

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.13872 of 2016

ORDER :

Heard learned counsel for the petitioner and learned Government Pleader for respondents.

2. The petitioner states that he along with seven others were convicted in S.C.No.365 of 1998 by the II-Additional District and Sessions Judge, Nellore, for the offences under Sections 147, 148, 324 and 302 read with 149 IPC and were sentenced to undergo imprisonment for life. When they filed an appeal in CrI.A.No.517 of 2006, this Court, by order, dated 22.03.2007, confirmed the conviction insofar as against the petitioner and four others. Challenging the same, S.L.P. was preferred and the Supreme Court dismissed the same. The petitioner was also convicted in S.C.No.444 of 2000, on 09.11.2009, by the Family Court-cum-III-Additional District and Sessions Judge (FTC), Nellore, for an offence under Section 302 IPC and was sentenced to undergo imprisonment for life. When the said order was challenged in CrI.A.No.1709 of 2009, this Court, by order, dated 10.03.2014, modified the conviction to be one under Part-II of Section 304 IPC and reducing the sentence from imprisonment for life to a period of five years and fine of Rs.5,000/-. Both sentences as aforesaid was ordered to be run concurrently by operation of Section 427 of the Code of Criminal Procedure.

3. While so, the Government of Andhra Pradesh issued G.O.Ms.No.163, dated 18.11.2015, granting special remission to life

convicted prisoners on the occasion of Republic Day. In the said Government Order (G.O.), the Government issued certain guidelines indicating the prisoners, to whom the remission was not applicable. A Committee was also constituted to recommend the cases to Government for consideration of eligible cases. Thereafter, G.O.Ms.No.9, dated 25.01.2016, was issued granting special remission to life convicted prisoners and in the list, the name of the petitioner and other convicted prisoners are shown. The further case of the petitioner is that when his son made an application to the 4th and 5th respondents seeking information under Right to Information Act with regard to the consideration of the case of the petitioner for grant of special remission, it came to light that the 4th respondent recommended the case of the petitioner for release on the ground that he satisfied the norms prescribed in G.O.Ms.No.163, dated 18.11.2015. However, when his application was under consideration, it appears that Telugu Desam Party District Vice President, Nellore, sent an e-mail to the 3rd respondent stating that the jail officials are giving wrong information about the petitioner and the case of the petitioner is going to be considered. On receipt of the said letter, the Director General of Prison and Correctional Services issued a memo to the 4th and 5th respondents calling for a report with regard to the allegations and the 5th respondent submitted report on 08.01.2016 and another report was also submitted on 13.01.2016 stating that there were some controversies with regard to the transfer of the petitioner

from Nellore Prison to Kadapa Prison. When the petitioner came to know that his case was not recommended for consideration, he filed the present writ petition.

4. The 4th respondent filed counter affidavit indicating the period of sentence completed by the petitioner and placing his name in the list of doubtful prisoner cases.

5. The 5th respondent filed a separate counter admitting the conviction of the petitioner in S.C.No.365 of 1998 and S.C.No.444 of 2000. With regard to consideration of the case of the petitioner, it is stated that the petitioner completed actual sentence of 11 years 2 months and 5 days as on 26.01.2016 and earned remission of 2 years 10 months and 20 days and he fulfilled the prescribed eligibility criteria laid down at para 7 of the G.O. It is further stated that the 4th respondent submitted the name of the petitioner to the 3rd respondent, vide letter dated 07.12.2015, for award of special remission by placing him in doubtful cases list as he was involved in a case of murder of N.M.R. employee, which comes under clause at para 8 (xiv) making the remission inapplicable. The 3rd respondent, by his memo, dated 08.01.2016, called for remarks on the contents mentioned in the e-mail petition sent by the District Vice President of Telugu Desam Party and accordingly, the 4th respondent submitted remarks stating that the petitioner was eligible to be included in the list for premature release in terms of G.O.Ms.No.163, dated 18.11.2015, and his name was sent to the 3rd respondent for perusal along with other inmates in

doubtful cases list. It is also stated that the 5th respondent, vide his letter, dated 08.01.2016, stated that the Medical Officers of Central Prison, Nellore, reported that on 10.04.2013 the petitioner had a heated argument with the Medical Officer and the Medical Officers have expressed their grievance regarding the way the whole issue was dealt by the in-charge Superintendent and submitted a written representation on 16.04.2013, which ultimately resulted in permanent transfer of the petitioner from Central Prison, Nellore to Central Prison, Kadapa, vide proceedings, dated 23.05.2013. The 5th respondent submitted a report on 13.01.2016 to the 3rd respondent reporting that the petitioner used to instigate other co-prisoners against the Prison Administration of Central Prison, Nellore, without himself getting directly involved in such cases. Since no evidence could be gathered, the petitioner could not be punished. On the request made by the 5th respondent, the Government cancelled the parole order granted to the petitioner and the 5th respondent requested the 3rd respondent to treat the transfer of the petitioner on administrative grounds as punishment and deny the grant of Special Remission under G.O.Ms.No.163, Home (Paroles) Department, dated 18.11.2015. It is stated that the said G.O. is not applicable to the prisoners, who are punished for any serious offences like revolt/organizing revolt against the prison administration any time during their entire period of stay in the prison and the said G.O. is applicable only to the prisoners, who maintain good behaviour in

prisons while undergoing sentence. The petitioner herein committed grave prison offences, therefore, the contention of the petitioner that non-recording of the prison offences and punishments in the History Ticket, are not valid reasons to claim that he is eligible for special remission and for his release.

6. Learned counsel for the petitioner submitted that non-consideration of the case of the petitioner is in violation of G.O.Ms.No.163, Home (Paroles) Department, dated 18.11.2015 as he fulfils the criteria in the said Government Order.

7. Learned Government Pleader, on the other hand, submitted that the petitioner was transferred from Nellore Prison to Kadapa Prison, though on administrative ground, and in view of the involvement in altercation with the Medical Officer, the petitioner is not eligible to be considered for premature release by applying G.O.Ms.No.163, dated 18.11.2015. The relevant portion of the Government Order, which is applicable to the petitioner, reads as follows:

All convicted male prisoners sentenced to imprisonment for life including those governed by Section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and who have undergone an actual sentence of 7 years including remand period and total sentence of 10 years including remission as on 26.01.2016 shall be released.

8. The persons, who are not entitled for remission of sentence and whose cases cannot be considered are mentioned in para 8 thereof. They were categorized into two categories. Category-II specifies the

following persons and the petitioner is stated to be coming under this category.

iv. Life convicts who are punished for any prison offence during the least 3 preceding years and those who are punished for any serious prison offence like revolt/organizing revolt against the prison administration anytime during their entire period of stay in the prison.

xiv. Prisoners convicted of murder of Public Servants on duty.

9. Para 11 of the said G.O. states that the Director General of Prisons and Correctional Services, Andhra Pradesh, Hyderabad, is requested to send the list of prison-wise eligible convicts as per the guidelines issued in paragraphs 7, 8 and 9 of the order in the proforma annexed to the said order, for placing the matter before the Committee constituted for the purpose of reviewing the list and recommend to Government for consideration of the eligible cases for grant of Special Remission.

10. So far as the ground of application of the rule of punishment is concerned, the transfer of the petitioner on administrative grounds is stated to be, in fact, a punishment. But, the learned counsel for the petitioner submits that the procedure prescribed in A.P. Prison Rules for award of punishment was not followed. This Court noticed that the transfer of the petitioner from Nellore jail to Kadapa jail cannot be called as a punishment within the meaning of the Prisons Act and Rules and hence, the said exemption is not attracted in the case of the petitioner.

11. The other contention that whether the exemption is attracted in the case of the petitioner is concerned, the list of prisoners contained in the G.O.Ms.No.9 Home (Paroles) Department, dated 25.01.2016, consists of the persons who were convicted along with the petitioner at Sl.No.247 to 250 in respect of Central Prison, Nellore and hence, the said ground is also not available to the respondents for not considering the case of the petitioner.

12. In view of the above facts and circumstances of the case, the 3rd respondent ought to have sent the name of the petitioner to the 2nd respondent for its review and further action by the 2nd respondent. Since the 3rd respondent failed to discharge his public duty even after the petitioner became eligible to be considered in the light of the said G.O.Ms.No.163 Home (Paroles) Department, dated 18.11.2015, this writ petition is allowed by directing the 3rd respondent to place the case of the petitioner before the 2nd respondent for taking appropriate action in accordance with the conditions mentioned in the G.O.Ms.No.163 Home (Paroles) Department dated 18.11.2015, within a period of thirty days. If the 2nd respondent is not in session, the Principal Secretary to the Government, Home (Paroles) Department, Government of Andhra Pradesh, Hyderabad, shall constitute a Committee and place the case of the petitioner before the Committee for its decision, as expeditiously as possible, but not later than three

months from the date of receipt of recommendations of the 3rd respondent.

13. Miscellaneous Petitions pending, if any, shall stand closed.

A. RAMALINGESWARA RAO, J

17th April 2017.

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