

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 11.07.2019

Order Passed on : 29.07.2019

W.P.(CR.) No. 421 of 2018

T. Ashok, S/o. T. Chinnarao, aged about 43 Years, R/o. 121, T/B Babu Kholi, Railway Colony, P.S. Torwa, District Bilaspur, Madhya Pradesh (Now Chhattisgarh).

---- Petitioner

Versus

1. State of Chhattisgarh, Through : Secretary, Department of Home Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
2. Director General of Police, Police Head Quarters, Naya Raipur, District Raipur Chhattisgarh.
3. Inspector General of Police, Police Range, Bilaspur, District Bilaspur Chhattisgarh.
4. Superintendent of Police, Bilaspur, District Bilaspur Chhattisgarh.
5. Station House Officer, Police Station Torwa, Bilaspur, District Bilaspur Chhattisgarh.
6. Jail Superintendent Officer, Central Jail Bilaspur, District Bilaspur Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Akhtar Hussain, Advocate
For Respondents/State	: Mr. Shubhash Yadav, Dy.G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

29/07/2019

1. This petition under Article 226 of Constitution of India has been filed praying for issuance of writ of mandamus or any appropriate writ.
2. It is submitted by the learned counsel for the petitioner that the petitioner was convicted by the Sessions Court in Sessions Trial No.382 of 1999 by the judgment dated 13.03.2000 and the same has been confirmed in the appeal by this Court in Cr.A. No.848/2000 decided on 01.02.2016. The appellant is in jail since more than 17 years and five months, therefore, he has become entitled for remission in sentence against him under the provisions of Section 432 of Cr.P.C. and according to the provisions of Jail Manual. It is prayed that appropriate order be passed.
3. State counsel opposes the petition and the submissions made in this respect. It is specifically mentioned that the petitioner has been remanded to jail for the period between 20.08.2008 to 15.02.2016 as an under trial prisoner under remand warrant issued by the learned trial Court, therefore, this period can not be included in the sentence under gone by him in jail. Thereafter, the sentence under gone by him is not sufficient so that remission can be considered in favour of the petitioner by the State Government. Therefore, it is prayed that the petition be dismissed.

4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. In the judgment dated 13.03.2000, passed in S.T. No.382 of 1999 by the Sessions Court, the petitioner was convicted and sentenced with life imprisonment along with fine of Rs.2,000/- for the offence under Section 302 of I.P.C. and he was further sentenced with R.I. for five years along with fine of Rs.2,000/- for offence under Section 201 of I.P.C. There was order for concurrent running of sentences. The Appellate Court has in Criminal Appeal No.848/2000 dismissed the appeal filed by the petitioner and has ordered that the petitioner has completed almost 13 years in jail, therefore, it shall be open for him to avail remedies in accordance with law.
6. The petitioner was already convicted and sentenced by the judgment of Sessions Court on 13.03.2000. Thereafter, he had been on bail for sometime, however, he was arrested on warrant issued by the Court and placed in detention on 20.08.2008. The warrant that was sent by the Court below for giving entrance to the petitioner in jail was titled as Remand warrant. This was an error of the Court below because at that time, the appellant was not an under trial prisoner, as trial was already completed and therefore, he had to be sent back to jail for under going remaining part of the sentence against him. This error can be rectified in this petition.

7. The sentence imposed upon the petitioner is not specific on this point that he shall undergo life sentence till the end of his life, therefore, under this circumstances, the petitioner has entitlement for remission or suspension as may be available to him under the provisions of Jail Manual. Further the Appellate Court has also given liberty to the petitioner to avail remedies available under the law.
8. On the basis of the forgoing discussions and the conclusions drawn, this petition is disposed off with following directions :-
 - (1) The period of detention of the appellant from 20.08.2008 to 15.02.2016 shall be considered as detention for undergoing the sentence imposed upon him.
 - (2) The respondents are directed to consider on grant of remission/suspension to the petitioner in accordance with Section 432 of Cr.P.C. and under the provisions of Jail Manual on the basis of his entitlement and grant relief to the petitioner accordingly.
9. With the aforesaid directions, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge