

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.107 of 2018

Manoj Agrawal, S/o Late Shankar Lal Agrawal, aged about 49 years,
R/o Behind Solakholi, Tikrapara, P.S. City Kotwali, District Bilaspur
(C.G.)

Through: Mahek Agrawal, S/o Manoj Agrawal, aged about 21 years,
R/o Behind Solakholi, Tikrapara, P.S. City Kotwali, District Bilaspur
(C.G.)

(In Jail)
---- Petitioner

Versus

1. State of Chhattisgarh, Through its Principal Secretary, Department of Home (Jail), Mantralaya, Mahanadi Bhavan, Naya Raipur, District Raipur (C.G.)
 2. The Jail and Correctional Services Chhattisgarh, the Director General Prisons, Jail Road, Raipur, District Raipur (C.G.)
 3. Board constituted under Rule 6(5) of the C.G. Prisoner's Release on Probation Rules 1964, Through its Chairman, Department of Home, Mantralaya, Mahanadi Bhavan, Naya Raipur, District Raipur (C.G.)
 4. The Director General, Jail and Correctional Services Chhattisgarh, District Raipur (C.G.)
 5. The Jail Superintendent, Central Jail, Bilaspur, District Bilaspur (C.G.)
 6. The District Magistrate, Bilaspur, District Bilaspur (C.G.)
 7. The Superintendent of Police, Bilaspur, District Bilaspur (C.G.)
- Respondents

For Petitioner: Mr. Sunil Pillai, Advocate.

For State/Respondents: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/12/2019

1. The petitioner is a convicted prisoner suffering sentence for offence under Sections 147, 148 & 302 of the IPC and Sections 25 & 27 of the Arms Act, as he has been sentenced on 30-4-2012. He made

application under Rule 4 of the M.P. Prisoner's Release on Probation Rules, 1964 (for short, 'the Rules of 1964') on the ground that he has completed more than 5 years without remission therefore he is entitled to be released on probation as per the Rules of 1964. The said application was considered by the Chhattisgarh Probation Board in its meeting held on 17-10-2017 and the same was rejected vide resolution passed on 17-10-2017 holding that it is not appropriate to enlarge the petitioner on probation and accepting the same, the State Government has passed order on 4-12-2017 (Annexure P-1) against which this writ petition has been preferred.

2. Mr. Sunil Pillai, learned counsel appearing for the petitioner, submits that the order impugned smacks total non-application of mind. The decisions of the Supreme Court in the matters of Arvind Yadav v. Ramesh Kumar¹ and State of Madhya Pradesh and others v. Khuman Singh and another² have not been considered and merely on the basis of gravity of offence, the Probation Board recommended for rejection of the application of the petitioner which has been accepted by the State Government.
3. Mr. Ravi Kumar Bhagat, learned Deputy Government Advocate, appearing on behalf of the State / respondents, would support the impugned order.
4. I have heard learned counsel for the parties and went through the record with utmost circumspection and also given thoughtful consideration to the same.
5. Rule 4 of the Rules of 1964 provides as under: -

1 (2003) 6 SCC 144

2 (2014) 15 SCC 188

“4. Eligibility for release.—Save the prisoners specified in Rule 3 any other prisoner who has served one-third of his sentence of imprisonment or a total period of five years without remission, whichever is less, may be released by the Government on licence;

Provided that in case of such prisoners who have been sentenced for life imprisonment, under Sections 302 and 305 of the Indian Penal Code, 1860 (No. 45 of 1860) or under the provisions of other penal laws in which death sentence is also one of the punishments subject to the conditions that such prisoners are not barred for such consideration under the provisions of such laws, will be considered for premature release from the prison. The eligibility for release shall be after undergoing the sentence of 14 years of actual imprisonment without remission of his sentence :

Provided further that all other prisoners, undergoing the sentence of life imprisonment, will be considered for premature release only after they have undergone at least 10 years of imprisonment with remission and after the completion of 7 years of actual imprisonment without remission in sentence :

Provided also that nothing in the above provisions shall apply to the prisoners whose cases are being sent to the Hon'ble Governor for consideration under Article 161 of the Constitution of India, on special reasons of humanitarian grounds.”

6. It is the case of the petitioner that he has completed five years of imprisonment and is entitled for probation as per Rule 4 of the Rules of 1964. The resolution passed pursuant to the application made by the petitioner has been placed on record by the State along with the return in which it has been stated that though the District Magistrate has recommended for release of the petitioner on probation, but looking to the seriousness of the offence committed by the petitioner, it is inappropriate to release him on probation. Except gravity of offence nothing has been considered by the State.

7. In Arvind Yadav (supra), the Supreme Court observed as under: -

“6. We are unable to sustain the impugned judgment of the High Court. Each of the convicts before the High Court had been found guilty of commission of serious crime. The

impugned judgment notices that offences against the convicts were under Sections 302/307/394/304-B/498-A/325 of the Penal Code and the convicts were serving their respective sentences in jail. In all the cases before the High Court, the recommendations of the Probation Board that had been accepted by the State Government were against the release of the convicts. *If there was non-application of mind to the relevant considerations, the appropriate course was to remand the case for fresh decisions by the authorities except, if in a given exceptional case, for strong cogent reasons, the High Court may have examined itself the relevant facts and quashed the order declining the release. The High Court, instead of adopting this course, has made a general observation that the remand to State Government for fresh consideration is bound to delay the matter causing further injustice to the convicts.*"

8. Similarly, in the matter of State of Punjab v. Kesar Singh³, the

Supreme Court observed as follows: -

"3. We have heard learned counsel for the parties. In our opinion the direction given by the High Court was not at all appropriate or permissible in law. The mandate of Section 433 CrPC enables the Government in an appropriate case to commute the sentence of a convict and to prematurely order his release before expiry of the sentence as imposed by the courts. Clause (b) of Section 433 CrPC provides that the sentence of imprisonment for life may be commuted for imprisonment for a term not exceeding 14 years or fine. Undisputedly, the respondent had not completed 14 years' sentence when he filed the petition under Section 482 CrPC seeking premature release. The direction of the High Court therefore to prematurely release the respondent and set him at liberty forthwith could not have been made. That apart, even if the High Court could give such a direction, it could only direct consideration of the case of premature release by the Government and could not have ordered the premature release of the respondent itself. The right to exercise the power under Section 433 CrPC vests in the Government and has to be exercised by the Government in accordance with the rules and established principles. The impugned order of the High Court cannot, therefore, be sustained and is hereby set aside."

9. In Khuman Singh's case (supra), the Supreme Court while overturning the decision of the M.P. Probation Board and the State Government has held that even if the approach adopted by the Board

3 (1996) 5 SCC 495

and the State is not germane, normally, the procedure to be followed by the High Court is to remand the matter to the competent authority by making appropriate observations.

10. In this case, it is quite vivid that except holding that there is gravity of offence, nothing has been considered by the Board and the State Government. It smacks total non-application of mind to the relevant consideration. Therefore, following the decisions of the Supreme Court in Arvind Yadav (supra), Kesar Singh's case (supra) and Khuman Singh's case (supra), the impugned order is set aside and the matter is remanded to the State Government to consider the case of the petitioner afresh in accordance with law within a period of three months from the date of receipt of a copy of this order, in the light of the provisions of the Rules of 1964, also keeping in view the decision rendered by this Court in the matter of In Reference High Court of Chhattisgarh v. State of Chhattisgarh and another⁴ in which the decision of the Supreme Court in the matter of State of M.P. and others v. Bhola alias Bhairon Prasad Raghuvanshi⁵ has been relied upon.
11. With the aforesaid observation, the writ petition stands finally disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

⁴ Cr.M.P.No.318/2017, decided on 8-2-2019

⁵ (2003) 3 SCC 1