

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF APRIL
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.39392 of 2013

BETWEEN

Somarouth Siva Rama Krishnaiah and others.

... PETITIONERS

AND

State of A.P., Rep. by its Principal Secretary, Home Department, Secretariat and others.

...RESPONDENTS

Counsel for the Petitioners: MR. GADA VENKATESWARA RAO

Counsel for the Respondents: GP FOR HOME

The Court made the following:

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ORDER:

Petitioners, who are convicts and undergoing life imprisonment as per judgment dated 16.06.2006 in S.C.No.337 of 2005 on the file of the Sessions Judge, Guntur and lodged in prison since 17.06.2006, seek a Mandamus to direct their release from the prisons by extending the benefit of G.O.Ms.No.220 Home (Parole) Department dated 28.09.2013.

2. Petitioners aver in the affidavit that the first respondent issued G.O.Ms.No.220 dated 28.09.2013, referred to above, on the request of the political parties and public representatives and the families of life convicts to grant premature release (special remission) on the eve of Gandhi Jayanthi i.e. 02.10.2013. Thus, in relaxation of the earlier orders of the Government, the aforesaid G.O. was issued setting out guidelines, which have to be followed for premature release of life convicts keeping in view their good behaviour and subject to conditions as set out in the said G.O. According to the petitioners, a committee headed by the first respondent was constituted to prepare the list of eligible convicts and recommend the same to the Government. Petitioners submit that their names were found in the list, prepared by the aforesaid committee, recommending their case for extension of the benefit of the aforesaid G.O., as their case does not fall within any of the categories as provided under clause 4 of the said G.O. Based on the recommendations of the Committee, the first respondent issued G.O.Ms.No.286 Home (Parole) Department dated 21.12.2014 granting remission to 390 life convicts but the names of the petitioners were not found in the said list. Hence, petitioners question the said action.

3. Reliance is placed by the petitioners on clause 4(xii) of the aforesaid G.O., which reads as follows:

“4. The remission of sentence in para (3) above shall apply to prisoners, who have been convicted by Courts situated within the State of Andhra Pradesh and are undergoing sentence in other States, but shall not apply to the following categories of prisoners, namely :-

i ...

ii ...

...

xii. Prisoners involved and convicted for Life in two or more different murder cases”.

4. Petitioners state that they were sentenced to undergo life imprisonment only under one charge, though they were convicted for lesser punishment with regard to other crimes. Hence, Cr.No.32 of 2004 on the file of Pedanandipadu police station has to be considered as a single murder case and consequently, their case does not fall under clause 4(xii), extracted above. Each of the petitioners is stated to have undergone imprisonment of more than 11 years and their case having been recommended there was no reason to deny them the benefit of remission. Each petitioner has filed a copy of the nominal roll with respect to each one of them giving details of the sentence undergone by each one of them and on that basis, petitioners contend that though they are entitled to remission in terms of the aforesaid policy of the Government, they have been erroneously denied the said benefit.

5. Learned Government Pleader for Home has filed a counter of the Superintendent of Prisoners Agricultural Colony, Anantapuram, who is arrayed as respondent No.3. It is stated in relevant portion of para 3 as under:

“3. In reply to the averments at Para 2 of the petitioners affidavit it is respectfully submitted that petitioner Convict.No.4100, Suda Anjaneyulu (a-7) who is confined at this Prisoners Agrl. Colony, Anantapuram was convicted and sentenced to Rigorous imprisonment for a term of 2 years for the offence punishable U/S 148 IPC, imprisonment for life for the offence punishable U/S 302 IPC R/w 149 IPC. Imposes rigorous imprisonment for 5 years for the offence punishable U/S 307 r/w 149 IPC, the Court imposes rigorous imprisonment for 3 years for the offence punishable U/S 3 of explosive substances act the Court imposes rigorous imprisonment of 1 year for the offences punishable U/S 5 of Explosives substances act. All the above mentioned imprisonments of sentences shall run concurrently and convicted on 16-06-2006 by the Honorable Sessions Judge, Guntur in S.C.No.337/05. The Honorable High Court of Andhra Pradesh, Hyderabad has confirmed the above sentence vide CRA.No.1026/06. The petitioner was transferred from Central Prison, Rajahmundry to Prisoners Agrl. Colony on 23-05-2010 ...”

6. It is, however, stated in the counter affidavit that the petitioners have been convicted for having killed three persons i.e. 3 counts, hence, are stated to be ineligible for remission as per para 5 (ii) of G.O.Ms.No.220 dated 28.09.2013, which reads as follows:

“5. The cases of prisoners who are convicted for life, along with offences under the following provisions of Law, subject to not coming under purview of the conditions at para-4 above, shall be considered for grant of remission by the Government after undergoing the periods of sentence as specified:

- (i)...
- (ii) Prisoners who are convicted for life imprisonment in any case with two counts and more shall undergo a minimum actual sentence of 14 years with remand period and total sentence of 20 years with remission.”

7. Counter affidavit also states that respondents 2 and 3 had prepared the list of convicts, who had undergone actual sentence of 7 years including remission period and total period of sentence of 10 years including remand and who are aged more than 65 years, as per the guidelines stipulated in the aforesaid G.O. The said list of prisoners was, however, scrutinized and examined by the committee formed by the Government comprising of following members.

1)	Special Chief Secretary to Government, Home (Prisons) Department, Government of Andhra Pradesh, Hyderabad	Chairman
2)	Secretary to Government, Legal Affairs, Law Department, Government of Andhra Pradesh, Hyderabad	Member
3)	Director General of Police, Andhra Pradesh, Hyderabad or his nominee	Member
4)	Chief Legal Advisor, CID, Hyderabad, a District Judge, Cadre Officer	Member
5)	Additional Director General of Police (Intelligence) O/o the Director General of Police, Andhra Pradesh, Hyderabad	Member
6)	Director General of Prisons and Correctional Services, Andhra Pradesh, Hyderabad	Member/Convener

It is stated that the case of the petitioners was not considered in view of clause 5(ii) of the aforesaid G.O. It is also stated in para 12 that 82 life convicts, were released in terms of the aforesaid G.O., who had committed single murder (1 count) from the Institution of Prisoners Agriculture Colony, Anantapuram. The averment of the petitioners that they were not extended the benefit of G.O.Ms.No.220 dated 28.09.2013 for the reason that “prisoners involved and convicted for life in two or more different murder cases” is denied stating that no such condition was mentioned in G.O.Ms.No.286 dated 21.12.2013. Ultimately, it is stated that

since the petitioners were convicted for killing three persons (3 counts), their case was found not eligible for release under G.O.Ms.No.220 dated 28.09.2013.

8. Learned counsel for the petitioners also filed written submissions refuting the aforesaid contentions by contending that though the Sessions Court had framed 9 charges, the sentence imposed on the petitioners is as follows:

- i) Sentenced for the offence under Sec. 148 IPC to undergo rigorous imprisonment for two (2) years;
- ii) Sentenced for the offence under Sec. 302 IPC r/w 149 IPC to undergo imprisonment for life;
- iii) Sentenced for the offence under Sec. 307 IPC r/w 149 IPC to undergo imprisonment for five (5) years;
- iv) Sentenced for the offence under Sec. 3 of the Explosive Substances Act to undergo rigorous imprisonment for three (3) years;
- v) Sentenced for the offence under Sec. 5 of the Explosive Substances Act to undergo rigorous imprisonment for one (1) year;

The said conviction dated 16.06.2006 was confirmed by this Court in CrI.A.Nos.999 and 1026 of 2006 dated 18.12.2008.

9. According to the learned counsel for the petitioners, therefore, even the guidelines under clause 5(ii), extracted above, is not applicable and it is contended that the petitioners were convicted only under single count for the offence under Section 302 IPC read with 149 IPC and the punishments with regard to other offences are lesser punishments and are not life imprisonments. Learned counsel for the petitioners, therefore, contends that the crime being one arising out of single instance and only one life imprisonment having been imposed on the petitioners, their case cannot be stated to be falling under the category of life imprisonment on more than one count and hence, under G.O.Ms.No.220 dated 28.09.2013, they are entitled for remission.

10. Learned Government Pleader, on the other hand, supports the averments of the counter affidavit to contend that the petitioners were convicted for killing three persons, hence, it was rightly treated by the first respondent that the conviction for life imprisonment awarded

to the petitioners was on more the one count and therefore, clause 5(ii) of the G.O., is clearly applicable.

11. During the hearing of the writ petition, learned counsel for the petitioners relied upon a decision of the Supreme Court in **SANTOSH KUMAR SINGH v. STATE OF MADHYA PRADESH**. Though the facts of the case and the legal principle decided by the Supreme Court is entirely different, learned counsel drew the attention of this Court to the factual details of the case mentioned in para 3 where the offences are described as either 2 counts or 4 counts etc. and submits that in the present case the word 'count' is to be understood in that context. Learned counsel for the petitioner also places reliance upon the judgment of this Court in **PUBLIC PROSECUTOR v. C.D. NAIDU**. However, the principle decided in the said case was that it was open for the prosecution to examine any witness, who was not examined by the police earlier under Section 161(3) Cr.P.C. In my view, the said decision, throws no light on the present controversy on hand. Similarly, learned counsel relied upon a decision of the Calcutta High Court in **ADHI MALLICK v. THE STATE**, which is again decided on an entirely different context and entirely different legal proposition was laid down. However, the said case is relied upon to show that while giving the facts of the case, it was described that the appellant was charged on three counts viz. under Sections 419, 420 and 465 IPC. Learned counsel for the petitioners, therefore, relies upon the aforesaid decisions to substantiate that the petitioners are convicted only on one count and not on more than one count to deny the benefit of remission.

12. The issue of consideration is, therefore, whether the petitioners are entitled to the benefit of G.O.Ms.No.220 dated 28.09.2013, referred to above.

ISSUE:

13. In order to appreciate the said issue, it is necessary to have a look at the judgment of the Sessions Court wherein the charges against the petitioners were referred to. To the extent of charge under Section 302 IPC, which form part of the charges viz. secondly, thirdly, fourthly and fifthly, is extracted hereunder:

"SECONDLY: that A1 to A7, A9, A10 and A8 (against whom the case was separated)

of you on the same date, time and place and during the course of same transaction as mentioned in charge no.1 above, did commit murder by intentionally (or knowingly) causing the death of Suda Sumburaiah, s/o. Venkatappaiah, aged 42 years, Vellaluru village (deceased No1) by hurling country made bombs on an auto AP-7X-7193 in which he along with 5 others was traveling including the driver of the auto, and later hacking him repeatedly with hunting sickles, battle axes and spears all over the head and body indiscriminately and you thereby committed an offence Punishable under Sec.302 of the Indian Penal Code and within my cognisance.

THIRDLY: that A1 to A7, A9, A10 and A8 (against whom the case was separated) of you on the same date, time and place and during the course of same transaction as mentioned in charge No.1 did commit murder by intentionally (or knowingly) causing the death of Batchu Srinivasa Rao @ Vasu, s/o. Venkayamma, aged 25 years, Vellaluru village (Deceased No.2), by hurling country made bombs on an auto in which he was traveling at that time along with 5 others and later hacking him repeatedly with hunting sickles, battle axes and spears all over the head and body indiscriminately and you thereby committed an offence Punishable U/Sec.302 of the Indian Penal Code and within my cognisance.

FOURTHLY: that A1 to A7, A9, A10 and A8 (against whom the case was separated) of you on the same date, time and place and during the course of same transaction as mentioned in charge No.1 did commit murder by intentionally (or knowingly) causing the death of Suda Venkateswararao @ Badvai, s/o. Venkatappaiah, aged 37 years, Vellaluru village (deceased No.3), by hurling country made bombs on an auto in which he was traveling at that time along with 5 others and later hacking him repeatedly with hunting sickles, battle axes and spears all over the head and body indiscriminately and you thereby committed an offence Punishable U/Sec.302 of the Indian Penal Code and within my cognisance.

FIFTHLY: that A1 to A7, A9, A10 and A8 (against whom the case was separated) of you on the same date, time and place and during the course of same transaction as mentioned in charge No.1, were members of unlawful assembly and in prosecution of your common object of which viz., committed an offence of hurling country made bombs and hacking 1. Suda Samudraiah, 2.Batchu Srinivasarao @ Srinu and 3.Suda Venkateswara Rao, which you knew likely to be committed in prosecution of the common object of the said assembly and you thereby committed an offence punishable U/sec.302 r/w 149 of Indian Penal Code and within my cognisance.”

The extract of the charges would show that each petitioner is charged for committing murder of each victim mentioned in each of the said charge and the last of the charges above is with regard to petitioners forming unlawful assembly and in prosecution of

common object viz. committing offence of hurling country made bombs and hackling the three victims named. At the conclusion of the trial the Sessions Court held that “ ... *So the prosecution proved the case against the accused in this case under section 302 r/w 149 of the Indian Penal Code which was framed under charge No.5 and the prosecution failed specifically to prove charges 2, 3 and 4.*”

14. It would be noticed that the fifth charge for which the petitioners were convicted related to murder of three victims.

The Sessions Court, however, did not convict the petitioners for charges 2, 3 and 4 as “... *there exists no exact material to specifically say that a particular injury caused by a particular weapon, caused by a particular accused, led to the death of the any of D1, D2 and D3.*

The death of each of the deceased D1, D2, D2 was due to cumulative effect of the injuries caused on them which they received due to country made bombs and also because of the injuries caused by all the accused in this case with deadly weapons held by each one of them”. The aforesaid judgment was confirmed by this Court in CrI.A.Nos.999 and 1026 of 2006 dated 18.12.2008 and para 52 of the said judgment, which is relevant, is extracted hereunder:

“52. It is a broad day light attack on three persons. Number of incised injuries were found on the dead bodies of the deceased persons. In the first instance, the accused hurled bombs and later attacked the three deceased persons with deadly weapons. The trial Court has not committed any illegality in accepting the evidence of P.Ws.1 to 6. After an elaborate consideration of the evidence on record in right perspective, the trial Court rightly found the appellants guilty of the charges framed against them. None of the findings is shown to be preserve or contrary to the evidence on record. Therefore, we have no hesitation to confirm the convictions recorded by the trial Court against the appellants/accused, and we also confirm the sentences recorded for the said sentences against all other accused, except against A.2 and A.3, for the following reasons.”

15. In view of the above, it would be clear that even the conviction of the petitioners on charge No.5 is relating to murder of three victims caused by the petitioners. It cannot, therefore, be said that the petitioners were convicted only on a single count, as contended by the learned counsel for the petitioners, as, undoubtedly, the petitioners were charged

separately with regard to each murder and were also charged cumulatively for the murder of three victims. In my view, therefore, the case of the petitioners, being clearly within the exceptions provided under clause 5(ii) of the aforesaid G.O., their case for remission was rightly not considered by the first respondent. Hence, the issue is accordingly answered in the negative.

The writ petition is liable to be dismissed and is accordingly dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

April 2, 2015

DSK