

(2010) 04 BOM CK 0174

Bombay High Court (Aurangabad Bench)

Case No: Criminal Writ Petition No. 1136 of 2009

Bhima Rangnath Adagale

APPELLANT

Vs

The State of Maharashtra, The
Inspector General of Prisons and
The Superintendent

RESPONDENT

Date of Decision: April 8, 2010

Acts Referred:

- Arms Act, 1959 - Section 32, 37(1), 4, 4(25)
- Bombay Police Act, 1951 - Section 135, 37(1)
- Criminal Procedure Code, 1973 (CrPC) - Section 432, 433, 433A
- Penal Code, 1860 (IPC) - Section 302

Citation: (2010) CriLJ 3301 : (2011) 6 RCR(Criminal) 1303

Hon'ble Judges: S.S. Shinde, J; S.B. Deshmukh, J

Bench: Division Bench

Advocate: Bharti B. Gunjal, for the Appellant; F.D. Godbharle, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.B. Deshmukh, J.

Heard learned Counsel for the parties.

2. Rule, made returnable forthwith, heard finally by consent of the parties.

3. The petitioner was accused in Sessions Case No. 371 of 1995. The petitioner was charged for the offence punishable u/s 302 of the Indian Penal Code, u/s 4(25) of the Arms Act and Section 37(1) read with Section 135 of the Bombay Police Act. On trial, the learned Sessions Judge convicted the petitioner for the offence punishable u/s 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life, fine

of Rs. 1,000/was imposed, i/d petitioner was directed to undergo further R.I. for six months. Petitioner/ accused was, however, acquitted of the offence u/s 37(1) of the Arms Act read with Section 135 of the Bombay Police Act and u/s 4 of the Arms Act. The judgment was rendered by the learned Additional Sessions Judge, Pune on 5th November, 1996.

4. The learned Counsel for the Petitioner submitted that on 30th November, 2009 the petitioner has completed actual imprisonment of 22 years including remissions. She further submitted that on 5th of July, 2009 present petitioner has undergone actual 14 years imprisonment. According to her opinion, the present petitioner is entitled to be released. In substance, premature release of the petitioner is sought in view of the Government Resolution dated 11th April, 2008. Copy of the said resolution is annexed with the writ petition. Petitioner claims that his case is being governed by Clause 3 (b) which reads "crime committed as above with premeditation either individual or by a gang" Period of imprisonment, for such Clause 3 (b) as mentioned in the Annexure I annexed to the Government Resolution is around 22 years.

5. Mr. Godbharle, learned A.P.P. points out reply affidavit filed on behalf of the Respondents. It is sworn in by Mr. Bhosale Bharat Mahadev, Additional Superintendent of Central Prison, Aurangabad Region, Aurangabad. In para 7 of this reply affidavit, two reported judgments of the Honourable Supreme Court have been referred to. The first one is in the matter of [State of Haryana and Others Vs. Balwan etc.](#). The other is in the matter of State of Haryana v. Bhupsingh reported in 2009 ALL M.R. (Criminal) 524 (S.C.). Statement is made in para 7 that on the date of delivery of judgment in Sessions Case, in the case on hand, policy laid down by the State of Maharashtra dated 5th November, 1992 was in existence and/ or in operation. New guidelines and/ or Government Resolution relied on by the Petitioner, according to the Respondents, does not have application to the facts of the present accused and in view of the judgment of the Honourable Supreme court.

6. Thus, there are two guidelines placed on record and independently relied upon by the parties, before the Court. At the costs of repetition we may state that the petitioner is relying on the Government Resolution dated 11th April, 2008. Counsel for the Petitioner points out para 2 of this Government Resolution. It reads that "these guidelines will be applicable from the date of issue of this Government Resolution and will supersede all earlier orders or guidelines." It is further pointed out to us from para 2 that these guidelines i.e. Government Resolution dated 11th April, 2008 will be applicable in the normal course to the convicts undergoing life sentence and those having good behaviour while undergoing sentence. In contrast to the submission of learned Counsel for the Petitioner, learned A.P.P. invited our attention to other set of guidelines placed on record. It appears from the communication addressed to the Inspector General of Prisons by the Deputy Secretary to the Government of Maharashtra, Home Department dated 11th May,

1992 that the State has issued guidelines for premature release of prisoners sentenced to life imprisonment or to death penalty commuted to that imprisonment after 18th of December, 1978. It reveals from the letter dated 11th May, 1992 that the question of framing of revised guidelines in consonance with Section 433A of Criminal Procedure was under consideration of the State Government. The State Government has decided to reiterate earlier guidelines dated 16th November, 1978, to the cases not governed by Section 433A excepting those which are specifically included in the revised guidelines, viz. convicts of category A.

7. Chapter XXXII of the Criminal Procedure Code is titled as Execution, Suspension, Remission and Commutation of sentences. Power to suspend or remit sentences is conferred upon the appropriate Government u/s 432 of the Code. The appropriate Government is also conferred with the power to commute the sentence u/s 433 of the Criminal Procedure Code. Criminal Procedure Code, 1973 has suffered amendment, by Act No. 45 of 1978, more specifically by Section 32 of the Act. By virtue of this, Section 433A is brought on the statute. This Section 433A is made enforceable with effect from 1st of December, 1978. A look to Section 433A shows that it starts with a nonobstante clause. Though the power of commutation is conferred upon the State Government u/s 433A, it is restricted power. The restriction imposed is contained in the section itself. The restriction imposed is that such person (prisoner) shall not be released by such commutation by the State Government from prison unless he had served at least 14 years of imprisonment. In other words, actual imprisonment for the period of 14 years in view of this added Section 433A is made obligatory for the State Government while exercising that power of commutation of sentence u/s 433A.

8. In view of the amended Section 433A it appears that initially the State Government had issued guidelines somewhere in the year 1978 as we have referred to in the forgoing paragraphs. These guidelines of 1978 with some modification and reservation have been continued operational from 1992.

9. The issue or controversy amongst the parties in the case on hand is in relation to applicability of policy of the State Government either of the year 1978 reiterated with some reservations in the year 1992 or 11th April, 1978. This issue also is no more res integra in view of the judgment of the Honourable Supreme Court. Learned A.P.P. has made available to us copies of the reported judgment of the Honourable Supreme Court in the matter of State of Haryana v. Mahender Singh reported in 2007 LawSuit (SC) 1202 . The Supreme Court was considering the prison policy of the State of Haryana. The State of Haryana was again before the Honourable Supreme Court in relation to its policy laid down u/s 433A of the Criminal Procedure Code. It was in the matter of [State of Haryana Vs. Bhup Singh and Others](#), . The Honourable Supreme Court, in para 10 of the judgment, held that right to ask for remission of sentence by a life convict would be under the law as was prevailing on the date on which the judgment of conviction and sentence was

passed. In para 11 of the reported judgment, the Honourable Supreme Court has in clear terms laid down that the policy decision of the State of Haryana in that case, on the date on which the prisoners were convicted is applicable and not the subsequent policy decision of the Government in the year 2002.

10. The policy decision is a matter of the appropriate Government. The policy of the State Government may change from time to time. It is the governance of the State Government. What is relevant is the policy of the State Government laid through executive fiat on the date of rendering the judgment by the competent court, in short, is the ratio of the judgment of Honourable Supreme Court in the matter of "State of Haryana v. Bhup Singh" (supra).

11. Now turning to the case on hand, in our opinion the guidelines issued by the State of Maharashtra in the year 1978 and reiterated with some reservations in the year 1992 were holding the field on the date of the judgment in the case on hand i.e. Sessions Case No. 371 of 1995 on 5th November, 1996. The proposal of the Petitioner could be considered only in view of these guidelines. We have noticed the submission of the learned Counsel for the Petitioner that the authorities of the State have moved the proposal of the present petitioner for premature release in view of the subsequent guidelines i.e. by way of Government Resolution dated 11th April, 2008. Moving of said proposal by the authorities, in contrast to the policy of the State Government, does not enure to the benefit of the petitioner/ convict. Order, which is impugned in this writ petition, cannot be said to be perverse/ illegal, to be interfered with in extraordinary jurisdiction of this Court.

12. Writ petition stands dismissed. Rule discharged. No order as to costs.