SUPREME COURT OF INDIA

State of M.P.

Vs.

Khuman Singh

Crl.A.No.2562 of 2014

(T.S. Thakur and Adarsh Kumar Goel JJ.)

10.12.2014

ORDER

ADARSH KUMAR GOEL, J.

1. Leave granted.

2. This appeal has been preferred by the State of Madhya Pradesh against Order dated 5th December, 2003 passed by the High Court of Madhya Pradesh at Indore in Writ Petition No.1077 of 2003.

3. The question raised for our consideration is whether the High Court ought to release a person under the provisions of Madhya Pradesh Prisoner's Release on Probation Act, 1954 read with M.P. Prisoner's Release on Probation Rules, 1964 (for short "Act and the Rules"), if it is found that rejection of the prayer for said release by the competent authority was not proper.

4. The respondent was tried for a charge of murder under Section 302 of the Indian Penal Code and convicted under the said provision in Session Trial No.106 of 1988 and sentenced to undergo life imprisonment vide Order dated 26th July, 1989. He applied for release under the provisions of aforesaid Act and the Rules. His request was considered by the statutory Board, in compliance of the Division Bench order of the High Court in Writ Petition No.1138 of 2002 but he was not found entitled to be

released. The opinion of the Board was accepted by the State Government. The said opinion and the order of the State Government are as follows : "In the light of the background of the case, it is clear that the past antecedents of the prisoners are not good. The prisoner alongwith other co- accused persons mercilessly murdered the deceased with the knot of the saree. The District Magistrate has not recommended the release and the opposite party has also objection on release of the prisoner. The State Probation Board is of the unanimous opinion that it would not be appropriate to release the prisoner on probation. Therefore, the State Government is recommended that it would not be appropriate to release the prisoner on probation.

> Recommendation of the State Probation Board Dt. 23.12.2002 are accepted vide Memorandum No.F. 3-5/2003/3/Jail dated 3.1.2003 of the Jail Department, State of Madhya Pradesh."

5. Aggrieved by the above, the respondent preferred a writ petition which was allowed by Order dated 5th December, 2003. It may be mentioned that prior to the passing of the impugned order, the Division Bench of the High Court vide Judgment dated 11th April, 2002 in LPA No.212 of 2001 in the matter of Subrato Bachaspati vs. State of M.P.[1], had expressed the view that if the relatives of the victim of the crime do not object and there is no evidence of extreme brutality, the High Court itself could direct release notwithstanding the opinion of the Board and the State. This view was reversed by this Court in Arvind Yadav vs. Ramesh Kumar & Others[2]. Thereafter, the same view has been followed inter alia in State of Madhya Pradesh vs. Abdul Kadir and Another[3].

6. We have heard learned counsel for the parties.

7. Learned counsel for the State pointed out that in view of the Judgment of this Court in Arvind Yadav (supra), the view taken by the High Court cannot be sustained.

8. In spite of service, no one has entered appearance for the respondent. However, this Court appointed Mr. Praveen Agrawal, Advocate as Amicus Curiae to assist the Court.

9. We find force in the contention raised on behalf of the appellant in view of earlier decision of this Court in Arvind Yadav (supra) wherein this Court held :

"6. We are unable to sustain the impugned judgment of the High Court. Each of the convicts before the High Court had been found guilty of commission of serious crime. The impugned judgment notices that offences against the convicts were under Sections 302/307/394/304-B/498-A/325 of the Indian Penal Code and the convicts were serving their respective sentences in jail. In all the cases before the High Court, the recommendations of the Probation Board that had been accepted by the State Government were against the release of the convicts. If there was non-application of mind to the relevant considerations, the appropriate course was to remand the case for fresh decisions by the authorities except, if in a given exceptional case, for strong cogent reasons, the High Court may have examined itself the relevant facts and quashed the order declining the release. The High Court, instead of adopting this course, has made a general observation that the remand to the State Government for fresh consideration is bound to delay the matter causing further injustice to the convicts.

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9. Having regard to the aforesaid, we are unable to sustain the impugned judgment of the High Court. It is accordingly set aside."

(emphasis added)

10. Again in State of Punjab vs. Kesar Singh[4], it was observed :

"3. We have heard learned counsel for the parties. In our opinion the direction given by the High Court was not at all appropriate or permissible in law. The mandate of Section 433 CrPC enables the Government in an appropriate case to commute the sentence of a convict and to prematurely order his release before expiry of the sentence as imposed by the courts. Clause (b) of Section 433 CrPC provides that the sentence of imprisonment for life may be commuted for imprisonment for a term not exceeding 14 [pic]years or fine. Undisputedly, the respondent had not completed 14 years' sentence when he filed the petition under Section 482 CrPC seeking premature release. The direction of the High Court therefore to prematurely release the respondent and set him at liberty forthwith could not have been made. That apart, even if the High Court could give such a direction, it could only direct consideration of the case of premature

> release by the Government and could not have ordered the premature release of the respondent itself. The right to exercise the power under Section 433 CrPC vests in the Government and has to be exercised by the Government in accordance with the rules and established principles. The impugned order of the High Court cannot, therefore, be sustained and is hereby set aside."

11. It is thus clear that even if approach adopted by the Board and the State is not germane, normally procedure to be followed by the High Court in exercise of power of judicial review is to remand the matter to the competent authority in the light of such observations as may be found to be appropriate, instead of the High Court itself directing release, as has been done in the present case. There is no reason in the present case to deviate from this established procedure, in exercise of power in judicial matter in cases of this nature.

12. Accordingly, we allow this appeal, set aside the impugned order and direct that the matter may be considered afresh by the competent authority under the provisions of the Act and the Rules in accordance with law within three months from the date of receipt of the copy of this order taking into account upto date developments.

[1] (2003) 1 JLJ 6
[2] (2003) 6 SCC 144
[3] (2009) 3 SCC 450
[4] (1996) 5 SCC 495