

STATE OF HARYANA AND ANR.

v.

RAM DIYA

APRIL 10, 1990

[S. RATN VEL PANDIAN AND K. JAYACHANDRA
REDDY, JJ.]

Code of Criminal Procedure, 1973: Sections 432, 433 and 433A—Death sentence commuted to life sentence—Conviction prior to introduction of section 433A—Premature release of such life convicts—Consideration by State Government—Compliance with Court's directions.

Punjab Jail Manual: Paragraph 516-B—Executive instructions—Convicts whose sentence of death commuted to life imprisonment—Conviction prior to amendment of Cr.P.C. in 1978—Premature release of—Applicability of the instructions.

Paragraph 516-B of the Punjab Jail Manual provides for premature release of prisoners, and is in the nature of executive instructions. The State Government modified the instructions in 1971 and 1976. The 1976 instruction was to the effect that cases of life convicts whose sentence has been commuted should be considered for premature release only after completion of 14 years of actual imprisonment. The State Government further liberalised its policy and decided that such cases might be reviewed by a state level committee and directed that cases of life convicts who have completed 8½ years substantive sentence and sentence of 14/10 years including remission be submitted to the Committee. Later on the State Government clarified that the liberalised policy would not be applicable to the life convicts whose death sentence has been commuted to life imprisonment.

In 1978, the Code of Criminal Procedure 1973 was amended introducing section 433A providing that such life convicts should undergo actual imprisonment of 14 years in jail. This Court declared that section 433A of the Code is prospective in effect and did not operate against those cases which were decided by the trial court before 18.12.1978 (*Maru Ram etc. etc. v. Union of India and Anr.*, [1981] 1 SCR 1196).

The cases of respondents were in fact covered by the said decision.

A They have filed writ petitions before the High Court for premature release and the High Court directed the State Government to consider their cases. The State Government has preferred these appeals, by special leave, against the orders of the High Court.

Dismissing the appeals, this Court,

B HELD: 1.1. No one has got a vested right to claim pre-mature release on the ground that he has suffered the minimum actual imprisonment as prescribed under section 433A Cr.P.C. because a sentence of 'imprisonment for life' is incarceration until death, that is, for the remaining period of convicted person's actual life. There is no question of releasing such a lifer early in the absence of an order of commutation under section 55 IPC by the appropriate Government, or under section 433(b) of Criminal Procedure Code of 1973 by the appropriate Government or on a clemency order in exercise of power under Article 72 or 161 of the Constitution of India. [435E-F; G-H]

D 1.2. In the instant case, the conviction of the respondents was recorded early to the introduction of section 433A and, therefore, as per the ratio laid down in *Maru Ram's* case, the two respondents are entitled for consideration of release by the appropriate Government as per the prevailing rules or executive instructions. Further, admittedly, the State Government did not take up the cases of the respondents for premature release within six months of the order of this Court dated 10th December 1980 in *Sant Ram's* case, (W.P. Nos. 1252-64/80 etc. etc.) and deferred the consideration of premature release till the respondents had completed 14 years of substantive sentence. It has become obligatory for the State to consider the cases of premature release of the respondents in accordance with the rules or executive instructions prevailing and applicable to them at the relevant time i.e. between the period 10.12.1980 and 9.6.1981. The plea of the appellant that the premature release of the respondents was not considered since they have not completed 14 years of substantive imprisonment is in violation of the directions of the order dated 10th December, 1980 of this Court and so the appellant cannot be permitted to make such a plea on the strength of the executive instructions overlooking and ignoring the above directions. There is no infirmity in the judgments of the High Court calling for interference. [436E-F; 437F; 438H; 439A-C]

H *Kishori Lal v. Emperor*, AIR 1945 P.C. 64; *Gopal Vinayak Godse v. The State of Maharashtra and Others*, [1961] 3 SCR 440; *Maru Ram etc. etc. v. Union of India & Anr.*, [1981] 1 SCR 1196; *Kartar Singh and*

Others v. State of Haryana, [1982] 3 SCC 1 and *Sadhu Singh v. State of Punjab*, [1984] 2 SCR 741, relied on.

A

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 365 of 1986 and 245 of 1990.

From the Judgment and Order dated 21.12.1984 of the Punjab and Haryana High Court in Crl. Writ Petition No. 399 of 1983 and 251 of 1983.

B

Mahabir Singh (N.P.) and Dalveer Bhandari for the Appellants.

A.K. Goel for the Respondents.

C

The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J. Leave granted in Special Leave Petition (Criminal) No. 1158 of 1985.

D

The State of Haryana has preferred these two appeals against the Judgment and Order of the Punjab & Haryana High Court dated 21.12.1984 in Writ Petition Nos. 399/83 and 251/83 respectively passing similar orders directing the State Government to consider the cases of the respondents for premature release.

E

The facts which lie in a very narrow compass may be stated thus:

The respondents were convicted under Section 302 of the Indian Penal Code and sentenced to death by the Additional Sessions Judge, Karnal which sentence inflicted on each of them was subsequently commuted to life imprisonment on mercy petitions.

F

It seems that the State Government issued various executive instructions from time to time either altering or amending the existing instructions by fresh executive instructions specifying the minimum period of actual detention to be undergone by a convict sentenced to life imprisonment before his case for premature release could be considered by the State Government. To appreciate the case of the respective parties it would be apposite to make reference to the relevant instructions. At the outset, the instructions contained in paragraph 516-B of Punjab Jail Manual which are in the nature of executive instructions by way of guidance may be referred to which instructions are based on a Government of India resolution No. 159-167 dated 6th

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A September, 1905. The aforesaid paragraph reads thus:

“516-B(a) With the exception of females and who were under 20 years of age at the time of commission of offence, the cases of every convicted prisoner sentenced to:

B (i) imprisonment for life

.....

(iv)

C (a) who has undergone a period of detenton in jail amounting together with remission earned to 14 years, shall be submitted through the Inspector General of Prisons, Punjab for the orders of the State Government”.

D The substance of the above paragraph is that the case of a male lifer who was above 20 years of age at the time of commission of offence sentenced to life imprisonment and who has undergone detention in jail amounting together with remission earned to 14 years, should be submitted to the State Government for consideration of his premature release. It further appears in the year 1971, the State Government after a considerable deliberation took a policy decision and issued instructions through its Memorandum No. 13311-6JJ-71/39656 dated 10th of November, 1971 providing that a period of actual sentence of 8½ years in the case of adult life convicts and 6 years in the case of female convicts as well those male convicts below 20 years of age at the time of commission of offence should be regarded as the qualifying period of consideration for premature release. This memorandum was clarified that all cases of prisoners should be sent for consideration of their premature release in the light of the said policy decision with effect from 2nd November, 1971.

G Thereafter, in January 1976 the question of releasing prematurely life convicts whose death sentence has been commuted was again considered by the State Government and it took a policy decision that cases of such life convicts should be considered for premature release only after completion of 14 years of actual imprisonment and in that behalf Memorandum No. 403-6JJ-76/3456 dated 30th January 1976 containing the necessary instructions was issued by the State Government. It is culled out from the impugned judgment of the High Court in Criminal Appeal No. 365 of 1986 (arising out of Writ Petition

No. 399/83) that the State Government with a view to liberalise the policy of premature release of prisoners decided that such cases might be reviewed by a State Level Committee comprising of four members inclusive of Minister for Prisons and directed the concerned Superintendent of Jail to submit cases of life convicts two months before they completed 8½ years substantive sentence and sentence of 14/10 years including remission along with his comments to the Inspector General of Prisons, Haryana who thereupon would put up all cases along with his recommendations for consideration before the Committee and further directed the Inspector General of Prisons to submit a copy of the decision taken by the said Committee along with the roll of each prisoner to Government within one week.

Be that as it may, the Parliament introduced Section 433(A) by the code of Criminal Procedure (Amendment) Act, 1978 (45 of 78) with effect from 18.12.1978. According to Section 433(A) that a person who has been sentenced to death and whose death sentence has been commuted into one of imprisonment for life and persons who have been sentenced to imprisonment for life for an offence for which death is one of the punishments provided by law should undergo actual imprisonment of 14 years in jail. We are referring to Section 433(A) in this judgment only for a limited purpose of showing that after the introduction of this section, the life convicts falling within the purview of Section 433(A) has to undergo the mandatory minimum 14 years of actual imprisonment. It may be mentioned at this juncture that no one has got a vested right to claim premature release on the ground that he has suffered the minimum actual imprisonment as prescribed under Section 433(A) because a sentence of 'imprisonment for life' is incarceration until death, that is, for the remaining period of convicted person's actual life vide *Kishori Lal v. Emperor*, AIR 1945 Privy Council 64; *Gopal Vinayak Godse v. The State of Maharashtra and Others*, [1961] 3 SCR 440; *Maru Ram Etc. Etc. v. Union of India & Anr.*, [1981] 1 SCR 1196; *Kartar Singh and Others v. State of Haryana*, [1982] 3 SCC 1 and *Sadhu Singh v. State of Punjab*, [1984] 2 SCR 741.

There is no question of releasing such a lifer early in the absence of an order of commutation under Section 55 IPC by the appropriate Government which term is defined under Section 55(A) IPC or under Section 433(b) of Criminal Procedure Code of 1973 by the appropriate Government or on a clemency order in exercise of power under Article 72 or 161 of the Constitution of India. Incidentally, it may be stated that Section 54 empowers the appropriate Government to commute the sentence of death for any other punishment provided by the Indian Penal Code.

A Section 432 of the Criminal Procedure Code gives the power to the appropriate Government either to suspend or to remit the sentences. The meaning of the expression 'appropriate Government' occurring in Section 432 and 433 is given under sub-section 7 of Section 432.

B The Constitution Bench of this Court in *Maru Ram Etc. Etc. v. Union of India & Anr.*, [1981] 1 SCR 1196 after thoroughly examining the intendment of Section 433(A) concluded by formulating its various findings one of which is as follows:

C "We declare that s. 433A, in both its limbs (i.e. both types of life imprisonment specified in it), is prospective in effect. To put the position beyond doubt, we direct that the mandatory minimum of 14 years' actual imprisonment will not operate against those whose cases were decided by the trial court before the 18th December 1978 (directly or ratro-actively, as explained in the judgment) when s. 433(A) came into force. All 'lifers' whose conviction by the Court of first instance was entered prior to that date are entitled to consideration by Government for release on the strength of earned remissions although a release can take place only if Government makes an order to that effect."

E Now, coming to the facts of case on hand, admittedly the conviction of the respondents was recorded early to the introduction of Section 433(A) and, therefore, as per the ratio laid down in *Maru Ram's* case (*ibid*), these two respondents are entitled for consideration of release by the appropriate Government as per the prevailing rules or executive instructions.

F After the judgment dated 11.11.1980 in *Maru Ram's* case, a number of life convicts filed batch of writ petitions in Writ Petition Nos. 1252-64 etc. etc. captioned *Sant Ram etc. etc. v. Union of India & Ors. etc.*, and those writ petitions were disposed of by an order of this Court dated December 10, 1980. Ram Diya, the respondent in Criminal Appeal No. 365 of 1986 was one of the petitioners in the connected batch of Writ Petition Nos. 1532-1539 of 1980. The common order passed in all those petitions reads thus:

H "All of these Writ Petitions except Writ Petition Nos. 1477 and 1478 of 1980 shall stand disposed of in accordance with the judgment of this Court dated November 11, 1980 in

Maru Ram Etc. Etc. v. Union of India & Anr., W.P. No. 865/79 etc. etc. All persons who were released on bail shall surrender to their sentence and the respective State Governments will pass appropriate orders in each individual case or generally in any group or class of cases in the light of the judgment aforesaid within six months from today.

If in particular cases, orders of release have been passed prior to the introduction of Section 433(A), Criminal Procedure Code, the accused need not surrender to their bail."

From the impugned judgment of the High Court, it is seen that the respondent (Ram Saran) also filed a Criminal Writ Petition seeking direction to the State Government to consider his case for premature release and the same was disposed of by an order dated December 10, 1980 in accordance with the decision in *Maru Ram's* case, and that Ram Saran who is said to have undergone 16 years 1 month and 28 days of imprisonment including 5 years 8 months and 27 days remissions as on July 21, 1982 was released on bail.

It appears the Government have issued letter No. 43/15783-JJ(2) dated February 27, 1984 clarifying the earlier instructions dated November 28, 1977 and reiterating their inapplicability to life convicts whose death sentence has been commuted to life imprisonment on their mercy petitions and further stating that consideration of premature release of such convicts shall continue to be considered in the light of the Government policy decision dated December 12, 1967 thereby making it obligatory for them to undergo 14 years substantive sentence.

Admittedly, the State Government did not take up the cases of the respondents for premature release within six months of the Order of the Supreme Court dated 10th December 1980 and deferred the consideration of premature release till the respondents had completed 14 years of substantive sentence. In the written statement filed by the Inspector General of Prisons, it is averred as follows:

"It is submitted that the conduct of the petitioner during his confinement in the jail was satisfactory but it is irrelevant as far as the consideration of his premature release case is concerned. According to the Government policy his premature release case is to be considered when he has

A undergone 14 years substantive sentence and 20 years sentence including remission. His jail conduct will be considered when he has completed 14 years substantive sentence.”

B In *Sadhu Singh's* case (*ibid*), it has been urged on behalf of the lifers that the State Government relying upon the executive instructions issued on 30.1.76 had erroneously made a distinction between cases of prisoners who had been sentenced to death but whose sentence on mercy petitions had been commuted to life imprisonment and cases of prisoners who had been straightaway sentenced to life imprisonment in the matter of consideration of their cases for premature release and that it is not open to the State Government to rely upon those executive instructions dated 30.1.76 for making the distinction and postponing the consideration of the cases of prisoners falling within the former category until 14 years of actual imprisonment has been suffered by them. This argument was answered by this Court holding thus:

D “The second contention also must fail in view of the admitted position that cases of prisoners who have been sentenced to death but whose sentence on mercy petitions has been commuted to life imprisonment (who constitute a distinct class) will now be governed by the 1976 instructions. Here also the view of the Punjab High Court in the case of *Mehar Singh* (*supra*) that the 1976 instructions issued on 30th of January 1976 will not be applicable to cases of prisoners convicted earlier to that date is not tenable. Clearly existing cases of life convicts falling within that category will be governed by those instructions.”

F So far as these cases are concerned, premature release of the respondents has to be considered in view of the directions given by this Court in the Order dated December 10, 1980 in the batch of writ petitions which instructions admittedly have not been complied with merely on the ground that the respondents have not completed 14 years of actual imprisonment since these respondents constitute a distinct class in that they have been initially sentenced to death which has been commuted on their mercy petitions. This argument is not available to the appellant because the respondents' premature release is required to be considered as per the directions of this Court vide Order dated 10.12.1980. Hence it has become obligatory for the State to consider the cases of premature release of these respondents in

accordance with the rules or executive instructions prevailing and applicable to them at the relevant time i.e. between the period 10.12.1980 and 9.6.1981. The plea of the appellant as reflected from the written statement filed by the Inspector General of Police that the premature release of the respondents was not considered since they have not completed 14 years of substantive imprisonment is in violation of the directions of the Order dated 10th December 1980 of this Court and so the appellant cannot be permitted to make such a plea on the strength of the executive instructions overlooking and ignoring the above directions. In the premises, we see no infirmity in the judgments of the High Court calling for interference.

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For the aforementioned reasons, we uphold the impugned Judgment and Order of the High Court and dismiss these appeals as devoid of any merit.

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G.N.

Appeals dismissed.