

(1987) 10 MP CK 0001
Madhya Pradesh High Court
Case No: M.P. No. 2825 of 1984

Rickshaw Malik Sangh,
Jabalpur and others

APPELLANT

Vs

State of Madhya
Pradesh

RESPONDENT

Date of Decision: Oct. 27, 1987

Acts Referred:

- Constitution of India, 1950 - Article 226
- Madhya Pradesh Prisoners Release on Probation Act, 1954 - Section 2, 8, 9, 9(4)
- Penal Code, 1860 (IPC) - Section 302

Citation: AIR 1988 MP 96

Hon'ble Judges: N.D. Oza, C.J; K.K. Adhikari, J

Bench: Division Bench

Advocate: Y.S. Dharmadhikari, for the Appellant; S.L. Saxena, Addl. Advocate-General, for the Respondent

Final Decision: Dismissed

Judgement

K.N. Shukla, J.

This petition has been placed before the Full Bench on a reference by one of us (K.N. Shukla, J.). There have been conflicting decisions about the scope of interference by this Court and numerous cases are being filed by prisoners under the M.P. Prisoners Release on Probation Act.

2. Facts as stated in the order of reference are as follows. Petitioner is undergoing a sentence of life imprisonment under S. 302, IPC. The petitioner has not disclosed the date of the judgment, the circumstances under which he was prosecuted or the findings on the basis of which he was convicted. The petitioner has merely stated that he had applied for release on probation under S. 2 of the M.P. Prisoners Release on Probation Act, 1954 (the Probation Act hereafter) before the Supreme Court. The

Supreme Court directed the State Government to decide petitioner's application within seven months and if the application was not decided within this period the petitioner would be entitled to be released on bail. Petitioner's application was not decided within the time allowed by the Supreme Court and he was released on bail. The Probation Board, however, considered the application of the petitioner as per Rules framed under the Probation Act and recommended to the State Government that the application was liable to be rejected. Accepting the recommendation of the Probation Board, the State Government rejected the application of the petitioner for being released on probation by order dt. 6-3-1987(Annexure R-1).

3. The petitioner prayed that the Probation Board be directed to reconsider the case of the petitioner because the grounds stated by the Board and accepted by the State Government were not sufficient for rejecting his application.

4. It may be mentioned at this stage itself that the Probation Board did not recommend petitioner's release on two grounds. First was that his release was likely to disturb the peace and secondly the guardian proposed by the petitioner was not a fit person for keeping supervision over the petitioner.

5. Release of a prisoner under the Probation Act is governed by the terms of the statutes and the Rules made thereunder. Administrative authorities, in particular those which are in charge of maintenance of law and order, have been entrusted with the job of deciding the propriety of releasing prisoner after examining his case. The parameters are mentioned in Section 2 of the Probation Act. Section 2 is as follows :--

2. Power of Government to release by licence on conditions imposed by it -- Notwithstanding anything contained in S. 401 of the Cr. P.C., 1898, where a person is confined in a prison under a sentence of imprisonment, and it appears to the Government from his antecedent and his conduct in the prison that he is likely to abstain from crime and lead a peaceable life, if he is released from prison, the Government may, by licence, permit him to be released on condition that he be placed under the supervision or authority of a Government Officer or of a person professing the same religion as the prisoner or such institution or society as may be recognised by the Government for the purpose, provided such other person, institution or society is willing to take charge of him.

It may be noted that the authorities concerned have to be satisfied that the prisoner fulfils two conditions, namely :--

1. Antecedent, and

2. Conduct in the prison.

On the basis of these factors the government has to be satisfied that the prisoner is likely to abstain from crime and lead a peaceable life. This scrutiny is very necessary because the purpose of penal law is to keep the stream of social life free from

unsocial of dangerous elements. The responsibility of the Government, therefore, is certainly heavy and a prisoner who has been found guilty of a heinous offence cannot claim as of right to be released on probation under the Probation Act merely because his conduct in prison had been good. A balance has to be struck between individual liberty and social compulsions. The reformatory aspect of criminal justice has to be appreciated and implemented in the context of the social environment and not in isolation. These matters cannot be decided in a casual or cavalier manner. It is for this reason that the Government has to examine carefully the entire conspectus of the prisoner's history and take a decision about his release on probation. The Government has to see the probable impacts of the release of such a prisoner, who has been found guilty of an offence, on the social life of the town or village including the reaction of the society to such an act before deciding an application for the purpose.

6. Section 9 of the Act empowers the Government to make Rules consistent with the Act. Under S. 9(4) the Government is empowered to define the classes of offenders who may be conditionally released on a licence M.P. Prisoners Release on Probation Rules, 1964 have been framed under the Probation Act for implementing the provisions of the Act.

7. Rule 6 prescribes the procedure which is to be followed by various authorities while considering the application by a prisoner for release on probation. The application has to be processed first by the Superintendent of the concerned Jail. He then forwards the same to the District Magistrate under sub-rule (2) of R. 6. The District Magistrate then consults the Superintendent of Police and the Probation Officer, if any, and then forwards the application with his remarks to the Inspector-General of Prisons; M.P. under sub-rule (3). Sub-rule (5) provides for the constitution of a Probation Board consisting of the Home Secretary to the Government, the Inspector-General of Prisons or the Deputy Inspector-General of Prisons and a non-official member to be appointed by the Government. This is a high powered Board with competent and senior Administrative Officers and even includes a non-official member. This Board then screens the applications of prisoners concerned in the light of the reports submitted to it by the Superintendent of Jail concerned, the District Magistrate and the Superintendent of Police with regard to the antecedents and the conduct of the prisoner in prison. This Board then makes its recommendation to the State Government either for the release of the prisoner on licence or for rejection of his application.

8. It is apparent, therefore, that the case of each prisoner who applies for his release on probation has to be examined and screened in accordance with the procedure prescribed for the purpose. Ordinarily there is no scope for any arbitrary or capricious order of the State Government either for releasing a prisoner on probation or for rejecting such application for release. Thus in the absence of any material to show that the State Government or the Probation Board acted

arbitrarily, capriciously or with mala fides or did not take into consideration relevant material or were influenced by extraneous circumstances, the administrative order passed by the State Government cannot be challenged in a writ proceeding under Article 226 of the Constitution.

9. In the present case the petitioner seeks reconsideration of his application for being released on probation. It is, therefore, necessary to refer to the relevant provision in that behalf. Rule 3 of the Probation Rules lays down that certain classes of prisoners shall not be released under the Act. The word "shall" is mandatory. Clause (c) of R. 3 may be reproduced :

Classes of Prisoners.....

(a)&(b).....

(c) Those, whose applications for release, other than an application for remission of sentence u/s 8, were on a previous occasion rejected by the Government.

An Explanation is appended to R. 3, which is asunder:--

Explanation. -- The rule in cl. (c) precludes a convict from himself applying a second time for release u/s 2 of the Act, but the Government may direct the Inspector-General of Prisons to place any case, which has already been once rejected, for reconsideration before that Board.

It is clear, therefore, that a prisoner whose application for release on probation has been rejected on a previous occasion by the Government is precluded from himself applying a second time for release under S. 2 of the Act. In the instant case, therefore, the petitioner can not seek a writ or directive from this Court to the State Government for reconsideration of his application for release on probation. The Act and Rules bar such a step. However, it is open to the Government to give a direction as laid down in the Explanation to R. 3 of the Probation Rules.

10. Learned Counsel for the petitioner has also prayed for release of the petitioner on bail till the State Government passes an order after reconsideration of the petitioner's application for release on probation. It is not permissible to release the petitioner on bail because as already noted the statutory rules bar any application for reconsideration after rejection of the previous application and, therefore, the question directing release of the petitioner on bail till his application is reconsidered by the State Government cannot arise.

11. In the result, the petition for a writ or direction to the State Government for reconsidering petitioner's application for release on probation is dismissed. Petitioner is at liberty to take recourse to such step as is warranted by the Explanation to R. 3 of the Probation Rules and if so advised move the State Government for a direction to the Inspector-General of Prisons to place his case for reconsideration before the Board.