

Jai Prakash and Others

Vs

State of Haryana and Others

Writ Petition (Criminal) No. 669 of 1986

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

27.08.1987

JUDGMENT

B. C. RAY, J. -

1. The petitioners who are life convicts in this writ petition have assailed a D.O. Letter No. 4665/1983-GI/G-4/R.10-84 dated April 24, 1985 issued by respondent 3, Inspector General of Prisons, Haryana, Chandigarh intimating to the Superintendent of Jail was convicts who are on bail and whose sentences are suspended, are excluded from the remissions systems in view of the provisions of Section 637 of the Punjab Jail Manual on the ground that the aforesaid letter purports to deprive the petitioners from the benefit of remissions of 19 months and 12 days granted to them during the period they were on bail, while counting the total period of sentence including remissions undergone by them in order to consider their cases of premature release from imprisonment.

2. Petitioner 1, Jai Prakash was convicted by the District and Sessions Judge, Bhiwani, on December 4, 1975 under Section 302 of the India Penal Code and he was awarded life imprisonment. Against this judgment and order of the Sessions Judge he preferred an appeal before the High Court of Punjab and Haryana and he was granted bail on January 12, 1976. This appeal, however, was dismissed on September 28, 1978 and he was arrested on January 29, 1979 while he was going to the court to surrender himself to serve of the remaining part of the sentence as stated by him. The petitioner has stated that during the period he was on bail he earned remission of 19 months and 12 days.

3. Similarly, petitioners 2 to 5 were also convicted by the District and Sessions Judge, Bhiwani, on March 23, 1976 in a case under Section 302 of the Indian Penal Code and they were awarded life imprisonment. Petitioners 2 to 5 were directed to be released on bail by the High Court of Punjab and Haryana during the pendency of their appeal by order dated April 7, 1976. The appeal was however dismissed by the High Court on December 8, 1978 and they surrendered themselves before the Magistrate on February 16, 1979 for serving not their remaining part of sentence. Petitioners 2 to 5 were also even remissions of 19 months and 12 days during the period they remained on bail.

4. It has been stated that though all the petitioners were given remissions of 19 months and 12 days and they were under the expression that the period of remission earned by them would be taken into consideration under para 637 of Punjab Jail Manual while computing their sentence under para 516-B of the Punjab Jail Manual, they have now been informed by respondent 3 as per his letter dated April 24, 1985 addressed to the Superintendent, District Jail, Bhiwani, respondent 2, that the convicts who were on bail and whose sentence were suspended would be excluded from the remissions purported as be earned by them while they were on bail. The petitioners have submitted

that a number of prisoners to whom remissions were given during the period when they were on bail were also released by the State Government after taking into consideration the remissions granted to them during the period when they were on bail or that their sentences had been suspended. Names of six persons were mentioned in the petition who were prematurely released. It has been submitted on behalf of the petitioners that they are entitled to have their period of remissions earned by them during the period they were on bail to be taken into account for consideration of their premature release under para 637 of Punjab Jail Manual. It has been further submitted that the aforesaid letter issued by respondent 3 laying down guidelines and instructions to respondent 2, that is, Superintendent of District Jail, Bhiwani, is contrary to the provisions contained in para 637 of Punjab Jail Manual. The petitioners have also stated that since they surrendered themselves before the jail authority after dismissal of their appeals by the High Court they are entitled to have the period of remissions earned by them to be counted while considering the total period of sentence undergone for their premature release.

5. A counter-affidavit affirmed by the Superintendent of District Jail, Bhiwani has been filed. It has been stated therein that no remission of period of sentence is permissible under paragraph 637 or any other provision of the Punjab Jail Manual (as applicable in Haryana) for the period that the convict remains on bail or his sentence is otherwise under suspension. Even the benefit of special remission allowed to convicts under State Government orders on visits of the Hon'ble Minister for Jail (though such orders did result in anomalous situations and on the basis of experience the government is inclined to restrict such orders) cannot be available to the petitioners. It has been further averred that a perusal of the relevant orders of 1977 would show that the orders were applicable to prisoners who had been convicted before the date of visit of the Hon'ble Minister in 1977, were released on bail subsequently and surrendered in the jail for undergoing the unexpired portion of the sentence. The petitioners are not entitled to the benefit claimed as they had not surrendered in the jail for undergoing the remaining period of the sentence. The appeal of petitioner 1 had been dismissed on September 28, 1978 but he did not surrender for several months. Ultimately warrants for his arrest were issued by the Chief Judicial Magistrate on January 24, 1979 and he was arrested and sent to jail on January 29, 1979. According to the petitioners' own averments in para 2 of the petition, the other four writ petitioners remained out of jail for more than several months after the dismissal of their appeal. It is evident that they had not surrendered in the jail for undergoing the remaining period of sentence of immediately after dismissal of their appeals. It has been further averred that even if any remission had been ordered inadvertently against relevant rules, it is in the interest of administration of justice that the mistake is rectified and not perpetuated by taking further action on its basis. It has also been stated that similar cases of remission earned during the period of bail came up before the High Court of Punjab and Haryana and it was held by the High Court that special remissions were not available to the convicts who had not surrendered voluntarily on the expiry of the bail period. It has been used further that non-surrender of the convict for several months after dismissal of appeal by itself showed that the surrender was not voluntary and such a convict did not merit the remission and an interpretation different from that would defeat the administration of justice it has been averred that petitioners could not avail of the remissions ordered erroneously and inadvertently not in accordance with the relevant rules. As regards the six specific cases mentioned, it has been stated that the benefit was given to Tuhi Ram and Dig Ram only but not in the cases of the other four convicts referred to in the petition. They were denied the benefit as it is being done to the petitioners.

6. Para 637 of the Punjab Jail Manual which is relevant for consideration of the question raised, as set out herein :

Manual for the Superintendence and Management of Jails in the Punjab

637. Subject to the provisions of paragraph 634 remission under paragraph 635 shall be calculated from the first day of the calendar month next following the date of the prisoner's sentence : any prisoner who after having been released on bail or because his sentence has been temporarily suspended in afterwards re-admitted in the jail, shall be brought under the remission system on the first day of the calendar month next following his re-admission, but shall be credited on his return to jail with any remission which he may have earned previous to his release on bail or the suspension of his sentence. Remission under paragraph 636 shall be calculated from the first day of the next calendar month following the appointment of the prisoner as convict warder, convict overseer or convict night watchman.

7. On a reading of the aforesaid provision it is manifest that a prisoner who has been released on bail or whose sentence has been temporarily suspended and has afterwards been re-admitted in jail will be brought under remission system on the first day of the calendar month next following his re-admission. In other words, prisoner is not eligible for remission of sentence during the period he is on bail or his sentence is temporarily suspended. The submission that the petitioners who were temporarily released on bail are entitled to get the remission earned during the period they were on bail, is not at all sustainable. As such the remissions that were inadvertently given to these petitioners cannot be taken into account in considering the total period of sentence undergone by them while considering their premature release from imprisonment under paragraph 637 of the Punjab Jail Manual. It also appears from the order of the Governor of Haryana dated August 14, 1977 annexed as Annexure 'RI' to the writ petition that the special remission was granted by the Governor of Haryana to only those prisoners who were in confinement on August 14, 1977 on the occasion of the first visit of the Chief Minister of Haryana to jail and who had been subsequently released on bail. It is pertinent to set out paragraph 2 of the said order :

All those prisoners who have been convicted before August 14, 1977 but subsequently released on bail shall be entitles to the remission only if they surrender in the jail for undergoing the unexpired portion of their sentence.

8. The petitioners though convicted prior to August 14, 1977 that is the date of visit of the Hon'ble Minister to the jail were granted bail before the said date. As such they are not entitled to the said remission in accordance with the order of Governor of Haryana. Secondly, all these petitioners did not surrender in the jail for undergoing the unexpired portion of their sentences immediately after their appeals were dismissed by the High Court. On the other hand, petitioner 1 whose appeal was dismissed on September 28, 1977 did not surrender either to the jail or to the magistrate for serving out the remaining part of sentence till he was arrested on January 2, 1979 in pursuance of the warrant issued by the court. Petitioners 2 to 5 who were released on bail by the High Court during the pendency of their appeal did not surrender in the jail immediately after their appeal was dismissed on December 8, 1978. They surrendered themselves to the magistrate only on February 16, 1979 to serve out the remaining part of their sentence. As such, it cannot be said that they have surrendered in jail for undergoing their unexpired period of sentence immediately after their appeals were dismissed and so they are not eligible for remissions as envisaged in the said government order dated August 14, 1977 referred to hereinbefore.

9. It appears that respondent 3, the Inspector General of police Haryana, Chandigarh issued a letter being D.O. No. 4665/1983-GI/G4/R.10-84 dated April 24, 1985 to all Superintendents of Jails

including the Superintendent of District Jail, Bhiwani, drawing their maintain to paragraph 2 of the letter dated January 11/14, 1985 from the State Government to the Jail Department which is to the following effect :

Attention of all Superintendents of Jails is drawn to para 4 of the government letter under which government have affirmed that convicts who are on bail and whose sentences have been suspended are excluded from the remissions system in view of the provisions of para 637 of the Punjab Jail Manual.

10. This DO letter has been annexed as Annexure 'A' to the writ petition. The letter dated January 11/14, 1985 issued by the Governor of Haryana to respondent 3 is annexed as Annexure 'R5' to the writ petition. The relevant excerpt of it is set out hereinbelow :

It has been decided that such remissions will be granted only in the following cases :

(i) All the convicts, convicted by the civil courts with criminal jurisdiction in the Haryana State and were present in the jails on the date and time of the visit of the Jail Minister or other high dignitaries.

(ii) All the convicts who were on parole/furlough from that jail on the date and time of the visit of the Jail Minister subject to the condition that they surrender at the jail on the due date after the expiry of parole/furlough period for undergoing the unexpired portion of their sentences.

4. Your attention is also invited to para 637 of the Punjab Jail Manual which provides that convicts who are on bail and whose sentence has been suspended are excluded from the remission system.

11. It is clear and evident from this letter that convicts who were on parole from jail on the date and time of the visit of the Chief Minister to the jail will be granted remissions on condition that they surrender at the jail on the due date after expiry of parole period for undergoing the unexpired period of their sentence. This means that a convict in order to get the benefit of remission as directed by the said order issued under Article 161 of the Constitution of India has to surrender voluntarily at the jail after expiry of bail. In the instant case, petitioner 1 did not surrender in jail or before the magistrate after his appeal was dismissed by the High Court and petitioner 1 had been arrested under warrant of arrest as he did not surrender in jail after his appeal was dismissed. Respondents 2 to 5 who were on bail also did not surrender immediately after dismissal of their appeal but they surrendered themselves after two months of dismissal of their appeal. In such circumstances, it cannot be said that the petitioners are entitled to the remissions as envisaged in the said government order dated January 11/14, 1985. There letter of respondent 3 the Inspector General of Prisons, Haryana, Chandigarh i.e. D.O. Letter No. 4665/1983-GI/G4/R.10-84 dated April 24, 1985 in quite in accordance with the government order made January 11/14, 1985 and respondent 3 in fact quoted paragraph 2 of the said letter which contains the necessary requisite for grant remissions from sentence. The said DO letter of respondent 3 cannot therefore be challenged as in violation of paragraph 637 of the Punjab Jail Manual nor is it contrary to the directions contained in the aforesaid order.

12. In the premises aforesaid, this writ petition is dismissed. There will be no order as to costs.

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