

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2871 OF 2016

Shri Futarmal Kapurji Borana ... Petitioner

Vs.

The State of Maharashtra ... Respondent

Mr.Prosper D'souza, Advocate appointed for the Petitioner
Ms.H.J. Dedia, APP, for Respondent - State

CORAM: **SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**

DATE: **SEPTEMBER 14, 2016**

ORAL ORDER (PER SMT.V.K. TAHILRAMANI, J.):

1. The petitioner is a life convict. The petitioner was convicted under sections 395, 396 and 449 of the Indian Penal Code by judgment and order dated 23.11.2004 passed by the learned Sessions Judge, Court of Sessions for Greater Bombay in Sessions Case No.270 of 2002. For the conviction under section 396 of the Indian Penal Code, the petitioner was sentenced to R.I. for life; for the offence under punishable under section 395 of the Indian Penal Code, the petitioner was sentenced to R.I. for life; for the offence under section 449 of the Indian Penal Code also, the petitioner was sentenced to life imprisonment. The learned Sessions Judge directed that all the sentences of imprisonment shall run concurrently. Being aggrieved by the said conviction and sentence, the

petitioner preferred Criminal Appeal. The said appeal came to be dismissed.

2. The case of the petitioner is that he has completed 14 years of actual imprisonment, hence, he should be released from prison. Reliance was placed on the decision dated 21.1.2009 of the Division Bench of this Court (Coram: Bilal Nazki and Anoop Mohta, JJ.) in **Writ Petition No.2391 of 2008** rendered in the case of **Vishwajeet Shankar Khavanekar vs. The State of Maharashtra & Ors.** It is pointed out that in the said order, it is reflected that if the convict has completed 14 years of actual imprisonment, he should be released from prison. Based on this observation, in the order dated 21.1.2009, the petitioner has prayed that he has been illegally detained and hence, direction should be issued to release him immediately from prison. The petitioner, as of 30.6.2016, has completed actual imprisonment of about 14 years and 8 months and with remission, he has completed about 18 years, 6 months and 6 days.

3. Life convicts are prematurely released from prison under section 433/433A of the Code of Criminal Procedure. Under both sections, the Government has power to commute the sentence of life imprisonment. However, section 433A deals with cases where a life sentence is imposed for offences for which death is one of the punishments. The learned Counsel for the petitioner states that the petitioner falls in this category,

hence, he would be covered by section 433A of the Code of Criminal Procedure.

4. When a life convict completes 12 years of actual imprisonment, his case is referred to the State Government for commutation of sentence. Thereafter, the Government takes into consideration the facts and circumstances of the case and the guidelines issued in relation to the commutation of sentence and thereafter decides which category the convict would fall in. Once the category is decided, the convict, who falls under section 433A, is released on completing the sentence of imprisonment as mentioned in the category including remission provided that the convict has completed 14 years of actual imprisonment.

5. In the order dated 21.1.2009, it is also reflected that directions are issued that those persons, who according to the respondents, have completed 14 years of imprisonment and **“who in the terms of Guidelines are entitled to be released”** on completion of 14 years, be released forthwith. Now the prison authorities have recommended that the case of the petitioner would fall in category 4(e) of the 2010 Guidelines. 4(e) *inter alia* deals with murders committed by dacoits and robbers in the act of committing dacoities and robberies. Category 4(e) provides that convicts who are placed in this category will be released on completing 26 years including remission provided that the convict has completed 14

years of actual imprisonment. As far as 1992 Guidelines are concerned, the petitioner would fall in category under 5(a) which deals with murders committed by dacoits and robbers in the act of committing dacoity and robbery. Category 5(a) of the 1992 Guidelines provide that convicts who are placed in this category will be released on completing 26 years including remission provided that the convict has completed 14 years of actual imprisonment. Thus, it is seen in both categories, the sentence of imprisonment to be undergone with remission is 26 years.

6. The learned Counsel for the Petitioner submitted that in view of the order of this Court dated 21.1.2009, the petitioner ought to have been immediately released from prison as soon as he had completed 14 years of actual imprisonment. As stated earlier, in the order dated 21.2.2009, it is reflected that the convicts who have completed 14 years of imprisonment, be released forthwith, if they are entitled to be released as per the Guidelines. As per the Guidelines, it is recommended that the petitioner's case would be covered by category 4(e) of the 2010 Guidelines. Prima facie, the categorisation appears to be correct.

7. As far as the order dated 21.1.2009 in the case of **Vishwajeet Shankar Khavanekar (supra)** is concerned, we would like to refer to some decisions of the Supreme Court. They are as under:

i) **Sangeet & anr. vs. State of Haryana** reported in **(2013) 2 SCC 452**. In paragraph 74 of the judgment, it is observed that there is a misconception that a prisoner serving a life sentence has an indefeasible right to release on completion of either 14 years or 20 years of imprisonment. The prisoner has no such right. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate government under section 432 of the Code of Criminal Procedure, which in turn is subjected to the procedural checks in that section and the substantive check in section 433A of the Code of Criminal Procedure.

ii) A Bench of three Judges of the Supreme Court in the case of **Swamy Shraddhananda (2) vs. State of Karnataka**, reported in **(2008) 13 SCC 767** has observed in paragraph 75 that "It is now conclusively settled by a catena of decisions that the punishment of imprisonment for life handed down by the Court means a sentence of imprisonment for the convict for the rest of his life (See the decisions of this Court in **Gopal Vinayak Godse vs. State of Maharashtra, AIR 1961 SC 600** (Constitution Bench), **Dalbir Singh vs. State of Punjab, (1979) 3 SCC 745**, **Maru Ram vs. Union of India, (1981) 1 SCC 107** (Constitution Bench), **Naib Singh vs. State of Punjab, (1983) 2 SCC 454**, **Ashok Kumar vs. Union of**

India, (1991) 3 SCC 498, Laxman Naskar vs. State of W.B., (2000) 7 SCC 626, Zahid Hussein vs. State of W.B., (2001) 3 SCC 750, Kamalanantha vs. State of T.N., (2005) 5 SCC 194, Mohd. Munna vs. Union of India, (2005) 7 SCC 417 and C.A. Pious vs. State of Kerala, (2007) 8 SCC 312)."

iii) The Supreme Court in the case of **State of Uttar Pradesh vs. Sanjay Kumar**, reported in **(2012) 8 SCC 537** in paragraph 24 has observed that life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it is considered for natural life of convict.

iv) In **Gopal Vinayak godse vs. State of Maharashtra**, reported in AIR 1961 SC 600, it was held that by earning remissions, a life convict does not acquire a right to be released prematurely, the Supreme Court noted that the release would follow only upon an order made under the Criminal Procedure Code by the Appropriate Government or on a clemency order in exercise of power under Article 72 or Article 161 of the Constitution of India. The Supreme Court further noted, "Thus, this Court in clear term has laid down that by earning remissions a life convict does not acquire a right to be released prematurely. But if the Government has framed any rule or made a scheme for early release of such convicts then those

rules or schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution”.

8. We are bound by the decisions of the Supreme court. From the decisions of the Supreme Court, it is clear that a convict cannot be released from prison just because he has completed 14 years of actual imprisonment. A convict would be entitled to release only after he completes the sentence of imprisonment as per the category he has been placed in pursuant to the Guidelines framed by the Government in that respect.

9. Reliance was placed by the learned Counsel for the petitioner on two decisions of this Court. The first decision is dated 3.8.2009 in Criminal Writ Petition No.207 of 2009 in the case of **Ravindra Shantaram Sawant vs. The State of Maharashtra & Ors.** (Coram: Bilal Nazki & A.R. Joshi, JJ.). The second decision is dated 12.10.2009 in Criminal Writ Petition No.2743 of 2009 in the case of **Ramji Baldev Yadav vs. The State of Maharashtra & anr.** (Coram: Bilal Nazki and A.R. Joshi, JJ.) Reliance was placed on both these decisions to contend that for applying the guidelines, the date to be taken into consideration is date of conviction. Hence, the guidelines prevalent on the date of conviction ought to be taken into consideration while categorising a prisoner. The petitioner has been placed in category 4(e) of the 2010 Guidelines. Category 4 deals

with murders for other reasons. Category 4(e) *inter alia* deals with murders committed by dacoits and robbers in the act of committing of dacoities and robberies. Convicts who are placed in this category, are released from prison after completing 26 years of imprisonment including remission. The case of the petitioner is that he was convicted on 23.11.2004. In such case, the guidelines which were prevalent at that time should be made applicable to him that is the 1992 Guidelines would be applicable to the petitioner. The 1992 Guidelines provide for murders committed by the dacoits and robbers in the act of committing dacoities and robberies in Category 5(a). Convicts who are placed in this category would be released from prison after completing 26 years including remission. Thus, even if the 1992 Guidelines or the 2010 Guidelines are taken into consideration, the period is the same i.e., the convict would be released after completing 26 years of imprisonment including remission.

10. There is one more aspect of the matter i.e., the issue about which guideline would apply to a convict in case of premature release has been laid to rest by the Supreme Court in the case of **State of Haryana & ors. vs. Jagdish**¹. In this decision, the Supreme Court has held that whichever guidelines is most beneficial to the convict, should be applied. In the present case, whichever guidelines is considered, the period remains the same, i.e., 26 years. Thus, the petitioner does not get any

1 (2010) 4 SCC 216

benefit from the decisions in the case of **Ravindra Shantaram Sawant vs. The State of Maharashtra & Ors.** and **Ramji Baldev Yadav vs. The State of Maharashtra & anr.**

11. Thus, the petitioner who has completed 14 years of actual imprisonment shall be entitled to be released only after he completes the sentence of imprisonment as per the category the convict has been placed pursuant to the Guidelines framed by the Government in that respect. Thus, no case is made out for interference.

12. Rule is discharged.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)