

2023 LiveLaw (SC) 10

**IN THE SUPREME COURT OF INDIA
EXTRA-ORDINARY APPELLATE JURISDICTION**

M.R. SHAH; J., C.T. RAVIKUMAR; J.

JANUARY 05, 2023

SPECIAL LEAVE PETITION (CRL) NOS. 12574-12577 OF 2022 (@ DIARY NO. 29535 OF 2022)

Rohan Dhungat Etc. *versus* The State of Goa & Ors Etc.

Parole Period - For the purpose of considering actual imprisonment, the period of parole is to be excluded-If the submission on behalf of the prisoners that the period of parole is to be included while considering 14 years of actual imprisonment is accepted, in that case, any prisoner who may be influential may get the parole for number of times as there is no restrictions and it can be granted number of times and if the submission on behalf of the prisoners is accepted, it may defeat the very object and purpose of actual imprisonment.

(Arising out of impugned final judgment and order dated 03-08-2022 in CRLWP No. 466/2021 03-08-2022 in CRLWP No. 467/2021 03-08-2022 in CRLWP No. 471/2021 03-08-2022 in CRLWP No. 472/2021 passed by the High Court of Judicature at Bombay at Goa)

For Petitioner(s) Mr. Siddhartha Dave, Sr. Adv. Mr. Shivraj Gaonkar, AOR Ms. Aarushi Singh, Adv.

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Bombay at Goa in Criminal Writ Petition Nos. 466 of 2021, 467 of 2021, 471 of 2021 and 472 of 2021 dated 03.08.2022, by which, the High Court has dismissed the said writ petitions holding that the period of Parole is to be excluded from the period of sentence while considering the 14 years to actual imprisonment for the purpose of premature release, the original writ petitioners have preferred the present Special Leave Petitions.

2. That the original petitioners are all convicts undergoing life imprisonment. That all of them were released on parole under the provisions of Goa Prisons Rules, 2006 (hereinafter referred to as the "Rules, 2006"). That all the original petitioners applied for premature release under the Rules, 2006. The State Sentence Revenue Board recommended for premature release. The State Government sought opinion of the convicting Court on the premature release of the petitioners. The convicting Court opined that the convicts shall not be released prematurely considering the gravity of offence. Therefore, the State Government rejected the premature release of the petitioners. The convicts – original writ petitioners, therefore, preferred the respective writ petitions before the High Court of Bombay challenging the State's decision to not considering their case for premature release. Before the High Court, it was the case on behalf of the original writ petitioners that the convicts have completed 14 years in custody and therefore, as such were entitled for premature release. It was the case on behalf of the convicts- original petitioners that the period of parole is not to be excluded from the period of sentence under the Rules, 2006 while considering 14 years of actual imprisonment for the purpose of premature release. Taking into consideration the Rule 335 of the Rules, 2006 which provides that the period of release on Furlough and Parole "shall be counted as remission of sentence" the High Court by impugned judgment and order has observed and held that the period of parole is to be excluded from the period of sentence while considering 14 years of

actual imprisonment for the purpose of premature release. As the respective convicts – original writ petitioners excluding period of parole did not complete 14 years of actual imprisonment, the High Court by the impugned judgment and order has dismissed the respective writ petitions. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court, the original writ petitioners have preferred the present petitions.

3. Shri Siddharth Dave, learned senior counsel appearing on behalf of the respective petitioners has vehemently submitted that in the facts and circumstances of the case the Hon'ble High Court has seriously erred in holding that the period of parole is to be excluded from the period of sentence under the Rules, 2006 while considering 14 years of actual imprisonment for the purpose of premature release.

3.1. It is vehemently submitted by Shri Dave learned Senior Counsel for the respective petitioners that the Hon'ble High Court has erred in relying on the Rule 335 of the Rules, 2006 to hold that since period of release on parole is counted as remission, the same cannot be counted as part of sentence.

3.2. It is submitted that even while on parole the accused /convicts can be said to be in custody / judicial custody and therefore, period of parole is to be included while considering 14 years of actual imprisonment for the purpose of premature release.

3.3. It is vehemently submitted that as such the view taken by the High Court is just contrary to the decision of this Court in the case of **Sunil Fulchand Shah vs. Union of India** reported in **(2000) 3 SCC 409** as well as in the case of **Avtar Singh vs. State of Haryana** reported in **(2002) 3 SCC 409 (para 11)**.

3.4. It is further submitted by Shri Dave learned senior counsel for the original writ petitioners-convicts that even as per Section 55 of the Prisons Act, 1894, a prisoner when being taken to or from any prison in which he may be lawfully confined, shall be deemed to be in prison and therefore, deemed to be in custody and therefore, the period of parole shall have to be included as in custody for the purpose of actual period of imprisonment while considering 14 years of actual imprisonment.

Making above submissions, it is prayed to hold that the period of parole is to be included while considering 14 years of actual imprisonment for the purpose of premature release.

4. The short question which is posed for the consideration of this Court is whether the period of parole is to be excluded from the period of sentence under the Rules, 2006 while considering 14 years of actual imprisonment for the purpose of premature release?

5. While considering the aforesaid question /issue, the object and purpose of parole is required to be taken into consideration.

Parole is a conditional release. Parole can be granted in case of short-term imprisonment. Duration of parole extends to one month. Parole is granted by the State Government. For parole, specific reason is required. Parole can be granted for number of times.

6. "Imprisonment" is defined under Rule 2(21) of the Rules, 2006. "Imprisonment" means imprisonment of either description as defined in Section 53 of the Indian Penal Code, 1860 and the General Clauses Act, 1897. The term of imprisonment is not included in the computation of term of parole.

7. Keeping in mind the above, the issue involved in the present case viz. whether the period of parole is to be excluded from the period of sentence while considering

14 years of actual imprisonment for the purpose of premature release is to be considered.

7.1. The High Court while passing the impugned judgment and order and taking the view that the period of parole is to be excluded from the period of sentence while considering 14 years of actual imprisonment has heavily relied upon or considered Rule 335 of the Rules, 2006 which provides that the period of release on Furlough and Parole “shall be counted as remission of sentence ...”. Once the period of parole is to be counted as remission of sentence, as rightly observed and held by the High Court, the period of parole is also required to be excluded from the period of sentence while considering 14 years of actual imprisonment.

8. Now, so far as the reliance placed upon the decision of this Court in the case of **Sunil Fulchand Shah** (supra) relied upon by learned senior counsel for the respective petitioners – convicts / prisoners is concerned, the said decision shall not be applicable to the facts of the case on hand. It was a case of detenu under the provisions of the COFEPOSA Act. Even in the said decision, it is observed and held that the period of detention would not stand automatically extended by any period of parole granted to the detenu unless the order of parole or rules or instructions specifically indicates as a term and condition of parole, to the contrary. In the present case the term ‘imprisonment’ is not included in the computation of term of parole. Rule 335 specifically provides that parole is to be counted as remission of sentence. Therefore, the said decision would not be applicable to the facts of the case on hand.

8.1. Similarly, the decision of this case in the case of **Avtar Singh** (supra) also shall not be applicable to the facts of the case on hand while considering the issue viz. whether the period of parole is to be excluded from the period of sentence under the Rules, 2006 while considering 14 years of actual imprisonment.

9. Now, so far as the submission on behalf of the petitioners relying upon Section 55 of the Prisons Act, 1894 that even on parole the prisoners shall be deemed to be in custody and therefore, the said period is to be included for the purpose of actual imprisonment is concerned, the aforesaid has no substance. Section 55 of the Prisons Act, 1894 shall not be applicable with respect to release on parole. Section 55 of the Prisons Act, 1894 shall be applicable in a case where a prisoner is taken out from any prison, he shall deem to have been in prison. However, the same shall not be applicable with respect to release on parole.

10. If the submission on behalf of the prisoners that the period of parole is to be included while considering 14 years of actual imprisonment is accepted, in that case, any prisoner who may be influential may get the parole for number of times as there is no restrictions and it can be granted number of times and if the submission on behalf of the prisoners is accepted, it may defeat the very object and purpose of actual imprisonment. We are of the firm view that for the purpose of considering actual imprisonment, the period of parole is to be excluded. We are in complete agreement with the view taken by the High Court holding so.

11. In view of the above and for the reasons stated above, all these Special Leave Petitions deserve to be dismissed and are accordingly dismissed.