

Suklal Hansda and Others

Vs

State of West Bengal

Writ Petition (Criminal) Nos. 1128-29 of 1982

(CJIP.N. Bhagwati, R.S. Pathak, A.N. Sen JJ)

03.03.1983

ORDER

1. These are two writ petitions before us; one writ petition is based on a letter addressed by Mahadev Hansda and the other is based on a letter addressed by B. Sansmal, who is an advocate practicing in Calcutta. Both the letters were treated as writ petitions and since they deal with the same subject matter, we propose to pass a common order dealing with the various averments made in those letters. These two writ petitions seek to bring to the notice of the court cases of 24 prisoners who are lodged in the Midnapore Central Jail in West Bengal. The broad complaint made in regard to these prisoners is that they have been in jail for long periods of time - in some cases longer than warranted by the order of conviction and sentence recorded against them and yet their cases have not been considered for release. The State Government has filed a common affidavit in reply to the two writ petitions setting out, what according to it, is the position in regard to these prisoners. The case of the State Government is that all the 24 prisoners mentioned in the two writ petitions have been sentenced to life imprisonment on various dates between 1970 and 1979, barring three who have been sentenced only in 1979 and 1980. Most of these prisoners have undergone imprisonment for a period which taking into account the remission earned by them as also the period of imprisonment undergone by them as undertrial prisoners, exceeds 14 years. But, the State Government has contended that Section 433-A of the Code of Criminal Procedure, 1973 requires that where a sentence of imprisonment of life is imposed on conviction of a person for an offence for which death is one of the punishments provided, such person shall not be released from prison unless he has served at least 14 years of imprisonment and since, according to the State Government, none of these 24 prisoners has suffered actual imprisonment for a period exceeding 14 years, their case cannot be considered for premature release. It is also the contention of the State Government that in any event the period of imprisonment undergone by these prisoners while they were undertrial prisoners, cannot be taken into account for the purpose of computing the period of 14 years after which alone their case can be considered for premature release. The validity of these contentions is contested on behalf of the petitioners by Mr Gobind Mukhoty who has been good enough to appear amicus curiae to assist the Court. So far as the first contention is concerned, it is now settled by the decision of this Court in *Maru Ram v. Union of India* [(1981) 1 SCC 107 : 1981 SCC (Cri) 112] that Section 433-A of the Code of Criminal Procedure, 1973 does not govern the case of prisoners who have been convicted and sentenced by the trial court prior to the coming into force of that section. We find that in the present case all the 24 prisoners whose case has been expressed by the petitioners appear to have been convicted and sentenced prior to the enactment of Section 433-A and the reliance placed by the State Government on Section 433-A, is, therefore, clearly unjustified. With regard to the second contention the State Government is undoubtedly right in its submission that the period of imprisonment undergone by an accused as an undertrial prisoner

is not liable to be taken into account for the purpose of reducing the term of imprisonment for life because the sentence being one of life imprisonment, it is not possible to deduct any period of undertrial detention from what is an imprisonment for life. But, for the purpose of considering whether the case of a prisoner should be considered for premature release on the completion of 14 years under sub-rule (1) of Rule 591 of the West Bengal Jail Code and on completion of 20 years under Part IV Rule 29 of the same Code, we do not see any reason why the period of imprisonment undergone by such a person as an undertrial prisoner should not be taken into account. So also the remission earned by a prisoner must be taken into account for the purpose of determining whether the case of a prisoner falls within sub-rule (1) of Rule 591 or Part IV Rule 29 of the West Bengal Jail Code, because both these rules specifically provide that in computing the period of 14 years or 20 years, as the case may be, the remission earned, if any, shall be taken into account.

2. There are, in fact, 8 out of 24 prisoners who have, on the basis of remission earned and the period undergone as undertrial prisoner, suffered imprisonment for a period of over 20 years. These are mentioned at items Nos. 1, 4, 11, 14, 15, 16, 19 and 20 in the list submitted by Mr Gobind Mukhoty, advocate for the petitioners, their names being Pradhan Majhi, Sukhlal Hansda, Khogen Mudi, Dubraj Majhi, Jata Mandi alias Bagla, Jitan Murmu, Man Singh Murmu and Laskar Murmu alias Majhi. We direct that the cases of these prisoners should be considered for remission of sentence by the State Government under Part IV Rule 29 of the West Bengal Jail Code and that in the meantime they should be immediately released on parole until the next hearing of the writ petitions. Out of the remaining prisoners, there are six who have on the same basis suffered imprisonment for a period of over 14 years and these are at items Nos. 2, 3, 12, 13, 21 and 23 in the list submitted by Mr Gobind Mukhoty, their names being - Rupai Murmu, Gera alias Jamadar Mundi, Manik Soran, Nemai Murmu, Rup Chand Tudu alias Hasa Tudu and Lada Murmu. We direct that, so far as these six prisoners are concerned, since their case falls clearly within sub-rule (1) of Rule 591 of West Bengal Jail Code, they shall be considered for relief under that sub-rule by the State Government.

3. We adjourn these two writ petitions to April 4, 1983 and we should like to know from the State Government by that time as to whether the cases of these prisoners have been considered as directed by us in this order. There seems to be some controversy as to whether some of these prisoners have been sentenced to life imprisonment, because, according to the petitioners, the prisoners at items Nos. 6, 8, 9 and 10 have been sentenced to lesser terms of imprisonment while according to the affidavit filed by the State Government, they have been sentenced to life imprisonment. We would, therefore, direct the State Government to produce before us, at the next hearing of the writ petitions the warrants committing these persons to jail, either in original or in photostat copies, so that it may be possible for this Court to ascertain from the warrants of arrest as to what is the term of imprisonment to which they have been sentenced.

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