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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 1334/2016

KAUSHAL KUMAR @ BABLOO

..... Petitioner

Through: Mr. Ajit Kumar, Advocate

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Rahul Mehra, APP

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

29.08.2016

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Mr. Rahul Mehra, learned Standing Counsel (Crl.) has argued the matter without filing the counter affidavit.

I have heard learned counsel for the petitioner as well.

The petitioner has preferred the present writ petition to seek a direction for immediate release of the petitioner from Central Jail No. 3, Tihar, New Delhi – 110 064. He seeks that till the petitioner's case is taken up for pre-mature release by the Sentence Reviewing Board (SRB) in its upcoming meeting, he may be released in the interregnum.

The petitioner stood convicted in case FIR No. 247/2000 under Sections 302/397/506-II/34 IPC registered at police station Preet Vihar, New Delhi.

The case of the petitioner is that the petitioner was under 20 years of age at the time of commission of the offence. He submits that he has undergone over 11 years of incarceration. He places reliance on Rule 516-B of the Punjab Jail Manual, which provides that in case of a male prisoner under 20 years of age at the time of commission of offence who is undergoing imprisonment for life, the convict becomes eligible for consideration of his case for commutation of sentence by the SRB after 10 years of incarceration. Consequently, the petitioner submits that his case should be placed before the SRB and in the meantime, he should be directed to be released.

Mr. Mehra, on the other hand, submits that the claim made by the petitioner is misconceived. In this regard, he places reliance, firstly, on Section 433 A Cr.P.C., which reads as follows:

“433A. Restriction on powers of remission or Commutation in certain cases-Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by laws, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.”

Mr. Mehra submits that since the conviction of the petitioner, inter alia, is under Section 302 IPC, which is an offence for which death is one of the punishments provided by law, even though, the petitioner has been awarded a sentence for imprisonment for life, he cannot take the benefit of Section 433A at this stage, since, admittedly, he has not undergone 14 years of incarceration as yet.

Learned counsel for the petitioner has sought to place reliance on the judgment of the Supreme Court in *Niwas Vs. Delhi Administration* 1982 Law Suit (SC) 144 (in the case of *Bhola Nath* writ petition No. 938/1982). In this case, the case of the petitioner was recommended for release by the Superintendent of Jail on completion of 10 years of imprisonment inclusive of remissions since each of them was aged below 20 years as on the date of commission of the offence.

Mr. Mehra has pointed out that the Constitution Bench in its decision in *Maru Ram Vs. Union of India and Ors.*(1981) 1 SCC 107, had the occasion to consider the applicability of Section 433A Cr.P.C. The Supreme Court held that the said provision would have no application in respect of cases where the conviction takes place prior to the introduction of Section 433A, however, where the conviction is taken place after introduction of Section 433A Cr.P.C., the said provision would have applicability. In particular, he has placed reliance on para 55 of the said decision, which reads as follows:

“55. Now to the first point. It is trite law that civilised criminal jurisprudence interdicts retroactive impost of heavier suffering by a later law. Ordinarily, a criminal legislation must be so interpreted as to speak futuristically. We do not mean to enter the area of Article 20(1) which has already been dealt with. What we mean to do is so to read the predicate used in Section 433-A as to yield a natural result, a humane consequence, a just infliction. While there is no vested right for any convict who has received a judicial sentence to contend that the penalty should be softened and that the law which compels the penalty to be carried out in full cannot apply to him, it is the function of the court to adopt a liberal construction when dealing with a criminal statute in the ordinary course of things. This humanely inspired canon, not applicable to certain terribly anti-social

categories may legitimately be applied to Section 433-A. (The sound rationale is that expectations of convicted citizens of regaining freedom on existing legal practices should not be frustrated by subsequent legislation or practice unless the language is beyond doubt.) Liberality in ascertaining the sense may ordinarily err on the side of liberty where the quantum of deprivation of freedom is in issue. In short, the benefit of doubt, other things being equal, must go to the citizen in penal statute. With this prefatory caution, we may read the section: "Where a sentence of imprisonment for life is imposed on conviction of a person ... such person shall not be released from prison unless he had served at least fourteen years of imprisonment". Strict conformity to tense applied by a precision grammarian may fault the draftsman for using the past-perfect tense. That apart, the plain meaning of this clause is that "is" means "is" and, therefore, if a person is sentenced to imprisonment for life after Section 433-A comes into force, such sentence shall not be released before the 14-year condition set out therein is fulfilled. More precisely, any person who has been convicted before Section 433-A comes into force goes out of the pale of the provision and will enjoy such benefits as accrued to him before Section 433-A entered Chapter XXXII. The other clause in the provision suggests the application of the mandatory minimum to cases of commutation which have already been perfected, and reads: "Where a sentence of death . . . has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment." The draftsman, apparently, is not a grammarian. He uses the tenses without being finical. We are satisfied that even this latter clause merely means that if a sentence of death has been commuted after this section comes into force, such person shall not be released until the condition therein is complied with. "Is" and "has" are not words which are weighed in the scales of grammar nicely enough in this section and, therefore, over-stress on the present tense and the present-perfect tense may not be a clear indication. The general rule bearing on ordinary penal statutes in their construction must govern this case. In

another situation, interpreting the import of “has been sentenced” this Court held that “the language of the clause is neutral” regarding prospectivity. [Boucher Pierre Andre v. Supdt., Central Jail, Tihar, (1975) 1 SCC 192, 195 : 1975 SCC (Cri) 70, 73] It inevitably follows that every person who has been convicted by the sentencing court before December 18, 1978, shall be entitled to the benefits accruing to him from the remission scheme or short-sentencing project as if Section 433-A did not stand in his way. The section uses the word “conviction” of a person and, in the context, it must mean “conviction” by the sentencing court; for that first quantified his deprivation of personal liberty.”

Mr. Mehra submits that the decision in *Niwas* (supra) has no applicability also for the reason that the conviction in those cases (in the case of Bhola Nath) had taken place prior to introduction of Section 433A Cr.P.C. which was introduced with effect from 18.12.1978.

Mr. Mehra submits that the aspect of grant of remission lies entirely within the domain of the State and in this regard, he places reliance on another Constitution Bench judgment of the Supreme Court in *Gopal Vinayak Godse Vs. State of Maharashtra and others* (1961) 3 SCR 440.

Having heard learned counsels, I am of the view that there is no merit in this petition. Section 433A Cr.P.C. is clear in its terms. Firstly, it does not draw a distinction between convicts who were below 20 years of age on the date of commission of crime or those who were more than 20 years of age on such date. It applies across the board to all convicts. Secondly, it is clear that Section 433A Cr.P.C. requires that the convict who is undergoing life imprisonment in respect of an offence for which death is one of the penalties, the convict must undergo 14 years of imprisonment without taking into account any remissions that he may have earned. His actual

imprisonment could be for a period of 14 years. The petitioner, in the present case, admittedly, has not undergone 14 years of imprisonment as on date. Reliance placed on *Niwas* (supra) is misplaced since Section 433A Cr.P.C. has been considered and applied by the Supreme Court in *Maru Ram* (supra) and it has been clearly held that the said provision would apply to all such cases where the first conviction takes place after the introduction of the said provision. In the present case, the conviction of the petitioner took place in the year 2010 whereas the provision was brought on the statute book in the year 1978. Consequently, there is no merit in this petition. Dismissed.

VIPIN SANGHI, J

AUGUST 29, 2016

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