SADHU SINGH RODA S/O BUTA SINGH ETC. A

v.

STATE OF PUNJAB

January 25, 1984 B

[V.D. TULZAPURKAR, R.S. PATHAK AND SABYASACHI MUKHARJI JJ.]

Code of Criminal Procedure 1973—Secs. 433 and 433A. C

Punjab Jail Manual—Para 516-B—Interpretation of—Para 516-B is nat a statutory rule but contains executive instructions which can be amended by subsequent executive instructions issued by State Government.

Paragraph 516-B of the Punjab Jail Manual provided *inter alia* that after a person sentenced to life imprisonment had undergone detention for D the period specified in that paragraph together with remission earned, his case should be submitted to the State Government for consideration of his pre-mature release. In 1971 the State Government issued instructions laying down certain minimum period of actual detention to be undergone by a person sentenced to life imprisonment before his case for pre-mature release could be considered by the State Government. In 1976 the State Government issued further instructions that cases of life convicts whose death sentence E had beed commuted to life imprisonment should be considered for pre-mature release only after completion of 14 years of actual imprisonment. The petitioners, who claimed to have satisfied the requirements of para 516-B and thus become entitled to be cansidered for pre-mature release under that paragraph, alleged that following the 1971 and 1976 instructions the jail authorities were not submitting their cases to the State Government for consideration of their pre-mature release. The petitioners contended that para 516-B was a statutory rule and the subsequent executive F instructions issued in 1971 and 1976 could not amend or alter the statutory rule thereby adversely affecting their rights under Para 516-B.

Dismissing the five petitions and allowing two petitions,

HELD : A sentence of imprisonment for life is a sentence for the remainder of the natural life of the convict and there is no question releasing G such a convict earlier in the absence of a formal order of commutation passed by the State Government either under sec. 55, IPC. or sec. 433 (b) of Cr. P.C. 1973 and that even the Remission Rules, though statutory, cannot over-ride the statutory provisions contained in the Penal Code. Admittedly, in the case of none of the petitioners before the Court has any order of commutation been passed by the State Government under either of the said provisions. [746E-F] H

A *Pandit Kishori Lal*, AIR 1945 PC. 64; *Gopal Godse* [1961] 3 S.C.R. 440; *Maru Ram*, [1981] 1 S.C.R. 1196 and *Kartar Singh* [1982] 3 S.C.R. 1; referred to.

Para 516-B of the manual itself contained executive instructions and had no force of a statutory rule. If that be so it would always be open to the State Government from time to time to alter or amend or even withdraw B such executive instructions by issuing fresh instructions. But once fresh instructions for processing the cases for lifers for pre-mature release are issued these must be uniformly and invariably applied to all cases of lifers so as to avoid the charge of discrimination under Art. 14 of the Constitution. [748E-F]

C In *Naranjan Singh's* case (which decision is subject matter of challenge in criminal appeal arising from leave being granted in SLP (Crl.) No. 499 of 1983) the fact that the State Government had issued the 1971 instruction which substituted Para 516-B of the manual was not properly placed before the High Court and in the absence of such proper material the High Court took the view that the convict's case for pre-mature release was required to be considered in the light of the provisions of Para 516-B. The view of D the High Court cannot obviously be accepted. [748G-H]

The contention of the petitioners that the State had been erroneously making a distinction between cases of prisoners who had been sentenced to death but whose sentences, on mercy petitions, had been commuted to life imprisonment and prisoners who had been straightaway sentenced to life imprisonment in the matter of consideration of their cases for pre-mature E release, must fail in view of the admitted position that cases of prisoners who have been sentenced to death but whose sentence on mercy petitions has been commuted to life-imprisonment (who constitute a distinct class) will now be governed by the 1976 Instructions. The view of the High Court in the case of *Mehar Singh* v. *State of Punjab* (not reported) that the 1976 instructions will not be applicable to cases of prisoners convicted earlier to that date is not tenable. Clearly existing cases of life convict's F falling within that category will be governed by those instructions. [749A-C]

ORIGINAL JURISDICTION: Writ Petition (Criminal) Nos. 64 to 70 of 1983.

Under article 32 of the Constitution of India

Mrs. Urmila Sirur, *Sanjeev Puri* and *Amerdeep Jaiswal* for the Petitioners.

G *Harbans Singh* and *S.K. Bagga* for the Respondent.

The Judgment of the Court was delivered by

TULZAPURKAR, J. In the context of the right of the 'lifers' H (prisoners sentenced to life imprisonment prior to 18th December,

1978 being the date of coming into force of sec. 433A, Cr.P.C.) to have their cases considered for pre-mature release under the Punjab Jail Manual two contentions were urged by counsel appearing for the lifers before us in the above matters. First, it was contended that such lifers were entitled to have their cases for pre-mature release considered by the concerned authorities on completion of ten years of sentence inclusive of remissions in the case of a female prisoner or a male prisoner of under 20 years of age at the date of the commission of the offence or completion of 14 years of sentence inclusive of remissions in the case of adult prisoners under Para 516-B of the Punjab Jail Manual but since November, 1971 the authorities concerned are not submitting their cases for such consideration until actual substantive imprisonment has been undergone for 6 years in case of female prisoners and prisoners below 20 years at the date of the commission of the offence and 8½ years in case of adult prisoners and in that behalf certain executive instructions issued by the Punjab Government on 6th August, 1971 are being relied upon but according to the counsel for the lifers such executive instructions issued in 1971 cannot affect the right conferred upon the lifers under Para 516-B which has the force of a statutory rule and Statutory Rules cannot be amended or altered by any executive instructions; hence the lifers concerned in these matters are entitled to have their cases considered for pre-mature release since they satisfy the requirements of Para 516-B of the Punjab Jail Manual. In this behalf counsel relied upon the Punjab High Court's decision dated 9.11.1982 in *Naranjan Singh's* case (which decision is subject-matter of challenge in Criminal Appeal arising from leave being granted in SLP (Crl. No. 499/1983). In other words, counsel canvassed for acceptance of the Punjab High Court's view in the aforesaid case by this Court.

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Secondly, counsel for the lifers urged that the State of Punjab has been erroneously making a distinction between cases of Prisoners who have been sentenced to death but whose sentences, on mercy petitions, have been commuted to life imprisonment and prisoners who have been straightaway sentenced to life imprisonment in the matter of consideration of their cases for pre-mature release in that in the case of the former completion of 14 years of actual sentence is insisted upon while in the case of the latter only 8½ years of actual sentence is regarded as sufficient for such consideration, the case of Tapinder Singh s/o Manjit Singh, the petitioner in Writ Petition (Crl.) No. 68 of 1983 being in point. According to counsel the State Government in this behalf has been relying upon certain

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executive instructions issued on 30th of January, 1976 but counsel pointed out that in the case of *Mehar Singh* v. *State of Punjab*(1) a Single Judge of the Punjab High Court held that those instructions will not be applicable to cases of prisoners convicted earlier to that date and Special Leave Petition (Crl.) No. 2142 of 1982 preferred by the State of Punjab against that decision was dismissed by this Court on 18th of February, 1983 and, therefore, it is not open to the State Government to rely upon those executive instructions issued on 30th January, 1976 for making the distinction and postponing the consideration of the cases of prisoners falling within the former category until 14 years of actual imprisonment has been suffered by them.

Paragraph 516-B of the Punjab Jail Manual runs thus :

> 516-B. (a) With the exception of females and of males who were under 20 years of age at the time of commission of offence, *the cases of every convicted prisoner sentenced to* :—
>
> (i) Imptisonment for life.
>
> (ii) Imprisonment/s for life and term/s of imprisonment.
>
> (iii) Cumulative Periods of Rigorous imprisonment aggregating of more than 14 years.
>
> (iv) a single sentence of more than 20 years. :—
>
> (a) *who has undergone a period of detention in jail amounting together with remission earned to 14 years, shall be submitted* through the Inspectors General of Prisons, Punjab for the orders of the State Government.
>
> (b) *the case of a female prisoner* and *of a male prisoner under 20 years of age at the time of commission of offence,* who is undergoing—
>
> (i) Imprisonment/s for life.
>
> (ii) Imprisonment/s for life and a term/s of imprisonment.

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(iii) Cumulative periods of Rigorous imprisonment aggregating to more than 10 years. or ; A

(iv) A single sentence of more than 20 years *shall be submitted* through the Inspector General of Prisons, Punjab, *for the orders of the State Government when the prisoner has undergone a period of detention in jail amounting together with remission earned to 10 years.* B

(v) Notwithstanding anything contained above, a Superintendent, Jail may, in his discretion, refer at any time, for the orders of the State Government through the Inspector-General of Prisoners, Punjab, the case of any prisoner sentenced to imprisonment for life whose sentence might in the Superintendent's opinion be suitably commuted into a term of imprisonment." C D

It appears that from time to time the State Government had been examining the question of, and the procedure for, submission of Roles for pre-mature release of prisoners as contained in the aforesaid Para 516-B of the Manual and after considerable deliberation the State Government took a policy decision in 1971 and issued instructions (hereinafter called 'the 1971 Instructions') providing that a period of actual sentence of 8½ years in the case of adult lifers and 6 years in the case of female prisoners and those below 20 years of age at the time of the commission of the offence should be regarded as the qualifying period for consideration of their cases for pre-mature release and in this behalf a Memorandum No. 13311-6JJ-71/39656 dated 10th of November, 1971 containing the aforesaid instructions was issued by the State Government to the Inspector-General of Prisons, Punjab and it was clarified that all cases of prisoners should be sent for consideration of their pre-mature release in the light of said policy decision with effect from 2nd of November, 1971. It further appears that the question of releasing pre-maturely life convicts whose death sentence has been commuted was again considered by the State Government and it took a policy decision in January, 1976 that cases of such life convicts should be considered for pre-mature release only after completion 14 years of actual imprisonment and in that behalf a Memorandum No. 403-6JJ-76/3456 dated 30th January, 1976 containing the necessary instructions (hereinafter called 'the 1976 Instructions') was issued by the State Government to the Inspector-General of Prisons, Punjab with a E F G H

request to direct the Superintendents of Jails to submit cases of such life convicts for pre-mature release accordingly. (Copies of the Memoranda dated 10th of November, 1971 and 30th January, 1976 have been annexed as Annexures B and C to the Affidavit of Shri C.L. Goel in support of the SLP No. 499/1983 filed by the State of Punjab in *Naranjan Singh's* case. (Proceedings of SLP No. 499/83 were made available to us at the hearing.) It may be stated that these 1971 Instructions and 1976 Instructions though not incorporated in the Punjab Jail Maunal as yet, are being followed and implemented and it appears that relying on these Instructions the Jail Authorities are not submitting cases of the concerned lifers to the State Government for pre-mature release though they may have sufferred the qualifying punishment under para 516-B of the Manual. Hence Counsel for the petitioners herein has raised the two contentions mentioned above. In our view, for the reasons which we are indicating presently, there is no substance in either of these contentions.

It is well settled as result of the Privy Council decision in *Pandit Kishori Lal's* (1) case and this Court's decisions in *Gopal Godse's* (2) case, *Maru Ram's* (3) case and *Kartar Singh's* (4) case that a sentence of imprisonment for life is a sentence for the remainder of the natural life of the convict and there is no question releasing such a convict earlier in the absence of a formal order of commutation passed by the State Government either under sec. 55, IPC. or sec. 433 (b) of Cr. P.C. 1973 and that even the Remission Rules, though statutory, cannot over-ride the statutory provisions contained in the Penal Code. In other words, unlike the cases of prisoners sentenced to terms of imprisonment, in the case of lifers even the Remission Rules though statutory are of no avail in the absence of a formal order of commutation either under sec. 55, IPC. or sec. 433 (b) of Cr. P.C. 1973. Admittedly, in the case of none of the petitioners before us has any order of commutation been passed by the State Government under either of the said provisions and the petitioners are merely relying upon para 516-B of the Punjab Jail Manual for contending that they are entitled to have their cases considered for pre-mature release since they have undergone the requisite period of punishment—14 years/10 years inclusive of remissions as per the provisions of the said para and the contention is

(1) A.I.R. 1945 P.C. 64.
(2) [1961] 3 S.C.R. 440.
(3) [1981] 1 S.C.R. 1196.
(4) [1982] 3 S.C.C. 1.

that since Para 516-B has the force of statutory rule the subsequent executive instructions (the 1971 Instructions or the 1976 Instructions) issued by the State Government cannot adversely affect their said right in as much as the effect of a statutory rule cannot be whittled down by executive instructions. On the other hand counsel for the State contended that the provisions contained in Para 516-B were themselves executive instructions and not a statutory rule and as such these could be amended or altered from time to time by fresh executive instructions issued by the State Government and therefore the petitioners' cases were not submitted to the concerned authorities for consideration of their pre-mature release because of the subsequent executive instructions issued in 1971 and 1976. We find ample material on record which supports the contention of counsel for the State.

In the first place, it may be stated that the marginal note against Para 516-B of the Punjab Jail Manual (1975 edition) clearly shows that the provisions thereof are based on a Government of India Resolution No. 159-167 dated 6th September, 1905, copy whereof was produced before us and the contents of the Resolution clearly show that various questions such as the places where transported prisoners should be kept, the nature of their punishment, remission of sentences, pre-mature releases, etc. had engaged the attention of Government of India and decisions were taken on those questions. In particular the Resolution records that the majority of the authorities consulted were in favour of the proposal of the U.P. Government that when the term of imprisonment undergone together with any remission earned under the rules amounted to 14 years the question of remitting the remainder of the imprisonment should be raised and the Governor-General in Council was accordingly pleased to direct that such a rule "shall be ordinarily adopted in future, though he would not, however, lay down that such prisoners must always be released at the end of the 14 years and it would still be open to, and indeed encumbent on, the Local Government to take into consideration, when deciding on the remission to be granted, circumstances of each, case, the character of the convict, his conduct in prison and the probability of his reverting to criminal habits or instigating others to commit crimes". What is more copies of the Resolution were forwarded to various State Government "for information and guidance." This clearly shows that the contents of Government's Resolution dated 6th September, 1905, on which para 516-B of the Punjab Jail Manual is based, were in the nature of executive instructions by way of guidance and not any hard and fast rule,

A much less a statutory rule. Secondly, this position has been sufficiently clarified at two places in the Punjab Jail Manual (1975 edition) itself. In the preface to that edition it has been clearly stated that the Paragraphs of the Manual against which a black line (side-line) appears are in substance, either quotations from the Law or from the Rules having the force of the law while B the portions of the Manual without a black line (side-line) are executive instruction which have from time to time been issued by the Government of India, Local Government or the Inspector General with the sanction and approval from the Local Government and para 516-B is not side-lined by any black line. Again, Chapter C XX which deals with remission system contains Para 631 to 650 which comprise what in terms are called 'remission rules' presumably having statutory force since these paras are all side-lined, but what is of importance is that at the foot of para 631 there is a Note which is nothing but a reproduction of para 516-B and at the end of Remission Rules (foot of para 650) there is a Nota bene D which says that the Note to para 631 should not be regarded as part of the Statutory Rules but the same has been inserted for convenience of reference and with the object of assisting officers to interpret the rules. It is thus clear that para 516-B of the Manual iteslf contained executive instructions and had no force of a statutory rule. If that be so it would always be open to the State Government from time to time to alter or amend or even whithdraw such E executive instructions by issuing fresh instruction. In other words any existing executive instructions co ld be substituted by issuing fresh executive intructions for processing the cases of lifers for premature release but once issued these must be uniformly and invariably applied to all cases of lifers so as to avoid the charge of F discrimination under Art. 14.

Reliance by Counsel for the petitioners on the Punjab High Court's decision in *Naranjan Singh's* case would be of no avail, However, we would like to observe that in that case the fact that the State Government had issued the 1971 Instructions which G substituted para 516-B of the Manual was not properly placed before it and in the absence of such proper material the High Court took the view that the convict's case for per-mature release was required to be considered in the light of the provisions of para 516-B. The view of the Punjab High Court cannot obviously be accepted. The first contention urged by counsel therefore has to H be rejected.

The second contention also must fail in view of the admitted position that cases of prisoners who have been sentenced to death but whose sentence on mercy petitions has been commuted to life-imprisonment (who constitute a distinct class) will now be governed by the 1976 Instructions. Here also the view of the Punjab High Court in the case of *Mehar Singh* (supra) that the 1976 Instructions issued on 30th of January, 1976 will not be applicable to cases of prisoners convicted earlier to that date is not tenable. Clearly existing cases of life convicts falling within that category will be governed by those instructions. It is true that SLP (Crl) No. 2142/1982 preferred by State of Punjrb against that decision was dismissed by this Court on 18th February, 1983 but the dismissal order passed by this Court itself indicates that this Court did so not beeause it approved the view of the Punjab High Court but that it "did not consider this to be a proper cases for interference in view of the peculiar facts of this case". This Court did not desire on the facts of that case to interfere with the direction given that the case of the convict should be submitted for consideration of his pre-mature release.

Having regard to the above discussion it is clear there is no entitlement on the part of the petitioners other than Jang Singh and Mukhtiar Singh to have their cases considered for pre-mature release immediately in view of 1971/1976 Instruction. Their Writ Petitions are therefore dismissed.

So far as Jang Singh s/o Bagga Singh and Mukhtiar Singh s/o Harnam Singh are concerned even the Counter Affidavit of Shri K.C. Mahajan shows that in accordance with the 1971 Instruction they have undergone more than 8½ years of actual imprisonment and as such they have the entitlement. We therefore issue a writ of Mandamus thet their cases be submitted for consideration of pre-mature release forth with without any delay.

H.S.K.

Two petitions allowed and five petitions dismissed