

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO(S). 120 OF 2019
[ARISING OUT OF SPECIAL LEAVE PETITION
(CRIMINAL) NO.5333/2018]**

THE STATE OF TAMIL NADU

& ORS.

...APPELLANT(S)

VERSUS

P. VEERA BHAARATHI

...RESPONDENT(S)

ORDER

1. Leave granted.
2. The manner in which the High Court of Madras understood the provisions of Rule 341 of the Tamil Nadu Prison Rules, 1983 (hereinafter referred to as "Rules") and the consequential directions issued as contained in paragraph 25 of the impugned judgment and order of the High Court dated 26th October, 2016 are under challenge in this appeal by the State.

3. Rule 341 of the Rules which will require reconsideration of the Court, though very exhaustive, is set out below:

"(1) The sentences of all prisoners sentenced to imprisonment for life or to more than twenty years imprisonment in the aggregate or imprisonment for life and imprisonment for terms exceeding in the aggregate twenty years shall, for the purpose of this rule, be deemed to be sentences of imprisonment for twenty years.

(2) The cases of prisoners undergoing imprisonment for life shall, ordinarily be placed before the Advisory Board as constituted for consideration as to whether their parole will be recommended, on completion of ten years of actual imprisonment:

Provided that by virtue of provision contained in section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the cases of prisoners sentenced to imprisonment for life on or after 18th December 1978 for an offence for which death is one of the punishments provided by law, or in whose case a sentence of death imposed

has been commuted under section 433 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) into one of the imprisonment for life, shall be placed before the Advisory Board only if they have served at least fourteen years of imprisonment.

Explanation (1).- Special remission granted in the case of life convicts in connection with the Second World Tamil Conference and Gandhiji's Centenary Celebrations shall be taken into account for calculation of two thirds of their life sentence in terms of rigorous imprisonment for 20 years, for eligibility for consideration under the Advisory Board Scheme, provided that such cases shall be placed before the Advisory Board only after the convicts have actually undergone imprisonment for ten and half years.

Explanation (2).- The set off period specified in section 428 of the Code of Criminal Procedure 1973 (Central Act, 2 of 1974) in the case of lifers sentenced prior to 18th December 1978 shall be taken into account and their cases shall be placed before the Advisory Board after completion of ten years of actual sentence including the above set off period, if any.

The period of ten and half years shall also include the special remission of one year sanctioned in G.O. Ms. No. 3333, Home, dated the 19th December 1971, and six months sanctioned in G.O. Ms. No. 2475, Home, dated the 14th September 1977.

Explanation (3).- The set off period specified in section 428 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974) shall be taken into account in the case of lifers sentenced on or after 18th December 1978 referred to in the proviso under sub-rule (2) for computing the period of fourteen years.

(3) The cases of prisoners sentenced to more than three years, excepting lifers to whom sub-rule (2) applies, shall be placed before the Advisory Board if they have served two thirds of their sentence including remission :

Provided that prisoners of the following categories who have been sentenced to imprisonment for more than three years or imprisonment for life shall not be eligible for premature release under the Advisory Board Scheme :-

(i) Prisoners convicted of rape, dacoity, terrorist crimes, offences against the State or

prisoners sentenced under section 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489-A, 489-B and 489-D of the Indian Penal Code (Central Act XLV of 1860) ;

(ii) Prisoners convicted of economical offences, black marketing, smuggling or misuse of power and authority ;

(iii) Prisoners sentenced under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988), the Suppression of Immoral Traffic in Women and Girls Act 1956, (Central Act 104 of 1956), the Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940), the Drugs Control Act, 1949 (Tamil Nadu Act XXX of 1949), the Dangerous Drugs Act, 1930 (Central Act II of 1930), and the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (Central Act 21 of 1954) or the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954).

(iv) Prisoners sentenced for Offences under sections 498-A and 306-B of the Indian Penal Code (Central Act XLV of 1860) ;

(v) Prisoners sentenced for the offence of selling illicit arrack mixed with poisonous substances ;

(vi) habitual forest offenders who are responsible for disturbing the ecological balance ; and

(vii) Prisoners sentenced for offences wherein minimum sentences are prescribed

The cases of prisoners imprisoned for failure to give security under Chapter VIII of the Code of Criminal Procedure 1973 (Central Act 2 of 1974) and Criminal lunatics shall not be placed before the Advisory Board.

Explanation (1).- The cases of prisoners convicted by Court Martial shall also be placed before the Advisory Board for consideration under sub-rules (2) and (3).

Explanation (2).- Sentences of imprisonment for failure to furnish security shall not be taken into account in determining the aggregate sentence for the purpose of sub-rules (2) and (3).

Explanation (3).- The set off period specified in section 428 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall be taken into

account in the case of all prisoners excepting lifers, to whom Explanations (2) and (3) of sub-rule (2) shall apply and to those sentenced to imprisonment not being in default of payment of fine, in determining the period of sentence served for the purpose of sub-rule (3).

Provided that prisoners of the following categories who have been sentenced to imprisonment for more than three years of imprisonment for life shall not be eligible for premature release under the Advisory Board Scheme.

i. Prisoners convicted of rape, forgery, dacoity, terrorist, crimes, offences against the State or Prisoners sentenced 474, 489-A, 489-B and 489-D of the Indian Penal Code (Central Act XLV of 1980).

ii. Prisoners convicted of economic offences, black marketing smuggling or misuse of power and authority; and

iii. Prisoners sentenced under the prevention of corruption Act, 1988 (Central Act 49 of 1988) the Suppression of Immoral Traffic in Women and Girls and cosmetics Act, 1940 (Central Act XXIII of 1940), the Drugs Control Act 1949 (Tamil Nadu Act XXX of 1949), the Drugs

and Magic Remedies
(objectionable advertisements)
Act 1954 (Central Act 21 of 1954
(Central Act 37 of 1954) and the
Dangerous Drugs Act, 1930
(Central Act II of 1930)."

4. The moot point that would require consideration is whether the respondent who has been convicted under Section 302 IPC and sentenced to rigorous imprisonment for life and also under Section 376 IPC and sentenced to rigorous imprisonment for seven years is entitled for early release under the provisions of Rule 341 of the Rules on completion of his present prison term which is about 16 years.

5. The High Court took the view that the respondent having served out the sentence imposed for the offence punishable under Section 376 IPC would be entitled to consideration of his case by the Advisory Board for such early/premature release. In

coming to the said conclusion, the High Court also deemed it proper to rely on the clarification issued by the Inspector/Director General of Prisons issued under letter/Memo No.14189/W.1/1989 dated 4th November, 1989 wherein the Inspector General of Prisons had clarified that if a convicted prisoner undergoing imprisonment for life for the offence under Section 302 IPC is also convicted and sentenced to undergo minor imprisonment under ineligible sections of IPC as stipulated in G.O. (Ms) No.1762, Home Department, dated 20th July, 1987 (e.g. sentenced to undergo 7 years of imprisonment under Section 376, 396 IPC) and both the sentences were ordered to run concurrently and if the convict had served out the sentence under the ineligible sections as envisaged in the Government Order (e.g. 7 years of imprisonment/minor

imprisonment) the above ineligible sections of IPC will not prevent the premature release of that convict in respect of the life sentence under Section 302 IPC and such convicted prisoner would be entitled for consideration for premature release under the Prison Rules in force.

6. Shri V.Giri, learned Senior Counsel appearing for the appellants has contended that the proviso appearing to Rule 341(3) of the 1983 Rules should be construed to be a stand-alone provision and not necessarily a proviso limited in its operation to Section 341(3) of the Rules. Shri Giri has pointed out that the rule making authority had deemed it appropriate to direct that the other provisions of Rule 341 of the Rules which contemplate consideration of the case of a convict for early/premature release would have no application if a

person convicted and sentenced for life or any period of over three years is also convicted and sentenced under the provisions of law contained in various clauses of the proviso to Rule 341(3) of the Rules which Shri Giri has termed as ineligible sections.

7. In other words, the argument on behalf of the appellants is that if a person is to be convicted and sentenced under an ineligible Section/ineligible offence he would not be entitled to the benefit of early/premature release under the Prison Rules.

8. The operation of the Rules in the manner as suggested on behalf of the appellants would result in a highly incongruous situation which the rule making authority could not have been understood to have contemplated or envisaged. Higher

offences involving sentence of imprisonment for life or even death sentence commuted to life imprisonment, if not coupled with convictions under the ineligible section(s), would entitle a convict to consideration of his case for early release. But, if a lifer is to be convicted for a much lesser offence, say, offences under Section 224, 498A IPC, etc. and sentenced to small periods of imprisonment, notwithstanding the fact that he had completed more than 10 years of custody, he would still not be eligible for early release. Such a situation, in our considered view, cannot be allowed to prevail by understanding the operation of the Rules in the manner suggested on behalf of the appellants.

9. The letter/Memo No.14189/W.1/1989 dated 4th November, 1989 of the Inspector

General of Prisons, contents of which have been stated above, is a pointer in the above direction and indicates the manner in which the prison authority had understood the provisions of the Rules.

10. Shri Giri's response in the matter is that the view of the Inspector General of Prisons does not reflect the view of the State and the said view was acted upon in few isolated cases, details of which have been given. The said facts do not detract from the position that the view expressed in the letter/memo issued by the Inspector General of Prisons coupled with the view adopted by the High Court presents a more reasonable understanding of the provisions of the Rules which contemplate grant of early/premature release if the contingencies contemplated by the Rules do occur.

11. For the reasons indicated above, we do not consider the present to be a fit case for interference with the view taken by the High Court which view, according to us, ought to be affirmed. We order accordingly.

12. However, we have noticed that in paragraph 25 of the impugned judgment and order of the High Court apart from dealing with the case of the petitioner before it (respondent herein), cases of all life convicts who are in prison and who have completed 14 years of custody have been ordered by the High Court to be reopened. We do not think that the High Court was justified in extending the directions beyond the parties to the proceedings before it. We, therefore, interfere with the aforesaid part of the order of the High Court and allow the appeal to the above

limited extent.

13. The case of the respondent will now be decided by the Advisory Board in accordance with law. We make it clear that we have not expressed any opinion on the entitlement of the respondent for early release.

14. Consequently and in the light of the above, the appeal stands disposed of.

.....,CJI.
(RANJAN GOGOI)

.....,J.
(L. NAGESWARA RAO)

.....,J.
(SANJIV KHANNA)

NEW DELHI
JANUARY 22, 2019

ITEM NO.3

COURT NO.1

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (CRL.) NO(S). 5333/2018
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 26-10-2016
IN HCP NO. 540/2016 PASSED BY THE HIGH COURT OF JUDICATURE AT
MADRAS AT MADURAI)

THE STATE OF TAMIL NADU & ORS.

PETITIONER(S)

VERSUS

P. VEERA BHAARATHI

RESPONDENT(S)

Date : 22-01-2019 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s)

Mr. V. Giri, Sr. Adv.
Mr. M. Yogesh Kanna, AOR
Mr. S. Partha Sarathi, Adv.
Mr. S. Raja Rajeshwaran, Adv.

For Respondent(s)

Respondent-in-person

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed
order. Consequently, all pending applications shall stand
disposed of.

[VINOD LAKHINA]

AR-cum-PS

[ANAND PRAKASH]

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]