

at the expense of another employee who too might have spent a couple of years with the employer. The very purpose of providing a machinery for the settlement of industrial disputes would get frustrated if stale claims are allowed to be raised or entertained. Of course, whether a claim has become stale or not will depend upon the circumstances of each case. In the present case, the workman has not offered any explanation much less satisfactory explanation for raising a dispute after more than 8 years from the date of his termination. The Labour Court in its discretion refused to grant any relief to him. The discretion cannot be said to have been exercised arbitrarily so as to warrant any interference by this Court in the exercise of its extraordinary jurisdiction.

(4) In Civil Writ Petition No. 4479 of 1994, the services of the workman were terminated on 17th February, 1988 and he raised an industrial dispute by serving a demand notice on 17th February, 1990. The Labour Court, in my opinion, was justified in refusing relief to the workman solely on the ground of delay.

(5) In the result, there is no merit in either of the writ petitions and both stand dismissed leaving the parties to bear their own costs.

R.N.R.

Before Hon'ble P. K. Jain, J.

VAKIL CHAND,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS.—*Respondents.*

Cr. M. No. 7470-M of 1995.

15th January, 1996.

Constitution of India, 1950—Arts. 226/227—Code of Criminal Procedure, 1973—S. 482—Instruction regarding pre-mature release of life convict—S. 2(D)—Petitioner suffering from AIDS (HIV-I)—Lodged in jail seeking premature release under instructions—Release rejected by respondents on ground that crime committed was heinous—Convict is suffering from AIDS and if released can also infect other citizens with virus—Such rejection not justified by law—Exercise of all administrative powers vested in public authority must be informed by relevance and reason.

Held, that under our Constitution, deprivation of personal liberty as penal policy is purposive because the imprisonment of the criminal is sanctioned as a measure of social defence and individual

rehabilitation. The focus of interest in penology is the individual and the goal is salvaging him for society. Time and again the apex Court has held that all aspects of criminal justice fall under the umbrella of Articles 14, 19 and 21 of the Constitution. It was clarified by their Lordships of the Supreme Court that convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess.

(Para 8)

Further held, that a reading of para 2(d) of the instructions would indicate that the State Government has itself classified the offences and the conditions for the purposes of premature release. Once this classification has been made, the question of pre-mature release of the convict will have to be considered at the touch stone of these instructions and not otherwise. For the purposes of applicability of para 2(d) of the instructions, it is enough to show that the person concerned has been sentenced to undergo life imprisonment and is suffering from a terminal disease like Cancer or AIDS and third stage of TB likely to result in death in the near future. A case falling within this para cannot be rejected for the reason that the offence committed by the petitioner was very heinous, ghastly or brutal.

(Para 9)

Further held, that the State Government has taken due care while promulgating the instructions in exercise of its powers under Article 161 of the Constitution by prescribing certain conditions. If there is an apprehension that if released, the petitioner would infect virus among other citizens, similar result can arise *qua* his jail inmates. It cannot be denied that proper medical facility for the treatment of such a dangerous and deadly disease is not available in the jail in question or in any other jail in the State. Thus, the respondents have exercised their administrative action for rejecting the case of the petitioner for pre-mature release in arbitrary manner which is contrary to Articles 14 and 21 of the Constitution. It is to be borne in mind that the exercise of all administrative powers vested in public authority must be informed by both relevance and reason, relevance in relation to the object which it seeks to serve and reason in regard to the manner in which it attempts to do so. In exercise of its beneficial jurisdiction the State should have considered the recommendation for pre-mature release of the petitioner strictly in accordance with the instructions issued by it.

(Para 10)

P. C. Chaudhary, Advocate, for the Petitioner.

P. S. Sullar, AAG, Haryana, for the Respondent.

JUDGMENT

P. K. Jain, J.

(1) Vakil Chand son of Siri Chand, a life convict undergoing sentence of imprisonment for life in Central Jail, Ambala, has filed this petition under section 482 of the Code of Criminal Procedure read with Articles 226/227 of the Constitution of India for issuance of an appropriate writ or direction thereby quashing the order dated 6th May, 1994 (Annexure P.2) whereby recommendation for pre-mature release of the petitioner has been rejected, and he be released forthwith.

(2) The facts in brief are that the petitioner alongwith two other co-accused was tried and convicted for the offences under sections 302/392/34, I.P.C. by judgment dated 11th December, 1986 and sentenced to undergo imprisonment for life for the offence under section 302, I.P.C., rigorous imprisonment for 8 years for the offence under section 392, I.P.C. and rigorous imprisonment for 3 years for the offence under section 25 of the Arms Act by order dated 15th December, 1986. He was released on four weeks parole on 23rd February, 1989 and was to surrender on 24th March, 1989. However, he failed to surrender in the Jail as directed and was arrested and readmitted in the jail on 28th April, 1993. He was convicted and sentenced to undergo rigorous imprisonment for 3 years under section 8/9 of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 by order dated 20th December, 1994 passed by the Chief Judicial Magistrate, Kaithal, for remaining absent from parole from 24th March, 1989 to 27th April, 1993. This sentence as awarded to the petitioner has been made to run consecutively to the sentence already awarded.

(3) The petitioner was 17 years of age on the date of sentence i.e. on 2nd May, 1986 and as such was kept in juvenile and Borstal jail till he attained the age of 21 years. It is alleged by the petitioner that he is a patient of AIDS (HIV-I) as per the report of AIDS Centre, P.G.I., Chandigarh. The Superintendent, Central Jail, Ambala, had forwarded and recommended the pre-mature release of the petitioner under para 2(d) of the Instructions dated 4th February, 1993 (Annexure P.1) issued by the State Government in exercise of the powers under section 161 of the Constitution of India. The State Level Committee considered the case of the petitioner but declined

to recommended his pre-mature release. Accordingly, the respondent State rejected the case by order dated 6th May, 1994 (Annexure P.2) for the following reasons :—

- (i) The crime committed was very heinous, ghastly and brutal as in the process of robbery he committed the murder of an innocent person who had handed over his belongings to save his life but he was murdered by this life convict Vakil Chand to death.
- (ii) This life convicted, as reported, is having AIDS with positive results as per medical report. If this life convict is released pre-maturely he can also infect the virus among other citizens of the country and may in desperation repeat the crime and
- (iii) While staying in the jail the Medical Officer can have constant watch on his health and extend all possible medical facilities as prescribed and precautions required under the circumstances.”

Hence this petition.

(4) Notice was given to the respondents. In the return it has been stated that the petitioner has undergone a sentence of 4 years 9 months and 9 days only out of the sentence imposed upon him in the Sessions trial and besides the same the petitioner is to undergo the sentence imposed upon him by order dated 20th December, 1994. It has been further stated that the State Level Committee did not recommend the pre-mature release of the petitioner which recommendation has been accepted by the State Government. It has been pointed out that the petitioner contracted AIDS during the period he was absent on parole. Keeping in view the gravity of the offence committed by him, no pre-mature release can be granted to him.

(5) I have heard the learned counsel for the parties.

(6) It is not disputed that the petitioner is undergoing life sentence. It has been admitted in the return filed by the respondents that the petitioner is having AIDS with positive results as per medical report of the Expert. It is also not disputed that in exercise of the powers under Article 161 of the Constitution, the

State Government has framed a policy (Annexure P.1) regarding premature release of life convicts. Para 2(d) of the said instructions (Annexure P.1) is relevant for our purposes, which reads as under : --

"2(d) Persons sentenced to life imprisonment inclusive of those convicted of crimes under (a) above and in whose cases death sentence has been commuted to life imprisonment but who suffer from a terminal disease like cancer or AIDS and 3rd stage of TB likely to result in death in the near future. These prisoners may be considered for release on the report of Medical Board designated by the Government. Medical re-examination of the convicts should be done 3 months after such release for the confirmation of the disease.

Conditions of release should contain a provision regarding periodic medical re-examination and re-admission to the prison if the patient is not found to be suffering from such a disease any longer or is on the road to recovery."

(7) The Superintendent, Central Jail, Ambala, had recommended the pre-mature release of the petitioner under the aforesaid para 2(d) of the instructions (Annexure P.1), since as per report of the Expert, the petitioner is a patient of AIDS (HIV-I) positive. The case has been rejected on the report of the State Level Committee for three reasons reproduced above. It is, thus, to be seen if this administrative action of the respondent-State is rejecting the case of the petitioner for pre-mature release is justified by law.

(8) (Under our Constitution, deprivation of personal liberty as penal policy is purposive because the imprisonment of the criminal is sanctioned as a measure of social defence and individual rehabilitation. The focus of interest in penology is the individual and the goal is salvaging him for society. Time and again the apex Court has held that all aspects of criminal justice fall under the umbrella of Articles 14, 19 and 21 of the Constitution.) As observed by the apex Court in *Bhuvan Mohan Patnaik v. State of Andhra Pradesh* (1), it was clarified by their lordships of the Supreme Court that

(1) A.I.R. 1974 S.C. 2092.

convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. In *Sunil Batra v. Delhi Administration* (2), their lordships further clarified that Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority.

(9) A reading of para 2(d) of the instructions (Annexure P.1) would indicate that the State Government has itself classified the offences and the conditions for the purposes of pre-mature release. Once this classification has been made, the question of pre-mature release of the convict will have to be considered at the touch-stone of these instructions and not otherwise. For the purposes of applicability of para 2(d) of the instructions (Annexure P.1), it is enough to show that the person concerned has been sentenced to undergo life imprisonment and is suffering from a terminal disease like Cancer or AIDS and third stage of TB likely to result in death in the near future. A case falling within this para cannot be rejected for the reason that the offence committed by the petitioner was very heinous, ghastly or brutal. The obvious reason is that in every murder there is an element of brutality and murder in itself is a heinous crime. The magnitude of the crime committed by the prisoner and the nature of the sentence imposed upon him are not relevant for invoking the aid of para 2(d) of the instructions. Therefore, reason No. 1, reproduced above, for rejection of the case of the petitioner for pre-mature release is not sustainable in the eyes of law.

(10) As regards the remaining two reasons, reproduced above, it may be stated that the State Government has taken due care while promulgating the instructions (Annexure P.1) in exercise of its powers under Article 161 of the Constitution by prescribing certain conditions mentioned in the aforesaid para itself. If there is an apprehension that if released, the petitioner would infect virus among other citizens, similar result can arise qua his jail inmates. It cannot be denied that proper medical facility for the treatment of such a dangerous and deadly disease is not available in the jail in question or in any other jail in the State. Thus, the respondents have exercised their administrative action for rejecting the case of the

petitioner for pre-mature release in arbitrary manner which is contrary to Articles 14 and 21 of the Constitution. It is to be borne in mind that the exercise of all administrative powers vested in public authority must be informed by both relevance and reason, relevance in relation to the object which it seeks to serve and reason in regard to the manner in which it attempts to do so. In exercise of its beneficial jurisdiction the State should have considered the recommendation for pre-mature release of the petitioner strictly in accordance with the instructions (Annexure P.1) issued by it.

(11) Ordinarily, this Court would have directed the respondent-Government to re-consider petitioner's case for his pre-mature release in the light of the foregoing observations but the peculiar facts and circumstances of the case compel me to adopt a different course. The factual position is admitted in the return filed by the respondents. It is not the case of the respondents that there is any modification or amendment in para 2 (d) of the instructions (Annexure P.1). No useful purpose would be served by sending back the case to the respondents for re-consideration.

(12) As a result of the above discussion, this petition is allowed. Order (Annexure P.2) is hereby quashed. The respondents are directed to release the petitioner on usual terms and conditions to the satisfaction of the District Magistrate, Ambala.

J.S.T.

Before Hon'ble P. K. Jain, J.

PARDEEP SINGH JASSAL @ BABLA,—*Petitioner.*

versus

UNION OF INDIA AND ANOTHER.—*Respondents.*

CrI. W.P. 276 of 1995.

18th January, 1996.

Constitution of India, 1950—Art. 22(5)—COFEPOSA Act, 1974—S. 3(3)—Detention—Detenue not supplied with documents relied upon by detaining authority despite requesting for the same in his representation—Held, it is now a well settled law that in order to make effective representation detenue entitled to obtain information regarding grounds of detention.