(2014) 4 JLJR 7

Jharkhand High Court

Case No: W.P. (PIL) No. 682 of 2014

Court on its Own Motion		APPELLANT
	Vs	
The Principal Secretary		RESPONDENT

Date of Decision: Aug. 4, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 432

Citation: (2014) 4 JLJR 7

Hon'ble Judges: R. Banumathi, C.J; Amitav Kumar Gupta, J

Bench: Division Bench

Advocate: Anoop Kumar Mehta, Amicus Curiae, Advocate for the Appellant; Jai Prakash, A.A.G, Advocate for the Respondent

Judgement

R. Banumathi, C.J.

The news published in the various newspapers (on 4.2.2014 and 5.2.2014) relating to fasting of the prisoners regarding premature release of the life convicts, who have spent more than 14 years in prison was suo motu taken cognizance by this Court. In State of Haryana and Others Vs. Jagdish and Harpal, , Hon"ble Supreme Court held that the State Authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict and since the news reported that the State Government has not taken decision regarding remission to be granted to the life convicts, this Court has taken the matter as Public Interest Litigation.

2. In response to the notice, State of Jharkhand has filed its response stating that the State has its own policy for premature release of the prisoners by granting remission under the law and the said Policy was notified, vide memo No. 2307 dated 26.5.2011, which inter alia provides premature release of various categories of prisoners and that there is a State Sentence Review Board comprising of the Home Minister as Chairman and five Members namely Secretary, Department of Home, Secretary, Department of

Law, One District and Sessions Judge nominated by Hon"ble Jharkhand High Court, Chief (Principal) Probation Officer, Director General of Police or his representative and Inspector General of Prison. The Inspector General of Prison is the Member Secretary of the State Sentence Review Board. The policy provides that the State Sentence Review Board shall meet every three months but if necessary, the meeting can be convened even earlier. On behalf of the State, reliance was placed upon Sangeet and Another Vs. State of Haryana, , wherein the Hon"ble Supreme Court in para 61 held that "an exercise of power by the appropriate Government under sub-section (1) of Section 432 Cr.P.C. cannot be suo motu for the simple reason that this sub-section is only an enabling provision". In para 61 of the aforesaid judgment, Hon"ble Supreme Court held as under:-

"61. It appears to us that an exercise of power by the appropriate Government under sub-section (1) of Section 432 Cr.P.C. cannot be suo motu for the simple reason that this sub-section is only an enabling provision. The appropriate Government is enabled to "override" a judicially pronounced sentence, subject to the fulfillment of certain conditions. Those conditions are found either in the Jail Manual or in statutory rules. Sub-section (1) of Section 432 Cr.P.C. cannot be read to enable the appropriate Government to "further override" the judicial pronouncement over and above what is permitted by the Jail Manual or the statutory rules. The process of granting "additional" remission under this section is set into motion in a case only through an application for remission by the convict or on his behalf. On such an application being made, the appropriate Government is required to approach the Presiding Judge of the court before or by which the conviction was made or confirmed to opine (with reasons) whether the application should be granted or refused. Thereafter, the appropriate Government may take a decision on the remission application and pass orders granting remission subject to some conditions, or refusing remission. Apart from anything else, this statutory procedure seems quite reasonable inasmuch as there is an application of mind to the issue of grant of remission. It also eliminates "discretionary" or en masse release of convicts on "festive" occasions since each release requires a case by case basis scrutiny."

In para 77 of the aforesaid decision, Hon"ble Supreme Court summarized the conclusion as under:-

"Conclusion

77. The broad result of our discussion is that a retook is needed at some conclusions that have been taken for granted and we need to continue the development of the law on the basis of experience gained over the years and views expressed in various decisions of this Court. To be more specific, we conclude:

77.1. This Court has not endorsed the approach of aggravating and mitigating circumstances in Bachan Singh Bachan Singh Vs. State of Punjab, . However, this approach has been adopted in several decisions. This needs a fresh look. In any event, there is little or no uniformity in the application of this approach.

77.2. Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up for comparing the two. The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review.

77.3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become Judge-centric sentencing rather than principled sentencing.

77.4. The Constitution Bench of this Court has not encouraged standardisation and categorisation of crimes and even otherwise it is not possible to standardise and categorise all crimes.

77.5. The grant of remissions is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced.

77.6. Remission can be granted under Section 432 Cr.P.C. in the case of a definite term of sentence. The power under this section is available only for granting "additional" remission, that is, for a period over and above the remission granted or awarded to a convict under the Jail Manual or other statutory rules. If the term of sentence is indefinite (as in life imprisonment), the power under Section 432 Cr.P.C. can certainly be exercised but not on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.

77.7. Before actually exercising the power of remission under Section 432 Cr.P.C. the appropriate Government must obtain the opinion (with reasons) of the Presiding Judge of the convicting or confirming Court. Remissions can, therefore, be given only on a case-by-case basis and not in a wholesale manner."

3. On behalf of the State, it was submitted that in view of the judgment rendered in the case of Sangeet and Another Vs. State of Haryana, , exercise of power under sub-section (1) of Section 432 Cr.P.C. cannot be suo motu for the simple reason that the sub-section (1) is only an enabling provision and therefore, no case for remission was considered by the State Government. However, it was submitted that the State Government has called for the details of all pending applications and it was reported that in total 152 were pending, out of which 106 proposals were considered by the State Sentence Review Board in the meeting held on 7.2.2014. Out of 106 proposal considered, 53 life convicts were recommended for premature release and all said 53 life convicts were released.

4. Vide order dated 21.2.2014, we directed the respondent State to communicate the order of rejection of premature release relating to all 52 life convicts mentioning the respective grounds of rejection. In so far as 46 proposals for which details are to be obtained, we have directed the respondent State to expedite the steps to obtain the

opinion of the Convict/Successor Court at the earliest and convene a meeting in accordance with the Rules.

5. It is stated that in compliance of the order of the Court, the reasons of rejection regarding 52 life convicts were communicated to the respective prisoners. In so far as the remaining 46 prisoners are concerned, it is stated that in total 97 proposals were placed before the State Sentence Review Board for consideration for premature release in the meeting held on 20.6.2014. It is further stated that considering the report submitted by the Jail Superintendent, Superintendent of Police, Probation Officer and the opinion of the Convict/Successor Courts, 25 life convicts were recommended for premature release and have been notified to be released by the Home Department and have actually been released from the respective jails. It is further stated that the remaining cases have been kept pending.

6. It will be in order if the meeting of the State Sentence Review Board is convened periodically as per the scheme and applications of the life convicts/prisoners along with necessary proposals are considered for remission in accordance with the provisions of law and various judgments of the Hon''ble Supreme Court Sangeet and Another Vs. State of Haryana, . Such periodical deliberations would send message to the prisoners that in future they may not be restoring to fasting/demonstrations inside the Prison.

7. Learned Additional Advocate General had drawn our attention to the order of Hon''ble Supreme Court dated 9.7.2014 in Writ Petition (Criminal) No. 48/2014 (Union of India v. V. Sriharan @ Murugan & Ors.), wherein Hon''ble Supreme Court has restrained the State Government from exercising power of remission to life convicts, until further orders. The respondent State is further directed to act in accordance with provision of law, State''s Scheme for remission and the further directions of Hon''ble Supreme Court.

This writ petition is disposed of with the above directions and observations. We hereby place on record the valuable assistance rendered by Mr. Anoop Kumar Mehta.