

# **SUPREME COURT OF INDIA**

Arjun Jadav

Vs.

State of W.B.

(Sudhansu Jyoti Mukhopadhaya and Ranjana Prakash Desai JJ.)

02.07.2014

## **JUDGMENT**

### **SUDHANSU JYOTI MUKHOPADHAYA, J**

1. The petitioner, who was convicted for the offence u/s 302/34 IPC, has preferred this writ petition under Article 32 of the Constitution of India in the nature of habeas corpus for setting the petitioner at liberty from the illegal custody in the prison/correctional Home.
2. The petitioner who was made an accused in a murder case no.S.T 3(9) for offence u/s 302/34 IPC, was arrested on 5.03.1985. According to the petitioner, he has undergone conviction in custody of the respondent, which should be counted towards sentence are as follows:
3. After trial, the petitioner was convicted u/s 302/34 IPC vide judgment dated 15.01.1991 along with another co-accused Partap Praharaj, who according to the petitioner, fired one gun shot on the abdomen of the deceased and was sentenced to imprisonment for life simplicitor (not rigorous imprisonment for life) by the Court of IXth Additional Session Judge, Alipore, Calcutta.
4. Against the conviction, the petitioner and co-accused filed Criminal Appeal No.56 of 1991 before Calcutta High Court which was dismissed on 9.04.1992. Thereafter, special leave petition against their conviction was also not entertained by this Court.

5. Further case of the petitioner is that he became eligible under Rule 591 (1-4) of the West Bengal Jail Code for considering his case for premature release under 14 years Rule, including remission, which according to the petitioner should be 10 years of actual imprisonment plus 4 years remission. Notwithstanding the law laid down in the West Bengal Jail Code and law laid down by this Court, the case of the petitioner was not considered and thereby respondents are violating his statutory rights and provisions.

6. In the year 2001, the wife of the petitioner made a mercy petition to the Competent Authority of the State for premature release of the petitioner but the same was rejected by the State Government on 12.4.2002 although the petitioner had a consistent good record in Jail/Correctional Home and his case was recommended by the Prison Authority for his release. Another mercy petition preferred by petitioners wife was also rejected by the State Government. The Superintendent, Alipore Central Jail of his own wrote a letter dated 18.9.2003 to the State Government for reconsideration of the case of petitioner and strongly recommended his release. Thereafter nothing was heard from the State Government.

7. In the meantime, the petitioner has undergone custody for more than 20 years including the period of remission and about 17 years of actual custody and, therefore, it is alleged that his detention has become unlawful and illegal.

8. Learned counsel for the petitioner contended that the length of duration of the imprisonment for life is equivalent to 20 years of imprisonment and that too subject to further remission admissible under the law. The petitioner is liable to be released under Rule 751 (C) of the West Bengal Jail Code. Reliance was also placed on the explanation to Section 61 of the West Bengal Correctional Services Act, 1992 (West Bengal Act XXXII of 1992) whereunder the imprisonment for life is equated to a term of 20 years of imprisonment.

9. On 7.1.2005, this Court directed to list the matter after decision in W.P (Crl.) No.45 of 1998 titled Md. Munna v. Union of India & Ors. since learned counsel for the petitioner informed that the arguments in the said case have already been concluded and judgment was awaited. By the said order, this Court further directed to release the petitioner on parole on his furnishing a personal bond in a sum of Rs.5,000/- to the satisfaction of Chief Judicial Magistrate, Alipore (24 Parganas, District Kolkata-27)

pending decision of this case.

10. The aforesaid Writ Petition (Crl.) No.45 of 1998 was heard with another Writ Petition (Crl.) No.50 of 2003. In the said case similar argument was made that the length of the duration of the imprisonment of life is equivalent to 20 years of imprisonment and that too subject to further remission admissible under the law. In the said case reliance was also placed on Rule 751(c) of the West Bengal Jail Code and explanation to Section 61 of the West Bengal Correctional Services Act, 1992 where under the imprisonment for life is equated to a term of 20 years imprisonment. The aforesaid writ petitions were dismissed by this Court on 16.09.2005, reported in (2005) 7 SCC 417, Mohd. Munna v. Union of India & Ors.

11. Similar issue was considered by Constitutional Bench of this Court in Gopal Vinayak Godse v. State of Maharashtra, (AIR) 1961 SC 600. In the said case this Court held that the sentence of imprisonment for life is not for any definite period and the imprisonment for life must, prima facie, be treated as imprisonment for the whole of the remaining period of the convicted persons natural life. In paragraph 5, the Court observed:

5. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words imprisonment for life for transportation for life enable the drawing of any such all-embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted persons natural life.

In paragraph 8, this Court held:

8. Briefly stated the legal position is this: Before Act 26 of 1955 a sentence of transportation for life could be undergone by a prisoner by way of rigorous imprisonment for life in a designated prison in India. After the said Act, such a convict shall be dealt with in the same manner as one sentenced to rigorous imprisonment for the same term. Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life

imprisonment is bound in law to serve the life term in prison. The Rules framed under the Prisons Act enable such a prisoner to earn remissions”ordinary, special and State”and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate (sic predict) the time of his death. That is why the Rules provide for a procedure to enable the appropriate Government to remit the sentence under Section 401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release.

12. In *Mohd. Munna v. Union of India and others* (supra) referring to decisions of this Court in *Naib Singh v. State of Punjab & Ors.* (1983) 2 SCC 454, Privy Council decision in *Kishori Lal v. Emperor* (AIR) 32 1945 PC 64 and Constitutional Bench decision in *Gopal Vinayak Godse v. State of Maharashtra*, (AIR) 1961 SC 600 this Court held:

8. The above contention of the petitioners counsel is only to be rejected. The imprisonment of the life convicts are being carried out on the strength of the order passed by the court. The provisions contained in the Prisoners Act are only procedural in nature. The preamble to the Act itself states that the Act is meant to consolidate the law relating to prisoners confined by order of a court and Section 32 of the Prisoners Act, 1900 specifically says about the persons under sentence of transportation and when the punishment of transportation itself was deleted, the provisions of Section 32 regarding the temporary custody of the prisoners, there is no relevance for the appointed places within the State or outside the State for a person under sentence of transportation. The prison authorities are bound to keep the persons who are sentenced to imprisonment for life in jails. Of course, some of the provisions in the Prisoners Act, 1900

were not suitably amended so as to be in conformity with the sentence of life imprisonment introduced by Act 26 of 1955. That does not make the detention illegal.

9. Therefore, it is clear that if a person is sentenced to transportation for a term, the same is converted to rigorous imprisonment for the same duration. Naturally, the transportation for life will only be treated as rigorous imprisonment for life.

10. If a portion of the period of transportation for life is to be treated as sentence of rigorous imprisonment for the same term, naturally, the entire transportation period is to be treated as rigorous imprisonment for life. Imprisonment for life is a class of punishment different from ordinary imprisonment which could be of two descriptions, namely, rigorous or simple. It was unnecessary for the legislature to specifically mention that the imprisonment for life would be rigorous imprisonment for life as it is imposed as punishment for grave offences.

16. We are bound by the above dicta laid down by the Constitution Bench and we hold that life imprisonment is not equivalent to imprisonment for fourteen years or for twenty years as contended by the petitioner.

17. Thus, all the contentions raised by the petitioner fail and the petitioner is not entitled to be released on any of the grounds urged in the writ petition so long as there is no order of remission passed by the appropriate Government in his favour. We make it clear that our decision need not be taken as expression of our view that the petitioner is not entitled to any remission at all. The appropriate Government would be at liberty to pass any appropriate order of remission in accordance with law.

13. Similar view was taken by this Court in *Life Convict Bangal alias Khoka alias Prasanta Sen v. B.K. Srivastava and others*, (2013) 3 SCC 425, This Court while defined meaning of life imprisonment reiterated that unless properly remitted by competent authority, life imprisonment means imprisonment for entire lifetime of convict, this Court held: 18. It is clear that neither Section 57 IPC nor the Explanation to Section 61 of the W.B. Act lay down that a life imprisonment prisoner has to

[pic]be released after completion of 20 years. 20 years mentioned in the Explanation to Section 61 of the W.B. Act is only for the purpose of ordering remission. If the State Government taking into consideration various aspects refused to grant remission of the whole period then the petitioner cannot take advantage of the above Explanation and even Section 57 IPC and seek for premature release. Further, the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 432 of the Code of Criminal Procedure, 1973 and neither Section 57 IPC nor any rules or local Acts (in the case on hand, the W.B. Act) can stultify the effect of the sentence of life imprisonment given by the Court under IPC. To put it clear, once a person is sentenced to undergo life imprisonment unless imprisonment for life is commuted by the competent authority, he has to undergo imprisonment for the whole of his life. It is equally well settled that Section 57 IPC does not, in any way, limit the punishment of imprisonment for life to a term of 20 years.

14. In the present case, the mercy petitions filed by the petitioners wife were rejected twice. The case of the petitioner was considered by the Review Board constituted by the State of West Bengal, which rejected the prayer. Therefore, no relief can be granted by this Court under Article 32 of the Constitution of India. However, in view of the fact that the petitioner has actually undergone more than 18 years of imprisonment; the Superintendent. Alipore Central Jail of his own wrote a letter dated 18.09.2003 requested for reconsideration of the case of the petitioner and recommended release of the petitioner. We are of the view that if any application for remission is filed by the petitioner or on behalf of the petitioner, the Competent Authority place the same before the Review Board and which will reconsider the case of the petitioner for premature release in accordance with law and guidelines issued by the State. The appropriate Government would be at liberty to pass appropriate order in accordance with law.

15. The petitioner was released on bail by an order passed by this Court on 7.01.2005. We vacate that order. The respondents would be at liberty to take the petitioner into custody and as regards remission the State Government may pass any appropriate order in accordance with law.

16. The Writ Petition is dismissed with aforesaid observations.