

A

STATE OF HARYANA  
v.  
NAURATTA SINGH AND ORS.

MARCH 10, 2000

B

[K.T. THOMAS AND D.P. MOHAPATRA, JJ.]

*Code of Criminal Procedure, 1973 : Sections 428, 432, 433-A.*

C

*Sentence—Remission of—Instructions issued by Govt. of Haryana—Applicability of.*

*Accused—Conviction for murder—Life imprisonment—Period during which accused remained on bail under orders of Court—Accused held not entitled to remission in respect of the said period.*

D

The respondent was an accused in a murder trial along with three others. By its judgment dated 5.1.1978 the Trial Court acquitted him of the offence under section 302 read with section 34 Indian Penal Code, but convicted him under section 324 and sentenced him to the period of imprisonment already undergone. State preferred appeal before High Court which by its judgment dated 23.4.1980 convicted the respondent under section 302 read with section 34 of Indian Penal Code and sentenced him to imprisonment for life. During the pendency of said appeal respondent was on bail. However, pursuant to the judgment of the High Court he surrendered to the bail on 7.6.1980. During pendency of appeal before this Court also he was released on bail as per order dated 2.8.1980. On dismissal of his appeal by this Court he was again taken back to jail on 22.8.1994. Thereafter, he approached the High Court praying that his conviction must be treated as passed on 5.1.1978 i.e. the date on which the Trial Court passed its judgment and hence the period during which he was on bail shall be included within the period of his entitlement for remission.

E

F

G

His claim was based on the instructions issued by the Government of Haryana which provides, "Remission will be also granted to all the convicts who were on parole/furlough from the jail on 25.1.1988 subject to the condition that they surrender at the jail on the due date after the expiry of parole/furlough period for undergoing the un-expired portions of their sentences."

H

Relying on two judgments\* Single Judge of the Punjab and Haryana High Court directed that respondent be granted remission in respect of the period during which he was on bail. The contention of the appellant-State that the interdict contained in section 433-A of the Code of Criminal Procedure was not applicable to the case was rejected by the High Court.

In State's appeal to this Court on the question whether the respondent-accused is entitled to remission of the period during which he was on bail under orders of the Court :

Allowing the appeal, this Court

**HELD 1.** That part of the impugned judgment by which the Single Judge directed remission to be granted in respect of the period during which respondent was released on bail is set aside. [254-E]

2. The instructions issued by the Government of Haryana under which respondent claimed remission cannot be interpreted as to enable him to count the period during which he was on bail towards remission. The expression "parole or furlough" in the instructions cannot, for obvious reasons be stretched to the period during which the person was enlarged on bail, during the pendency of the trial or appeal or revision. It must be remembered that no sentence would be passed on the accused during the time he remains under trial and hence there is no question of any remission to be granted to him during that stage, except the period during which he was under detention as provided in section 428 of the Code. If he was released on bail during the pendency of appeal or revision it is on account of the fact that the court suspended the sentence passed on him. When the sentence stands suspended he would be released on bail on his own entitlement. But the case of parole or furlough is different from the above. [252-B-E]

3. Suspension of a sentence is obviously different from remission of any part of the punishment to which a person is sentenced. While Section 432 of the Code deals with power of the Government to suspend the sentence, section 389 of the Code deals with power of the court to suspend execution of sentence pending appeal or revision. Whenever the sentence is suspended by the court the convict is entitled to be released on bail. The expression used in section 432(1) of the Code for remission is "remit the punishment to which he has been sentenced". It is, therefore, clear that

A remission can be granted only with reference to an operative punishment. In other words, when there is no operative punishment there is no need to remit any part of such punishment. [252-G-H; 253-A-B]

B 4. Parole is “a conditional release of a prisoner, generally under supervision of a Parole Officer, who has served part of the term for which he was sentenced to prison”. Parole relates to executive action taken after the door has been closed on a convict. During parole period there is no suspension of sentence but sentence is actually continuing to run during that period also. [253-B-C]

C *Maru Ram v. Union of India*, [1981] 1 SCR 1196, reiterated.

\**Man Mohan Sahani v. State of Haryana*, (1987) 2 Recent Criminal Reports 292; \**Amrik Singh v. State of Haryana*, (1992) 2 Recent Criminal Reports 138, Disapproved.

D *Sunil Fulchand Shah v. Union of India*, JT (2000) 2 SC 230 and *State of Haryana v. Mohinder Singh Etc.*, JT (2000) 1 629, relied on.

*Black's Law Dictionary*, referred to.

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 933 of 1998.

From the Judgment and Order dated 14.2.97 of the Punjab and Haryana High Court in Crl. Misc. No. 478-M of 1996.

F Ms. Shikha Roy Pabbi, Prem Malhotra, Mahabir Singh and Gautam Awasthi for the Appellant.

Hardev Singh and Ms. Madhu Moolchandani for the Respondents.

The Judgment of the Court was delivered by

G THOMAS, J. A convicted prisoner undergoing sentence of imprisonment claims that he is entitled to remission of the period during which he was on bail under orders of the court. His claim was upheld by a learned Single Judge of the Punjab and Haryana High Court. But the State of Haryana is not inclined to reconcile with the decision and hence this appeal  
H by special leave.

It is necessary to set out the background in which the said claim was made by the prisoner who is a respondent herein. He was an accused in a murder case along with three others. The trial court, as per its judgment dated 5.1.1978 convicted only one of the accused, by name Balbir, of the offence under Section 302 of the Indian Penal Code, and the respondent was acquitted of the said offence read with Section 34 IPC. However, the respondent was convicted under Section 324 IPC and he was sentenced to the period of imprisonment which he had already undergone till then, (that period was 9 months and 26 days). The State preferred an appeal against the acquittal of respondent while Balbir filed an appeal against the conviction and sentence passed on him. The High Court, which heard both the appeals together, confirmed the conviction and sentence passed on Balbir and dismissed his appeal. But the appeal filed by the State was allowed and respondent was convicted under Section 302 read with Section 34 of IPC and sentenced him to undergo imprisonment for life. The judgment of the High Court was pronounced on 23.4.1980.

During the pendency of the said appeal respondent was allowed to remain on bail. Pursuant to the conviction and sentence imposed on him by the High Court he surrendered to the bail on 7.6.1980. Thereafter he moved Supreme Court in appeal and during the pendency of that appeal he was released on bail as per the order passed by this Court on 2.8.1980. But this Court confirmed the conviction and sentence passed on him by the High Court and dismissed his appeal pursuant to which he was again taken back to jail on 22.8.1994. It was in the aforesaid background that respondent moved the High Court on 14.2.1997 praying that his conviction must be treated as passed on 5.1.1978 (the date on which the trial court passed the judgment) and hence the period during which he was on bail (from 5.1.1978 to 7.6.1980 and from 2.8.1980 to 21.8.1994) shall be included within the period of his entitlement for remission.

Though respondent did not specifically state the basis of his claim, both sides now agree that the said claim was based on the instructions issued by the Government of Haryana which reads thus:

“Remission will be also granted to all the convicts who were on parole/furlough from the jail on 25.1.1988 subject to the condition that they surrender at the jail on the due date after the expiry of parole/furlough period for undergoing the un-expired portions of their sentences.”

A We may point out that Section 433-A of the Code was introduced in the statute book on 8.12.1978 by which the power of a State Government to release a person (who has been convicted and sentenced to life imprisonment of any offence punishable with death or imprisonment for life) has been curtailed by introducing the rider that such convicted person should have served at least 14 years of imprisonment. A Constitution Bench of this Court

B has held in *Maru Ram v. Union of India*, [1981] 1 SCR 1196 that the period of 14 years envisaged in the new provision is the actual period of imprisonment undergone by the prisoner without including any period of remission.

C Appellant - State of Haryana had contended before the High Court that the interdict contained in Section 433-A of the Code would not apply to the present case. But the learned Single Judge of the High Court repelled that contention, mainly relying on another legal position declared by the Constitution Bench in *Maru Ram v. Union of India* (supra) as thus: "When a person is convicted in appeal, it follows that the appellate court has exercised its

D power in place of the original court and guilt, conviction and sentence must be substituted for and shall have retrospective effect from the date of the judgment of the trial court; the appellant's conviction must relate back to the date of the trial court's verdict." Appellant - State is not disputing the above legal position in this appeal. Even otherwise we have to concur with the view taken by the learned Single Judge that Section 433-A would not stand in the

E way now as the conviction of the appellant for the offence under Section 302 read with Section 34 of the IPC has to be treated as passed on 5.1.1978 when the trial court pronounced its judgment.

F The claim of the respondent that he is entitled to deduct the period during which he was on bail was sought to be supported by two judgments rendered by the Punjab and Haryana High Court earlier. They are: *Man Mohan Sahani v. State of Haryana* [1987] 2 Recent Criminal Reports 292 and *Amrik Singh v. State of Haryana*, [1992] 2 Recent Criminal Reports 138. In *Man Mohan Sahani's* case the prisoner was acquitted by the trial court on 26.4.1977, but the High Court reversed the judgment and convicted him and

G sentenced him to imprisonment for life, to which sentence he surrendered on 28.1.1980. So he claimed the benefit of remission in respect of the said period. A learned Single Judge of the High Court following the ratio laid down in *Maru Ram's* case (supra) held that petitioner's conviction must relate back to the date of the trial court's verdict and substituted so. There is no dispute

H regarding that part of the decision. But learned Judge had abruptly concluded

thereafter thus:

“On a parity of reasoning, in the present case too, the conviction of the petitioner by the High Court must relate back to the date of the trial court’s verdict from which it would, therefore, follow that the petitioner, for purposes of the remission claimed, must be deemed to have been convicted and out on bail at the time of the remissions and thus entitled to the benefit thereof. The petitioner is accordingly entitled to the benefit of the remissions claimed and the authorities concerned are consequently directed to consider his case for release from jail after allowing him such benefit.”

In *Amrik Singh v. State of Haryana* (supra), another Single Judge of the same High Court, following the above quoted passage from Man Mohan Sahani observed thus:

“There is no doubt left in my mind that the judgment in *Man Mohan Sahni’s* case (supra) is fully applicable to the facts and circumstances of the case, on hand, rather this case stands on a better footing as the petitioner was on bail by the order of the Court. He is entitled to earn the remissions earned by other detenus during the period he was on bail.

It is pertinent to point out that in the judgment impugned before us learned Single Judge has merely followed the above two decisions as could be noticed from a passage of the impugned judgment which is extracted below:

“In *Amrik Singh’s* case, this Court held that the accused is entitled to the remission earned during the period when he was on bail. Therefore, it is clear that though the petitioner herein was first convicted under Section 302 read with Section 34 of the Indian Penal Code, on 23.4.1980 by the High Court, which was ultimately confirmed by the Supreme Court on 27.7.94, for all intents and purposes, the petitioner must be taken to have been convicted on 5.1.1978, which is the date of the verdict of the trial court. It is also clear that he is entitled to all the benefits of the remission even for the period during which he was on bail.”

We have no doubt that the High Court of Punjab and Haryana has wrongly decided *Man Mohan Sahani’s* case and that erroneous view was

A wrongly followed in Amrik Singh's case so far as the present question is concerned (relating to entitlement of remission to include the period during which the convicted person was on bail). We need only to point out that in *Man Mohan Sahani's* case the High Court did not advert to any reason, whatsoever, for the period during which the person was not in jail to be counted towards the period of remission of the punishment under the sentence.

The instructions issued by the Government of Haryana under which respondent claimed remission cannot be interpreted as to enable him to count the period during which he was on bail towards remission. The expression "parole or furlough" in the aforesaid instructions cannot, for obvious reasons be stretched to the period during which the person was enlarged on bail, during the pendency of the trial or appeal or revision. It must be remembered that no sentence would be passed on the accused during the time he remains under trial and hence there is no question of any remission to be granted to him during that stage, except the period during which he was under detention as provided in Section 428 of the Code. If he was released on bail during the pendency of appeal or revision it is on account of the fact that the court suspended the sentence passed on him. When the sentence stands suspended he would be released on bail on his own entitlement. But the case of parole or furlough is different from the above.

Section 432 of the Code of Criminal Procedure falls within Chapter XXXII, which contains provisions regarding "execution, suspension, remission and commutation of sentences". Sub-section (1) of Section 432 empowers the appropriate Government to "suspend the execution of the sentence" or remit "the punishment to which he has been sentenced". The sub-section reads thus:

"When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Suspension of a sentence is obviously different from remission of any part of the punishment to which a person is sentenced. While Section 432 of the Code deals with power of the Government to suspend the sentence, Section 389 of the Code deals with power of the court to suspend execution of

sentence pending appeal or revision. Whenever the sentence is suspended by the court the convict is entitled to be released on bail. The expression used in Section 432(1) of the Code for remission is "remit the punishment to which he has been sentenced". It is, therefore, clear that remission can be granted only with reference to an operative punishment. In other words, when there is no operative punishment there is no need to remit any part of such punishment.

Parole is defined in Black's Law Dictionary, as "a conditional release of a prisoner, generally under supervision of a Parole Officer, who has served part of the term for which he was sentenced to prison". Parole relates to executive action taken after the door has been closed on a convict. During parole period there is no suspension of sentence but sentence is actually continuing to run during that period also.

A Constitution Bench of this Court has considered the distinction between bail and parole in the context of reckoning the period to which a detenu under a preventive detention order has to undergo in prison. It was in *Sunil Fulchand Shah v. Union of India* JT (2000) 2 SC 230. Dr. A.S. Anand, C.J., speaking for himself and for K.T. Thomas, D.P. Wadhwa & S. Rajendra Babu, JJ, has observed thus:

"Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties.

After referring to the meaning given to the word "parole" in different lexicographs learned Chief Justice has stated thus:

"Thus, it is seen that 'parole' is a form of temporary release from custody, which does not suspend the sentence or the period of detention, but provides conditional release from custody and changes the mode of undergoing the sentence."

In a recent decision rendered by a two Judge Bench of this Court in *State of Haryana v. Mohinder Singh Etc.* JT (2000) 1 629 a similar question was

A considered and it was held that the benefits intended for those who are on parole or furlough cannot be extended to those who are on bail. The said decision has been quoted with approval by the Constitution Bench in the majority judgment in *Sunil Fulchand Shah* (supra).

B The clear fallacy of the approach made by the High Court can be demonstrated through an illustration. An accused was tried for an offence under Section 326 of IPC. During trial period he was allowed to remain on bail and the trial prolonged up to, say 3 years. Finally the court convicted him and sentenced him to imprisonment for three years. Should not the convicted person go to jail at all on the premise that he was on bail for three years and is hence entitled to remission of that period?

C Yet another illustration can be shown by stretching the above illustration a little farther. If the aforesaid convicted person filed an appeal and got his sentence suspended by the appellate court and the appellate court confirmed the conviction and sentence after a period of 3 years, is he entitled to claim that he need not go to jail at all as he was on bail for more than 3 years during the post conviction stage also? If it is to be held that he is entitled to such remission, we are afraid, criminal justice system would be reduced to a mockery. The absurdity of the claim of the respondent can thus be demonstrated.

D In the result we allow this appeal and set aside that part of the impugned judgment by which the learned Single Judge directed remission to be granted in respect of the period during which respondent was released on bail.

T.N.A.

Appeal allowed.