

CASE NO.:
Appeal (crl.) 913 of 2007

PETITIONER:
State of M.P.

RESPONDENT:
Kusum

DATE OF JUDGMENT: 19/07/2007

BENCH:
Dr. ARIJIT PASAYAT & P.P. NAOLEKAR

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 913 OF 2007
(Arising out of SLP (Crl.) No.4654 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court at Jabalpur quashing the Circular dated 3.8.2005 issued by the State.
3. Background facts in a nutshell are as follows:

Respondent is convicted for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and was sentenced to rigorous imprisonment for life. She filed an application for release under the Madhya Pradesh Prisoners' Release on Probation Act, 1954 (in short the 'Act') and the rules framed thereunder. On 3.8.2005 a Circular was issued by the Inspector General of Prisons that persons whose appeals are pending before the Appellate Court are not entitled to be considered for the purpose of release on probation. The Circular was purportedly issued on the basis of the decision rendered by a Division Bench of the Madhya Pradesh High Court, Gwalior Bench in Writ Petition No.941 of 2004 dated 14.10.2004.

Respondent's prayer was rejected by the Probation Board on 8.8.2005. The State Government formally approved the rejection by rejecting the prayer for release by order dated 29.10.2005. A writ petition was filed before the High Court questioning the legality of the Circular dated 3.8.2005. Primary stand taken was that the same was contrary to the provisions of the Act. The High Court noted that the Division Bench in the earlier case had adverted to the concept of conditions precedent and the irregularity in release on probation of certain convicts particularly those whose applications for bail had been rejected and their appeals were pending. The High Court noted that in the said case there was a question mark over the decision making process of the Probation Board as in some cases where prayer for bail had been rejected convicts have been released on probation. The High Court further noted that the concerned authorities by the Circular dated 3.8.2005 have directed that the Probation Board should not consider the case of convicts whose appeals

are pending in the High Court. That apart, there has been a direction not to consider the mercy application for grant of release. According to the High Court, the earlier Division Bench's decision was rendered to curb the illegality in the decision making process. But the Circular to the effect that no case would be considered by the Probation Board where the appeal is pending could not have been issued. The entertainment of mercy petition was also not prohibited by the earlier Division Bench. Therefore, the same cannot be prohibited by the Circular if otherwise entertainable in law. The High Court noted that the Circular was absolutely general, sweeping and inconsistent with the Act and M.P. Prisoners' Release on Probation Rules, 1964 (in short the 'Rules'). It was noted that the judgment of the earlier decision of the High Court was mis-construed by the authorities concerned. The writ petition was allowed by quashing the Circular.

4. In support of the appeal, learned counsel for the appellant submitted that the observations and views expressed in the earlier Division Bench's judgment have not been properly appreciated by the Division Bench in the instant case. It has been pointed out that the High Court had deprecated the practice of releasing the convicts whose applications had been rejected. The Circular therefore was not illegal and had only encompassed what was decided in the earlier case.

5. Learned counsel for the respondent on the other hand submitted that the High Court in the earlier decision had not in any way prohibited making of an applications. Whether the applications would be entertained and/or were to be allowed or not is another matter. But by the Circular even making of an application was provided to be impermissible.

6. The observations of the Division Bench in the earlier decision which form the foundation of the Circular reads as follows:

"It may be mentioned that after rejection of earlier application by the subsequent order after the remand, the Board has passed similar order rejecting the application and Board has not considered the directions given by this Court. We have also issued notice to State to show cause why persons have been released on 5 years and the reasons for releasing them on 5 years or 6 years. No explanation has been submitted by the respondents. It appears that there are some irregularities in the release of probationers on probation particularly those dreaded criminal whose application for bail has been rejected and their appeal are pending, they too had been released. This Court has come across number of appeals thereafter rejection of bail application the convicts had been released on bail. This act of probation puts a question mark on their decision making process."

7. The parameters of consideration were only highlighted by the Division Bench. It never held that even making of an application is to be barred. Therefore, the Circular has been rightly held to be illegal by the High Court. There cannot be any bar for making an application. Whether the prayer as

contained in the application is to be accepted or not is another question. It needs no re-iteration that while considering an application the principles set out by this Court in Arvind Yadav v. Ramesh Kumar and Ors. (2003 (6) SCC 144) are to be kept in view. Para 7 of the judgment reads as follows:

"Apart from the fact that there are factual infirmities in the impugned judgment, it is also to be borne in mind that the victim and the family of the victim who have suffered at the hands of the convict have also some rights. The convicts have no indefeasible right to be released. The right is only to be considered for release on licence in terms of the Act and the Rules. The Probation Board and the State Government are required to take into consideration the relevant factors before deciding or declining to release a convict. In the present case, the Probation Board had not recommended the release. The State Government had confirmed the order of the Board. The writ petition had failed before the learned Single Judge. The facts of individual cases were not considered by the Division Bench. In the case of Ramesh Kumar, the stand of the State Government was that he along with six others had formed an unlawful assembly and murdered Jitendra, son of Shashi Mohan Yadav on 20.9.1994 in Hoshangabad, Madhya Pradesh causing seventeen injuries on him and swords, knives and gupti and that Ramesh Kumar was the accused in fourteen cases filed under various sections of the Indian Penal Code. The manner of commission of crime is a relevant consideration. In a given case, the manner of commission of offence may be so brutal that it by itself may be a good sole ground to decline the licence to release. The Rules provide for a detailed procedure for consideration of application for release. Once rejected, again application for release can be made after two years. The Board comprises of the Home Secretary of the State Government or any other empowered officer, IG of Prisons or Deputy IG and another member."

8. The appeal is, therefore, dismissed.