

PETITIONER:
PHOOLAN DEVI

Vs.

RESPONDENT:
STATE OF M.P. & ORS .

DATE OF JUDGMENT: 27/11/1996

BENCH:
J.S. VERMA, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

J.S. VERMA.J.

The petitioner - Smt. Phoolan Devi was in custody since February 12, 1983 when she claims to have voluntarily surrendered in the State of Madhya Pradesh with a criminal past. She was in the Central Jail at Gwalior in Madhya Pradesh. In this writ petition filed in January 1993 under Article 32 of the Constitution she has prayed for a direction for her release from custody, and an appropriate writ, order or direction quashing the large number of prosecutions initiated against her by the State of Uttar Pradesh for commission of heinous offences, e.g. dacoity and murder. In substance, she claims that her right to speedy trial guaranteed under Article 21 of the Constitution has been violated and her continued custody was without any lawful authority. By an order dated February 18, 1994 this Court directed release of the petitioner on parole in view of the fact that the petitioner had been in custody for a period of eleven years till then. The petitioner is on parole pursuant to that order.

The petitioner alleges that atrocities were committed on her and members of her family by persons belonging to the upper castes and she was also the victim of gang rape which drove her to adopt a life of crime; this criminal past is the cause for a large number of criminal cases for offences of dacoity and murder etc. against her in the State of Uttar Pradesh. She alleges that she had surrendered certain terms and conditions offered to her by the Government of Madhya Pradesh; those terms included, inter alia, the assurance that she would be released from custody after release on parole should be converted into a direction for her final release.

It may be mentioned that the petitioner has also filed Transfer Petition (Crl.) No. 36 of 1992 praying for transfer of all the criminal cases against her pending in the courts of Uttar Pradesh to the Special Court at Gwalior in Madhya Pradesh. That transfer petition is pending and is to be heard separately. The order disposing of this writ petition has no bearing on that transfer petition. For the same reason the arguments of Shri Jethmalani which may have

relevance in the transfer petition, though urged in this writ petition are not being considered in this writ petition and would remain available for considering the prayer made in the petitioner's transfer petition.

In our opinion, the limited scope of this writ petition is the question of the release of the petitioner from custody on the present facts. The other aspects sought to be raised by Shri Jethmalani do not require consideration in this writ petition. The question of the content and effect of the terms of surrender alleged by the petitioner has to be raised and decided in the criminal cases pending against the petitioner. The same cannot be raised on the basis of an omnibus statement in this petition under Article 32 of the Constitution.

We are informed that the State of Uttar Pradesh has moved an application in each trial pending in the courts of Uttar Pradesh seeking leave to withdraw the prosecution. This aspect based on the alleged terms of the surrender may have relevance in those proceedings requiring consideration of the same in the facts of each prosecution. The question whether the blame for the entire delay in the prosecution/trial in each of those 4 criminal cases lies on the State alone and not the petitioner is a question of fact to be considered in each of those cases. Merely because of the lapse of several years since the commencement of those prosecutions, to cannot be said that for that reason alone the continuance of the prosecutions would violate the petitioner's right to speedy trial. Similarly, the cumulative effect of the terms of the alleged surrender have to be examined, on the same being duly proved in those prosecutions to decide the merit of the contention that eight years; she would be tried in the courts in Madhya Pradesh only even for the crimes alleged to have been committed in the State of Uttar Pradesh; and death penalty would not be imposed in any case. On this basis it is claimed that the custody for eleven years undergone by the petitioner is sufficient to satisfy this requirement and all the prosecutions pending against her in the courts in Uttar Pradesh should be quashed. According to the petitioner there are about 55 criminal prosecutions against her in the courts in Uttar Pradesh alleging the commission of heinous offences like dacoity and murder by her.

Shri Ram Jethmalani, learned counsel for the petitioner, strenuously urged that there is no justification for continuing the prosecution of the petitioner in any of the criminal cases pending against her in the courts of Uttar Pradesh, since the petitioner has already been in custody for a total period of eleven years when according to the terms of surrender she was to undergo imprisonment for a total period of eight years only. He submitted that to honour this commitment the petitioner did not challenge the order dated August 13, 1986 passed by the Government of Madhya Pradesh in the purported exercise of power under Section 268 of the Criminal Procedure Code even though it was invalid for continuing the petitioner's detention in the Central Jail at Gwalior. He submitted that the petitioner was required to serve the sentence of three years' imprisonment in the only case in the State of Madhya Pradesh which term of imprisonment ended on July 25, 1985 and, therefore, the further custody for a period of eight years satisfied the terms of the surrender. Shri Jethmalani submitted that the petitioner did not challenge the validity of Madhya Pradesh Government's order dated August 13, 1986 because of the moral justification for continuing her custody for a further period of eight years under the terms of surrender. Learned

counsel submitted that now there is no justification for continuing any prosecution in Uttar Pradesh, there being no other criminal case pending in Madhya Pradesh against her. On this basis learned counsel contended, that all the prosecutions pending in the courts in Uttar Pradesh against the Petitioner should be quashed; and her the petitioner is not liable for any further punishment as claimed by her. The mere fact that the alleged terms offer immunity from death penalty and trial of all cases in Madhya Pradesh even for crimes committed in Uttar Pradesh, indicates that the question of the punishment to be imposed on the petitioner in each case depends on the final outcome at the trial, and the imprisonment of eight years mentioned in one of these terms does not conclude the prosecutions. The petitioner's contention that the violation of her right to speedy trial is proved by these facts alone to justify quashing of all the prosecutions is, therefore, untenable.

The only question now is of the relief pertaining to petitioner's release from custody at this juncture. In response to the notice of this petition, it has been stated clearly on behalf of the State of Madhya Pradesh that the petitioner has served out the sentence of three years' imprisonment awarded in the only case against her in Madhya Pradesh; and that there is no other criminal case in which she has been sentenced or is wanted. This being so, no authority has been shown to justify continuance of her custody on account of the commission of any crime in Madhya Pradesh or any judgment of any court in Madhya Pradesh. On behalf of the State of Uttar Pradesh also, nothing has been shown to indicate that there is any subsisting order or judgment of any court requiring the continuance of petitioner in custody. In short, no authority has been shown either by the state of Madhya Pradesh or by the State Uttar Pradesh to justify further custody of the petitioner at this juncture. This is, however, subject to the requirement of any order made hereafter by any competent court in any of the pending prosecutions against the petitioner. The petitioner is, therefore, entitled to release at present, unless by any order made hereafter by any competent court she is required to be taken in custody. The Petitioner is entitled to the grant of relief only to this extent in this writ petition.

For the aforesaid reasons we direct that the petitioner, who is on parole by virtue of order dated February 18, 1994 made in this case, shall continue remain free, subject to the requirement of taking her in custody by virtue of any order made by a competent court/authority in any of the prosecutions pending in the State of Uttar Pradesh or any other case. The prayer in the writ petition for quashing the prosecutions pending in the State of Uttar Pradesh is rejected.

The writ petition is disposed of in this manner.