

Hava Singh

Vs

State of Haryana and Another

Writ Petition (Criminal) No. 668 of 1986

(A. P. Sen, B. C. Ray JJ)

21.08.1987

JUDGMENT

B. C. RAY, J. -

1. The petitioner who was aged about 18 years along with one Subeh Singh was involved in a case of murder of one Ranbir Singh and he was convicted for an offence under Section 302/34 IPC and sentenced to life imprisonment by judgment and order dated May 22, 1980. The petitioner being admittedly below 21 years of age at the time of alleged commission of offence was sent to Borstal Institution in accordance with the provisions of Punjab Borstal Act, 1926. It has been stated that the petitioner has already undergone a period of about 6 years, 10 months and 11 days detention in jail and together with remissions earned by him it comes to over 10 years. It has been further stated that he is entitled to be released both under the Punjab Borstal Act as well as under paragraph 516-B of the Punjab Jail Manual and has therefore prayed for his premature release as provided under the Punjab Borstal Act and also under paragraph 516-B of the Punjab Jail Manual. In the counter-affidavit filed on behalf of the respondent sworn by one Shri Ram Chander Sarwan, Superintendent of District Jail at Rohtak it has been stated that the petitioner was convicted and sentenced to life imprisonment under Section 302/34 IPC on May 22, 1980 by the Sessions Judge, Rohtak and he was sent to District Jail, Rohtak to undergo the sentence passed upon him. It has been further stated that at the time of conviction he was 19 years of age and as such he was sent to B. I. & J. Jail, Hissar. He was transferred back to this jail (Rohtak District Jail) on December 16, 1981 for trial in second case (FIR No. 111/78 under Sections 452/325/34 IPC). He was acquitted in this second case and as he was about 21 years of age so he was kept in the jail to undergo the life imprisonment imposed upon him on May 22, 1980. It has been further averred that after the amendment of the Criminal Procedure Code the petitioner being sentenced to life imprisonment has to undergo 14 years of substantive sentence under Section 433-A of the Code before his case can be considered for premature release. The detail of sentence undergone by the petitioner as on December 22, 1986 was also given in the said affidavit wherefrom it appears that he has already undergone 7 years, 3 months and 3 days actual sentence up to December 22, 1986. It has therefore been stated that the petitioner having not undergone 14 years of actual sentence, he cannot be released prematurely.

2. It is evident from the averments made in the writ petition as well as in the said counter-affidavit that the petitioner who was admittedly adolescent at the time of his conviction was sent to Borstal Institute at Hissar. Subsequently, he has been transferred to the District Jail at Rohtak and is undergoing the sentence of imprisonment for life. It appears from the objects and reasons of Punjab Borstal Act, 1926 that the object of the Act is to provide for segregation of adolescent prisoners from those of more mature age, and their subsequent training in separate institutions. These Borstal

Institutions are meant for detaining adolescent offender and to impart to them such industrial training and other instructions and subject them to such disciplinary and moral influence as will conduce to their reformation. This is evident from the provisions of Section 2(1) of Punjab Borstal Act, 1926. Sub-section (2) of Section 2 defines 'detained' as detained in, and 'detention' as detention in a Borstal Institution. Section 5 of the said Act which is very vital for the purpose of decision of this case is quoted hereinbelow :

5. Powers of courts to pass a sentence of detention in a Borstal Institution in the case of a convict under twenty-one years of age in lieu of transportation or rigorous imprisonment. - (1) When any male person less than twenty-one years of age is convicted of an offence by a Court of Session, a Magistrate specially empowered under Section 30 of the Code of Criminal Procedure, 1898, or a Judicial magistrate of the first class, or is ordered to give security for good behavior and fails to give such security, and when by reason of his criminal habits or tendencies or associations with persons of bad character it is expedient in the opinion of the Judge or Magistrate, that he should be detained, such Judge or Magistrate may, in lieu of passing a sentence of transportation or rigorous imprisonment, pass an order of detention for a term which shall not be less than two years and shall not exceed seven years when the order is passed by a Court of Session or a Magistrate specially empowered under Section 30 of the Code of Criminal Procedure, 1898, and shall not be less than two years nor exceed three years, when the order is passed by a Judicial Magistrate of the first class not so empowered.

(2) When any Judicial Magistrate not empowered to pass such order, is of opinion that an offender convicted by him is a person in respect of whom such order should be passed in accordance with the provisions of sub-section (1), he may, without passing any sentence, record such opinion and submit his proceedings and forward the accused to the Chief Judicial Magistrate to whom he is subordinate.

(3) The Chief Judicial Magistrate to whom the proceedings are so submitted may make such further enquiry (if any) as he may deem fit and pass such order for the detention of the offender or such other sentence or order, as he might have passed if the trial had been held by him from its commencement.

3. Thus it is manifest from Section 5 of the said Act that either a Sessions Judge or a Magistrate of first class or a Magistrate specially empowered under Section 30 of the Code of Criminal Procedure after convicting any male person who is less than twenty-one years of age, of an offence punishable with imprisonment for life or transportation or other rigorous imprisonment or a convict is ordered to give security for good behavior and fails to give such security, may in lieu of passing a sentence of transportation or rigorous imprisonment pass an order of detention which shall not be less than two years and shall not exceed seven years when an order is passed by a Court of Session or a Magistrate specially empowered under the Code of Criminal Procedure. The petitioner who was an adolescent admittedly being less than twenty-one years of age at the time of his conviction though convicted under Section 302/34 IPC and sentenced to imprisonment for life, was sent to the Borstal Institute in accordance with the provisions of Punjab Borstal Act, 1926. On his attaining the age of about twenty-one years he was transferred back to the jail. There is no provision except Section 20 under the said Act for transferring back an adolescent convict on his attaining the age of twenty-one years for the Borstal Institute to jail for undergoing the unexpired term of imprisonment. On the other hand on a plain reading of Section 5 it is clear that the adolescent under twenty-one year of

age after expiry of his period of detention has to be released from detention and he is not to be transferred to jail for undergoing the unexpired period of his sentence of imprisonment. Section 20 of the said Act is in the following terms :

20. Incurrigibles :- Where an inmate is reported to the State Government by the visiting committee to be incorrigible or to be exercising a bad influence on the other inmates of the institution or is convicted under Section 19 of this Act or is reported by the Superintendent to have committed an offence which has been declared to be a major Borstal Institution offence by rules made by the State Government in pursuance of the provisions of sub-section (14) of Section 34 of this Act, the State Government may commute the residue of the terms of detention to such term of imprisonment of either description not exceeding such residue as the State government may direct, and may order the transfer of the inmate to any jail in Punjab in order to complete the said term of imprisonment.

4. This section empowers the State Government to commute the residue of the term of detention of an inmate in Borstal Institute to such term of imprisonment of either description not exceeding the residue as the State Government may direct and also to order transfer of the inmate to any jail in Punjab in order to complete the said term of imprisonment when such an inmate is reported to be incorrigible or his exercising bad influence on the other inmates of the Institution or such an inmate has committed a major Borstal Institution offence as provided in the rules. There is nothing to show that the petitioner was ever found to be incorrigible or to be exercising a bad influence on the other inmates of the Institution or is found to have committed any major Borstal Institution offence and the State Government has not passed any order for his transfer from the Borstal Institution to jail for undergoing the residue of his term of imprisonment.

5. This Court while considering an identical case in the State of Andhra Pradesh v. Vallabhapuram Ravi (1984) 4 SCC 410: 1984 SCC (Cri) 635 has observed that : [SCC p. 411, SCC (Cri) pp. 635-36, head-note]

A person detained in a Borstal School under Section 10-A has to be released after he has served the full term of 5 years of detention or on his completing 23 years of age. He cannot be retransferred thereafter to prison. Such a retransfer would defeat the very object and purpose of the Act of providing for detention of young offenders in Borstal School for the purpose of reformation and rehabilitation of such offenders.

It is to be noted in this connection that sentence of detention is passed in lieu of sentence of imprisonment which may have been passed. Hence the detention order under Section 5 of the said Act is not imprisonment and Borstal School where the adolescent offender is detained is not a prison. It has also been observed further that [SCC pp. 411-12, SCC (Cri) p. 636, head-note]

Section 433-A, CrPC. would not operate where a person is detained by an order under Section 10-A of the Act. Section 433-A of the Code was introduced not to set at naught provisions like Section 10-A of the Act which dealt with a special class of offenders like adolescent offenders but only to regulate capricious and arbitrary decision decisions under Section 432 of the Code and the remission rules sometimes reducing the sentence of imprisonment for life imposed on persons who had been convicted of capital offences but had been sentenced to imprisonment for life to short periods like five to six years.

6. On a conspectus of the aforesaid decision as well as on a consideration of the facts and circumstances the only conclusion follow that the petitioner who has already undergone actual imprisonment for seven years is entitled to be released from detention and from imprisonment. Paragraph 516-B of the Punjab Jail Manual is not applicable in this case as the petitioner who has an adolescent convict below twenty-one years of age was sent to the Borstal Institute at Hissar for detention in accordance with the provisions of Section 5 of the Punjab Borstal Act, 1926. He being convicted by the Sessions Judge the maximum period of detention as prescribed by the Act is seven years. We have already said hereinbefore that such an inmate of the Borstal Institute cannot be transferred to jail on the ground that he has attained the age of twenty-one years as the said Act does not provide for the same. The only provision for transfer to jail is in the case of incorrigible inmate or inmates convicted of major Borstal Institute is entitled to be released and to be set free as he has already undergone detention for a period of seven years. The writ petition is therefore allowed. The respondents are directed to release the petitioner from imprisonment forthwith. There will be no order as to costs.

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