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KRISHAN LAL

v.

STATE OF RAJASTHAN & ANR.

(Criminal Appeal Nos. 1972-1973 of 2012)

DECEMBER 03, 2012

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[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Rajasthan Prisoners Release on Parole Rules, 1958:

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rr.2 (d), 9 and 10 A(i) – Application for release on ‘Parole’, by appellant, a life convict, who was sentenced to remain in prison for the rest of his life – Held: In view of the order of the Court, appellant is not entitled to normal parole in terms of r.9 – However, in emergent cases involving humanitarian consideration, the Authority concerned is free to pass appropriate orders in terms of Rule 10 A(i) and as directed in the judgment – Code of Criminal Procedure 1973 – s.401 – Penal Code, 1860 – ss. 302, 307, 148, 450 r/w. ss. 149 and 120-B.

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The appellant was convicted and sentenced to death alongwith 9 others for offences punishable u/ss. 302, 307, 148, 450 read with ss. 149 and 120-B, IPC. The High Court upheld the conviction but commuted the death sentence to imprisonment for life. The Supreme Court¹ while deciding the appeals of the convicts against their conviction as also those of the complainant respondent no. 2 and the State for restoring death sentence of the convicts, by its judgment dated 29.03.2001, confirmed the conviction and sentence awarded to the accused persons by the High Court and held that the imprisonment for life awarded to the appellant would be the imprisonment in prison for the rest of his life and he would not be entitled to any commutation or premature

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1. 2001 (2) SCR 864..

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release u/s 401 of the Code of Criminal Procedure, 1973, Prisoners Act, Jail Manual or any other Statute and the Rules made for the purposes of grant of commutation and remissions. On the petition of the appellant, the High Court directed the Advisory committee to consider his case and the Advisory Committee, on 18.08.2010, released him on parole for 40 days. When the complainant apprised the High Court of the order of the Supreme Court, the High Court, by order dated 06.10.2010 issued a show cause notice to the appellant and the State Government and by final order dated 06.04.2011 dismissed the petition filed by the appellant as having rendered infructuous.

Disposing of the appeals, the Court

HELD: 1.1. It is true that this Court, in *Subhash Chander**, has not considered appellant's right or entitlement to parole. However, the order in the said case shows that it was represented on behalf of the appellant that the Court can pass appropriate orders to deprive the appellant of his liberty throughout his life and if he was sentenced to life imprisonment, he would never claim his pre-mature release or commutation of his sentence on any ground. It is also relevant to note that in the course of hearing, it was pleaded for the complainant that if the appellant was not awarded death sentence, he was likely to eliminate the remaining family members of the deceased, as was evident from his past conduct and behaviour, and this Court accepted the apprehension so made and passed the order insofar as the appellant was concerned. It is, therefore, clear that the appellant has to serve the imprisonment throughout his life in prison and is not entitled to any commutation or premature release under the Code or any other provision made for the purposes of grant of commutation and remissions. [Para 6-7] [225-G-H; 226-A-D-G-H]

A *Subash Chander vs. Krishan Lal & Ors. 2001 (2) SCR 864 = (2001) 4 SCC 458 – referred to

B 1.2. In view of the order of this Court dated 29.03.2001 in *Subash Chander* it is reiterated that the appellant is not entitled to normal parole in terms of r. 9 of the Rajasthan Prisoners Release on Parole Rules, 1958. However, in emergent cases involving humanitarian consideration, the Authority concerned is free to pass appropriate orders in terms of r.10 A(i) of the said Rules. Even while considering such application, the Authority concerned is directed to adhere to the conditions mentioned in the said Rule, impose appropriate stringent condition(s) and see that by the temporary release of the appellant nothing happens to the complainant and his family and also pass appropriate orders giving them necessary protection. It is also made clear that if the Authority concerned is not satisfied with the reasons for temporary parole, it is free to reject such application. [Para 12] [229-D-F]

Case Law Reference:

E 2001 (2) SCR 864 referred to Para 2

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1972-1973 of 2012.

F From the Judgment & Order dated 06.10.2010 of the High Court of Rajasthan at Jodhpur in DBCWP No. 2982 of 2010, WP No. 10309 of 2010 dated 6.4.2011 in WP No. 10309 of 2010.

G K.V. Viswanathan, Arun Kumar Beriwal, Shiv Kumar Dwivedi, Adeeba Mujahid, Mehul M. Gupta, Rishabh Sancheti, T. Mahipal, Amit Bhandari and Milind Kumar for the appearing parties.

The Judgment of the Court was delivered by

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P. SATHASIVAM, J. 1. Leave granted.

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2. These appeals are directed against the order dated 06.10.2010 passed by the High Court of Judicature for Rajasthan at Jodhpur in Writ Petition (Parole) No. 10309 of 2010 whereby a show cause notice was issued to the appellant herein and the State Government and it was also held that the convict- Krishan Lal (the appellant herein) shall not be released on parole or otherwise as ordered by this Court on 29.03.2001 in the case of *Subash Chander vs. Krishan Lal & Ors.* reported in (2001) 4 SCC 458 and also against the final order dated 06.04.2011 by which the petition filed by the appellant herein was dismissed as having rendered infructuous.

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3. Brief facts:

(i) The appellant herein was an accused in a murder case along with 11 accused persons. The trial Court convicted all the accused persons except one for the offences under Section 302, 307, 148, 450 read with Sections 149 and 120B of the India Penal Code, 1860 (in short "IPC") and sentenced them to death.

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(ii) Aggrieved by the order of conviction and death sentence, the appellant along with other accused persons filed appeals before the High Court. The High Court upheld the conviction of all the convicted persons including that of the appellant herein but commuted the death sentence to imprisonment for life.

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(iii) Challenging the order of the High Court, the complainant – respondent No.2 herein filed two sets of appeals bearing Criminal Appeal Nos. 812-814 of 1999 and Criminal Appeal Nos. 815-816 of 1999 before this Court praying for setting aside the order of acquittal and awarding of death sentence to the convicted persons as was done by the trial Court. The accused persons also filed two sets of appeals bearing Criminal Appeal Nos. 817-

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A 818 of 1999 and Criminal Appeal Nos. 819-820 of 1999
 before this Court praying for their acquittal by setting aside
 the conviction and sentence awarded to them by the trial
 Court and the High Court. The State also filed appeals
 before this Court for quashing the order of acquittal of one
 B accused person and for awarding death sentence to the
 convicted persons. This Court, in the abovesaid appeals,
 by judgment dated 29.03.2001, confirmed the conviction
 and sentence awarded to the accused persons by the High
 Court and held that the imprisonment for life awarded to
 C the appellant herein shall be the imprisonment in prison for
 the rest of his life and he shall not be entitled to any
 commutation or premature release under Section 401 of
 the Code of Criminal Procedure, 1973 (in short "the
 Code"), Prisoners Act, Jail Manual or any other Statute
 and the Rules made for the purposes of grant of
 D commutation and remissions.

(iv) Prior to the order of this Court in *Subash Chander*
 (supra), on 06.03.1999 and 12.05.2000, the appellant
 herein was allowed regular parole of 20 days and 30 days
 E respectively by the Parole Advisory Committee and,
 accordingly he availed the same. During the period from
 2001-2010, the appellant tried for third regular parole for
 40 days by filing various applications but the same were
 not considered. Aggrieved by the same, the appellant
 F herein moved the High Court by filing an application being
 D.B. Criminal Parole No. 2982 of 2010. The High Court
 by order dated 26.05.2010, directed the Parole Advisory
 Committee for considering the case of the appellant. Vide
 order dated 12.08.2010, the Advisory Committee released
 G the appellant herein on parole on 18.08.2010 for 40 days.

(v) Aggrieved by the orders dated 26.05.2010 and
 12.08.2010 passed by the High Court and the Parole
 Advisory Committee respectively, the Complainant-
 H respondent No.2 herein filed an application being Civil

Misc. Application No. 93 of 2010 in DB Criminal W.P. No. 2982 of 2010 before the High Court for reconsideration of the order dated 26.05.2010 and for quashing the order dated 12.08.2010 passed by the Parole Advisory Committee. The High Court, by impugned order dated 06.10.2010, issued show cause notice to the appellant herein and the State Government and also held that the appellant shall not be released on parole or otherwise as ordered by this Court in the case of *Subash Chander* (supra). After the reply of the appellant herein, the High Court, by final order dated 06.04.2011 dismissed the petition filed by the appellant herein as having rendered infructuous.

(vi) Against the orders dated 06.10.2010 and 06.04.2011, the appellant has filed these appeals by way of special leave before this Court.

4. Heard Mr. K.V. Viswanathan, learned senior counsel for the appellant, Mr. Amit Bhandari, learned counsel for respondent No.1-State and Mr. Rishabh Sancheti, learned counsel for respondent No.2-the Complainant.

5. The only point for consideration in these appeals is whether the appellant is entitled to be released on parole in the light of the order passed by this Court on 29.03.2001 in *Subash Chander* (supra)?

6. In order to understand the claim of the appellant, it is useful to refer the direction given by this Court in *Subash Chander* (supra). When the above-said appeals were filed by the complainant, the State as well as the accused before this Court, it was represented on behalf of the present appellant – Krishan Lal (A-1) that the Court can pass appropriate orders to deprive the appellant herein of his liberty throughout his life. It is also seen from the order that upon instructions, Mr. U.R. Lalit, learned senior counsel submitted that Krishan Lal (A-1) – appellant herein, if sentenced to life imprisonment, would

A never claim his pre-mature release or commutation of his sentence on any ground. The above statement of the learned senior counsel for Krishan Lal (A-1) – appellant herein had been recorded by this Court. It is also relevant to note that in the course of hearing, Mr. Ranjit Kumar, learned senior counsel, B who appeared for the Complainant in that matter, contended that if accused like Krishan Lal (A-1), appellant herein, is not awarded death sentence, he is likely to eliminate the remaining family members of Bhagwan Ram, as is evident from his past conduct and behaviour. He further submitted that in order to C protect the surviving family members of Bhagwan Ram, it is necessary to at least deprive Krishan Lal(A-1)-appellant herein of his life. It is relevant to point out that this Court accepted the apprehension made by the learned senior counsel for the Complainant. In those circumstances, the following order D insofar as Krishan Lal – the appellant herein is concerned was passed:

“23. However, in the peculiar circumstances of the case, apprehending imminent danger to the life of Subhash Chander and his family in future, taking on record the statement made on behalf of Krishan Lal(A1), we are inclined to hold that for him the imprisonment for life shall be the imprisonment in prison for the rest of his life. He shall not be entitled to any commutation or premature release under Section 401 of the Code of Criminal Procedure, Prisoners Act, Jail Manual or any other statute and the Rules made for the purposes of grant of commutation and remissions.”

(Emphasis supplied)

G 7. From the above direction, it is clear that Krishan Lal-appellant herein has to serve the imprisonment throughout his life in prison and is not entitled to any commutation or premature release under the Code or any other Act including Prisoners Act, Jail Manual or any other statute and the Rules made for H the purposes of grant of commutation and remissions. It is true

that this Court has not considered his right or entitlement of parole. A

8. Mr. K.V. Viswanathan, learned senior counsel for the appellant in support of his claim for parole relied on the Rajasthan Prisoners Release on Parole Rules 1958. In exercise of the powers conferred by sub-section (6) of Section 401 of the Code of Criminal Procedure, the Government of Rajasthan has passed the above Rules. Section 2(d) defines "Parole" as under: B

"2(d) "Parole" means conditional enlargement of a prisoner from the jail under these rules" C

As per the Rules, a prisoner sentenced to imprisonment for not less than one year may be permitted to make an application for release on parole before the Prisoners Parole Advisory Committee. Rules provide constitution of Prisoners Parole Advisory Committee and procedures to be followed in considering such applications. Rule 9 of the said Rules speaks about Parole period. Mr. Viswanathan has also pointed out that on the basis of the said Rules, the appellant was granted parole on two occasions i.e., on 06.03.1999 and 12.05.2000 for a period of 20 days and 30 days respectively, and when the appellant made another application praying for third parole for 40 days, based on the order dated 26.05.2010 of the High Court, the Advisory Committee, by order dated 12.08.2010 released the appellant on parole for a period of 40 days on 18.08.2010. The said order was challenged by the complainant – respondent No.2 herein by filing an application being D.B. Civil Misc. Application No. 93 of 2010 before the High Court. Considering the earlier order of this Court dated 29.03.2001 in Subash Chander (supra), the High Court rejected the 3rd application filed by the appellant for parole. D E F G

9. Learned counsel appearing for the State as well as the Complainant submitted that in view of the stand taken by the learned senior counsel for the appellant before this Court giving H

A up his right of praying for commutation or premature release
 and be in prison till the end of his life and the apprehension of
 the complainant's family that in the event of his release even
 on parole he is likely to eliminate the remaining family
 members of Bhagwan Ram, the present appeals are liable to
 B be dismissed.

10. We have already extracted the ultimate order of this
 Court confirming the imprisonment for life in prison for rest of
 his life and foregoing commutation or premature release under
 any of the statute or Rules or Circulars. Though Mr. Viswanathan
 C has claimed that the appellant was granted parole on two
 occasions for 20 days and 30 days and no adverse against
 the appellant was reported, it is relevant to note that the
 appellant was granted parole on the abovesaid two occasions
 prior to the order passed by this Court on 29.03.2001 in *Subash*
 D *Chander* (supra) and the specific direction of this Court in that
 order was not placed for consideration at the time of granting
 3rd parole to the appellant by the Advisory Committee.

11. Though the Rajasthan Prisoners Release on Parole
 E Rules, 1958 enables the appellant to apply for parole before
 the Advisory Committee, we are of the view that in view of the
 commutation of death sentence into life imprisonment and
 specific conditions imposed foregoing commutation or
 premature release under any statute or Rules and considering
 F the apprehension expressed by the complainant-respondent
 No.2 herein, we hold that henceforth the appellant shall not be
 entitled for regular parole in terms of Rule 9 of the said Rules.
 However, if any contingency arises, the same may be
 considered by the Advisory Committee in terms of Rule 10-A(i)
 G of the said Rules which reads as under:

"10-A(i) Notwithstanding the provision of rules 3,4,5, 9 &
 10 in emergent cases, involving humanitarian
 consideration viz., (1) critical condition on account of illness
 of any close relations i.e. father, mother, wife, husband,
 H children, brother or unmarried sister; (2) death of any such

close relation; (3) serious damage to life or property from any natural calamity; and (4) marriage of a prisoner, his/her son or daughter or his/her brothers/sisters in case his/her parents are not alive.

A Prisoner may be released on parole for a period not exceeding 7 days by the Superintendent of the Jail and for a period not exceeding 15 days by the Inspector General of Prisons (District Magistrate) on such terms and conditions as they may consider necessary to impose for the security of the prisoner including a guarantee for his return to the jail, acceptance or execution whereof would be a condition precedent to the release of such prisoner on parole.”

12 In view of the order of this Court dated 29.03.2001 in *Subash Chander* (supra), we reiterate that the appellant is not entitled to normal parole in terms of Rule 9, however, in emergent cases involving humanitarian consideration, the Authority concerned is free to pass appropriate orders in terms of Rule 10 A(i) of the Rules. Even while considering such application, the Authority concerned is directed to adhere to the conditions mentioned in the said Rule, impose appropriate stringent condition(s) and see that by the temporary release of the appellant nothing happens to the complainant and his family and also pass appropriate orders giving them necessary protection. It is also made clear that if the Authority concerned is not satisfied with the reasons for temporary parole, it is free to reject such application.

13. With the above direction, the appeals are disposed of.

R.P.

Appeals disposed of.