

CASE NO.:
Writ Petition (crl.) 135 of 2003

PETITIONER:
ANIL SHARMA

RESPONDENT:
STATE OF HARYANA & ANR

DATE OF JUDGMENT: 29/01/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT

WRIT PETITION (CRL.) NO.135 OF 2003
WITH
WRIT PETITION (CRL.) NO.200/2003
(SOCIETY FOR HUMAN RIGHTS & CIVIL LIBERTIES VS. STATE OF HARYANA)
WRIT PETITION (CRL.) NO.267/2003 (M.K. BALAKRISHNAN VS. UNION OF INDIA & ORS.)

O R D E R

WRIT PETITION (CRL.) NO.135/2003

In this petition under Article 32 of the Constitution the petitioner prays for quashing of Annexures P-1, P-2 and P-3. Annexure P-1 is a publication in India Today. No particular has been disclosed by the petitioner. Annexure P-2 is the publication in Hindustan Times. No material particular has been disclosed. Annexure P-3 is list of accused granted remission by the Government. Charge under Section 302 IPC in respect of accused/Kulwant Singh has been shown to have withdrawn on 03.12.2001. In the list \026 Annexure P-3 besides Kulwant Singh none of the accused has been convicted/charged under Section 302 IPC. Therefore, the contention of the learned counsel appearing for the petitioner that the accused who has been convicted under Section 302 IPC. has been arbitrarily released prematurely is not substantiated. This petition being abuse of the process of the Court is accordingly dismissed.

WRIT PETITION (CRL.) NO.200/2003

In view of our order passed in WRIT PETITION (CRL.) NO.135/2003 this petition is dismissed.

...2/-

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WRIT PETITION (CRL.) NO.267/2003

In this writ petition petitioner prays for the following reliefs :

- a. Issue notice on the Union of India and States and Uts. of the Union.
- b. Issue writ in the nature of writ of mandamus/ order or direction to the respondents for releasing life convicts after 14 years term in jail generally and to release all life convicts particularly detailed in Annexures P-2 to P-4.
- c. Constitute an expert Committee to deal with the case of life convicts languishing in jail even after 14 years term.
- d. In the alternative, issue an appropriate writ, order or direction to the Respondent Union of India, the States and the Union Territories to frame uniform rules and guidelines for exercise of powers under Articles 72 and 161 of the Constitution keeping large reservoir of power to deal with exceptional situations as observed in the Maru Ram case but subject to recording of reasons;
- e. Issue an appropriate writ, order or direction to the Respondent

Union of India, the States and the Union Territories to treat the mandatory minimum period of 14 years to be served by certain life convicts under Section 433-A as only one of the guidelines under Articles 72 and 161 of the Constitution.

...3/-

: 3 :

f. Issue an appropriate writ, order or direction that all the cases of life convicts must mandatorily and automatically be reviewed by a board after a specified period (which in the case of convicts covered under Section 433A of the Cr.P.C. is at the end of 13 years in prison) on an individual basis under the above guidelines to consider whether the convict should be released or not;

g. Direct the Respondents to educate the prisoners on their right to be considered for premature release and provide adequate legal aid for the same.

h. Issue any order or direction as this Hon'ble Court finds fit and proper in the circumstances of the case.

Mr. K. Venugopal, learned counsel appearing for the petitioner at the outset fairly submits that he is not pressing prayer Nos. a and b. On a reading of the prayers from c to h, we are afraid that in exercise of power under Article 32 of the Constitution such prayer could be acceded. The prayer, inter alia, seeks direction to amend a law which power this court does not have. At the same time, the learned counsel for the petitioner has also brought to our notice that in the case of Andhra Pradesh as many as 1500 hardcore prisoners have been prematurely released. It is no doubt true that power under Articles 72 and 161, or under Section 433-A can not be exercised arbitrarily, as pointed out by this Court in Maru Ram vs. Union of India and others, (1981) 1 SCC 107. However, there is another difficulty to give effective relief. The alleged prematurely released 1500 hardcore prisoners are not before us. Therefore, it is difficult to give effective relief in exercise of our power under Article 32 of the Constitution.

...4/-

: 4 :

We, however, clarify that if there are instances that the power has been exercised arbitrarily by the State Government it is open to the petitioner to challenge such arbitrary exercise of power before the High Court under Article 226 of the Constitution after impleading the prisoners released prematurely as respondents.

Subject to the aforesaid observation, we see no merit in this petition. The writ petition is dismissed accordingly.

Application for impleadment is dismissed.

.....J.

(H.K. SEMA)

.....J.
(MARKANDEY KATJU)

NEW DELHI,
JANUARY 29, 2008.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 406 OF 2004

SHAMIM AHMED & ORS.

...APPELLANT (S)

VERSUS

STATE OF U.P. & ORS.

...RESPONDENT(S)

O R D E R

This appeal is directed against the judgment and order dated 27th September, 2001 passed by the Division Bench of the High Court of Allahabad. By the aforesaid order the High Court has set aside the Government Order dated 11th January, 2000 and 25th January, 2000 granting remission to the appellants purportedly in exercise of power under Article 161 of the Constitution. Para (i) of the aforesaid Order provides premature release of the category of prisoners as under: (i) Prisoners who had undergone 20 years of sentence with remission by 26.1.2000;

(ii) Male prisoners of 60 years or above, who had been sentenced to imprisonment for life and had undergone 3 years of sentence (without remission) by 26.1.2000;

(iii) Lady prisoners of 50 years or above who had been sentenced to imprisonment for life and had undergone 3 years of sentence (without remission) by 26.1.2000;

(iv) Male prisoners of 60 years or above who had been sentenced to a fixed term of imprisonment and undergone 1/3 of the sentence imposed upon them or 2 years which ever is less;

(v) Lady prisoners of 50 years or above who had been sentenced to a fixed term of imprisonment and had undergone 1/3 of the sentence imposed upon them or 2 years which ever is less.

The High Court has quashed the aforesaid order on the ground that the power has been exercised arbitrarily and in violation of the statutory provisions of Section 433A of the Code of Criminal Procedure.

After hearing the learned counsel for the appellants and going through the judgment of the High Court, we entirely agree with the view taken by the Division Bench of the High Court. A perusal of Clause (ii) of the Government Order discloses the male prisoners of 60 years or above, who had been sentenced to imprisonment for life and had undergone 3 years of sentence (without remission) by 26.1.2000 and clause (iii) discloses the lady prisoners of 50 years or above who had been sentenced to imprisonment for life and had undergone 3 years of sentence (without remission) by 26.1.2000.

Validity of Section 433A of the Code of Criminal Procedure has been challenged before a Constitution Bench of this Court in Maru Ram Vs. Union of India & Others [1981 (1) SCC 107] in which this Court had upheld the validity of Section 433A. This Court also pointed o

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that even the power under Article 72 and 161 of the Constitution should not be exercised
arbitrarily. Counsel for the appellants contended that the order of remand has been passed
by
the State Government in exercise of power under Article 161 of the Constitution which is qui
te
different from the power under Section 433A of the Code of Criminal Procedure. While
reading the order of the Government it appears that even assuming the Government has
exercised power under Article 161 of the Constitution, it appears to be quite arbitrary and
the
High Court was justified in setting aside the aforesaid order.

In the result, there are no merits in this appeal and the same is dismissed.

We clarify that if any appellants have completed 14 years of actual imprisonment, he

or
they may approach the State Government/concerned authority for appropriate orders and the
concerned authority shall dispose of the petition expeditiously.

The application for deletion of the name of respondents is dismissed.

.....J.
(H.K. SEMA)

.....J
(MARKANDEY KATJU)

New Delhi,
January 29, 2008

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 408 OF 2004

MUNNAAPPELLANT (S)

VERSUS

STATE OF U.P. & ORS.

...RESPONDENT(S)

CRIMINAL APPEAL NOS. 407, 410-415 OF 2004
CRIMINAL APPEAL NO. 982 OF 2006
CRIMINAL APPEAL NO. 1492 OF 2007

O R D E R

In view of the Order passed in Criminal Appeal No. 406 of 2004, these appeals
are dismissed with the directions stated therein.

.....J.
(H.K. SEMA)

.....J
(MARKANDEY KATJU)

New Delhi,
January 29, 2008

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NOS. 5-6 OF 2005

MANSA RAM & ANR.

...APPELLANT (S)

VERSUS

STATE OF U.P. & ORS.

...RESPONDENT(S)

O R D E R

Heard learned counsel for the parties.
The Writ Petitions are dismissed.