2022 LiveLaw (SC) 118

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
SANJAY KISHAN KAUL; M.M. SUNDRESH, JJ.
Writ Petition (Criminal) No.256/2021; 31st January, 2022
MATA PRASAD *versus* **THE STATE OF U.P. & ANR.**

Premature Release Policy - Validity of clause prescribing a minimum age of 60 years which would imply that a young offender of 20 years will have to serve 40 years before his case for remission can be considered - Implies that a young offender of 20 years will have to serve 40 years before his case for remission can be considered - The State Government to re-examine this part of the Policy which prima-facie does not seems to be sustainable.

For Petitioner(s) Mr. Mohd. Irshad Hanif, AOR Mr. Aarif Ali Khan, Adv. Mr. Rizwan Ahmad, Adv. Mr. Mujahid Ahmad, Adv. For Respondent(s) Mr. Ardhendhumauli Kumar Prasad, AAG Mr. Rohit K. Singh, AOR Mr. Uday N. Tiwary, Adv. Ms. Subhali Pathak, Adv.

O R D E R

Admit.

The petitioner has taken recourse to Article 32 of the Constitution of India for a direction for consideration of his case for premature release from prison as per the policy dated 01.8.2018 and consequently to release the petitioner forthwith.

The petitioner along with his younger brother and father were tried for offences under Section 302/307/323/34 of the IPC and post-trial were convicted in sentence to maximum imprisonment for life with a judgment dated 30.9.2004 passed in Session Trial No.208 of 1999 arising from FIR No.380/1999 at P.S. Gosaiganj, Sultanpur. The petitioner aggrieved by the said judgment filed the appeal before the High Court of Judicature at Allahabad in Crl. Appeal No.2247/2004. 17 years hence the appeal is still pending adjudication.

The appellant on completion of 14 years of imprisonment claimed eligibility for release under the provisions of the U.P. Prisoners' Release on Probation Act, 1938 and submitted the duly filled Form-A but the same was rejected on 28.4.2017.

It is the case of the petitioner that the Governor of Uttar Pradesh exercising powers under Article 161 of the Constitution of India issued a G.O dated 01.8.2018, a policy for prisoners in respect of pre-mature release on occasion of Republic Day every year. One of the categories of such prisoners is all male convicted prisoners sentenced to suffer life-imprisonment whose crime is not covered by any sub-rule or restricted category pointed out at Section 3 and who have served 16 years of actual imprisonment without remission and 20 years of imprisonment inclusive of remission along with the pending period. However, this petition of the petitioner was also rejected on 04.11.2019.

It is the case of the petitioner, that the Government in the years 2018-2021 released 1000 of prisoners from the various jails of U.P. under the aforesaid policy and the petitioner despite having satisfied all terms and conditions for pre-mature release under the said policy, his proposal for release was recommended on the occasion of 26.1.2020 i.e., two years back but he has still not been released. The fate of the petitioner is stated to have been same even on 26.1.2021 without assigning any reasons.

In the conspectus of the aforesaid facts, we had issued notice and counter affidavit has been filed by the State.

One of the aspects pointed out in the counter affidavit is by annexing the Policy for pre-mature release by submitting that the same stands amended on 28.7.2021. The significant change as applicable in the case of the petitioner is that all such convicts are required to be considered "who have completed age of 60 years" and have undergone custody of 20 years without remission and 25 years with remission. In this behalf learned counsel for the respondent fairly states that as per the policy of the 2018 the case of the petitioner would be covered though as per the 2021 policy he is not of the requisite age of 60 years. However, he also accepts that in terms of a recent judgment of this Court in ***State of Haryana & Ors. V. Raj Kumar @ Bittu*** reported as ***2021 (9) SCC 292*** it has been clearly opined taking note of the consistent view of this Court that the policy prevalent at time of conviction shall be taken into consideration for considering the pre-mature release of a prisoner. He, thus, submits that 2021 policy prescribing the age of 60 years as the minimum age could not apply to the case of the petitioner.

We are really not required to go into this aspect in view of the aforesaid but would like to express a great doubt on the validity of this clause prescribing a minimum age of 60 years which would imply that a young offender of 20 years will have to serve 40 years before his case for remission can be considered. Though we are not required to test this aspect, we call upon the State Government to re-examine this part of the Policy which prima-facie does not seems to be sustainable more so in view of the illustration we have just noted above and thus we call upon the State Government to take a fresh look at the insertion of this clause. The needful be done within four months from today.

Now once again coming to the facts of the present case, learned counsel for the respondent submits that the appeal of the petitioner pending before the High Court, in view of the long incarceration, he could have moved the High Court for suspension of sentence. We have no doubt about this proposition but the remedy of seeking suspension of sentence and that in view of long incarceration remission is provided, are different release.

It cannot be said that the State Government is precluded from examining the case of the petitioner for remission if an appeal is pending before the High Court and from the submissions of the learned counsel for the petitioner it does appear that petitioner seems to have lost interest even in possibly prosecuting the appeal.

We are, thus, of the view that it would be in fitness of things that the case of the petitioner be considered for remission in view of our aforesaid observations by the Competent Authority within a period of three months from today.

We, thus, issue a dual direction i.e. of consideration of the case of the petitioner for remission within three months and for consideration of the amendment to the Policy of 2021 within a period of four months from today. We may note that according to the learned counsel for the State the remission policy is also under challenge before this Court but then that cannot preclude the State itself from re-visiting the issue.

In view of the fact that the petitioner as on date has already served about 22½ years without remission and almost 28 years with remission, we are inclined to grant bail to the petitioner in the meantime pending consideration in pursuance to our aforesaid directions.

Writ Petition accordingly stands allowed in the terms aforesaid leaving parties to bear their own costs.