 months before. The Delhi

Administration has obviously not kept these aspects in view while dealing with the petitioner's prayer for grant of parole. Such indifference on the

part of the Delhi Administration can't deter the writ of this Court running into the prison and compelling compliance of the message illumined by the

Apex Court in the case of Inder Singh Vs. State (supra).

(9) We are constrained to observe that the operative reasons for the State action in rejecting the petitioner's prayer for grant of parole are not

legitimate and relevant but are devoid of human benediction and outside the area of permissible considerations. Consequently, the impugned order

can't be allowed to stand.

(10) Ordinarily we would have directed the Delhi Administration to consider the petitioner's case for her release on parole in the light of foregoing

observations but the peculiar facts and circumstances of this case compel us to adopt a different course. In this case, we gave sufficient opportunity

to the State Government to reconsider the petitioner's case in the light of various pronouncements made by the Apex Court on the prison

administration. On 10.11.95, the Chief Secretary to the Government was called to court in connection with another case, which was listed for

hearing. The counter-affidavit filed on behalf of the Government was discussed in his presence. Learned Standing counsel for the State, on being

especially asked if the Govt. would like to reconsider the matter, took a stand on the basis of which has been slated in the affidavit and wanted a

decision on merits. Thus, instead of taking a purpose oriented approach in the matter, the Government took a stand which is against the prison

jurisprudence developed through case law and derived from constitutional law.

(11) In view of the foregoing, we direct that the petitioner shall be released on parole for one month on her furnishing a personal bond of

Rs.5,000.00 with one surety in the like amount to the satisfaction of the Chief Metropolitan Magistrate, Delhi. We further direct that the State

Government shall pay a sum of Rs.4,()0().00 by way of costs to the petitioner, for having to engage a counsel on four days of hearing adjourned

due to the respondent's unreasonable and recalcitrant attitude in the case. dusty.