



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**st
ON THE 21 OF JANUARY, 2025**

WRIT PETITION No. 1716 of 2024

LACHU @ LAXMINARAYAN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Ms. Dixita Gupta, learned counsel for the petitioner

Shri Anirudh Malpani, learned counsel for the respondent/State.

Reserved for order : 11.12.2024

Pronounced on : 21.01.2025

ORDER

1] This petition under Article 226 of the Constitution of India has been filed by the petitioner, seeking the following reliefs:-

“7.4 That, by way of writ of appropriate writ or the writ of certiorari, quash the order dated 25.08.2023 (Annexure P/6), passed by the learned Magistrate and further directed to consider the case of petitioner for premature release in accordance with Section 4 of Act 1954 and in light of guidelines stipulated in Laxman Naskar vs. Union of India (2000) 2 SCC595 as well as Rajwa @ Rajendra Mandal vs. the State of Bihar and others WP (CRL.)no.252/2023.”

2] The petitioner is aggrieved by the order dated 25.08.2023 (Annexure P/6), passed by the Chief Judicial Magistrate, Indore whereby, the petitioner has been sent to suffer the remaining jail sentence awarded to him in connection with his conviction under



Sections 302,34 of the Indian Penal Code 1860 in S.T. no.313/1995.

3] In brief, the facts of the case are that the petitioner is facing the aforesaid trial for murder wherein, he was convicted by the learned Judge of the trial court vide his judgment dated 13.01.1997, in which, the petitioner was sentenced to life imprisonment. The criminal appeal preferred by the petitioner before this Court has already been dismissed.

4] The case of the petitioner is that after he underwent the requisite sentence, he was released on probation on 31.05.2002, under s.2 of M.P. Prisoners' Release on Probation Act 1954 (hereinafter referred to "the Act of 1954"). However, he has again been arrested without any prior intimation on 25.08.2023, and has been sent to jail by the Chief Judicial Magistrate, Indore vide its order dated 28.5.2023, to serve the remaining jail sentence.

5] Ms. Dixita Gupta, learned counsel appearing for the petitioner has vehemently argued before this Court and it is submitted that after the petitioner had already undergone the requisite sentence as provided under Section 4 of the Act of 1954 and Rule 5 of the Prisoners' Release on Probation Rules, 1964 (hereinafter referred to "the Rules of 1954"), the respondents had no reason to arrest the petitioner to suffer the remaining jail sentence. Counsel has also submitted that the identical matter has also been considered by the respondents favorably in the case of another prisoner viz., Samandar Singh, whose order dated 25.03.2014 (Annexure P/5) is also filed on record.

6] Counsel for the petitioner has further submitted that the petitioner is aged about 61 years and is leading a peaceful life since last 20 years. Thus, it is submitted that the impugned order be quashed and the



petitioner be directed to be released forthwith.

7] A reply to the petition has also been filed and it is submitted that no case for interference is made out.

8] The respondents' contention is that the petitioner had earlier filed a petition bearing Writ Petition No.1523/2001 seeking his release under the provisions of the Act of 1954 which was allowed vide the order was passed by this Court on 17.04.2002, but the said order was challenged by the State in LPA no.307/2002 in which, on 21.10.2003, the order dated 17.04.2002 was set aside and the petitioner was directed to surrender immediately, but the petitioner, despite being served a notice dated 29.11.2003, did not surrender, and hence, with a view to ensure that he suffers the entire sentence he has been arrested on 25.08.2023.

9] It is also stated that although, as per the Act of 1954, the convicts facing trial or facing life imprisonment can be released on probation after completing five years of actual incarceration, however, in the Notification dated 24.03.2008, the aforesaid provision has been amended, and it has been directed that after competition of 14 years of incarceration, the convicts shall be entitled to be released on probation. The aforesaid amendment is also placed on record as Annexure R/4.

10] It is also stated that the petitioner was earlier released on probation licence on 07.06.2002, by that time he had already suffered seven years and seven days of incarceration, and during the pendency of the LPA no.307/2002 he has further suffered one year four months and twenty days of incarceration, and thus, the petitioner, as on 25.08.2023, has suffered the actual sentence of eight years five months and five days, and again as on 28.2.2024, he has suffered eight years and eleven



months of incarceration, and since the petitioner did not surrender even after a specific direction issued by the division bench of this Court in LPA no.307/2002, he has been arrested after 20 years and has been sent to jail to suffer the remaining sentence of at least 14 years. And thus, it is stated that since the petitioner has completed only eight years and eleven months of incarceration, he is not entitled to get the benefit of probation.

11] A rejoinder to the aforesaid reply has also been filed by the petitioner, and it is denied that the petitioner was aware about the order dated 21.10.2003, passed by the Division Bench of this Court in LPA no.307/2002, and despite the fact that the presence of the petitioner's advocate is also noted in the aforesaid order, he was not informed about the order by his lawyer, and thus, could not surrender before the authorities and was under the impression that his licence dated 31.05.2002, is still in force. It is submitted that the petitioner was never issued any notice for compliance of the aforesaid order which is also reflected in the order dated 25.08.2023 itself, passed by the Chief Judicial Magistrate in which, there is no reference that the petitioner was ever issued any notice to surrender after he was directed to surrender in LPA no. 307/2002.

12] In support of her submissions, Ms. Gupta has relied upon S. 3 and 4 of the Act of 1954, *which respectively provide for the period of licence which is in force, and the period of release to be reckoned as imprisonment for computing period of sentence served.*

13] Counsel for the petitioner has also relied upon the rule 11 of the Rules of 1964 to submit that the licence granted to the petitioner on



31.05.2002 was to remain in force till the date it is cancelled or revoked or discharged, in accordance with Section 3 of the Act of 1954 read with rule 11 of 1964. And in such circumstances, the petitioner is eligible for premature release, in accordance with Section 4 r/w. Rule 5 of the Rules of 1964, as he shall be deemed to have undergone more than 29 years of actual imprisonment as he shall be deemed to be in custody from 07.06.2002 to 21.02.2023.

14] It is also submitted that otherwise also the amendment dated 24.03.2008, to the Rules of 1964 is also not applicable to the case of the petitioner as he was convicted in the year 1997, and since the licence of probation under Section 2 of the Act of 1954 was issued to him on 31.05.2002, the amendment cannot be applied retrospectively and has to be strictly construed prospectively only.

15] In support of her submissions, counsel for the petitioner has also relied upon the decision rendered by the Supreme Court in the case of *State of Haryana vs. Rajkumar* reported as (2021) 9 SCC 292, para 3 to submit that when the policy on the date of conviction and on the date of consideration for premature release are different, the policy prevailing on the date of conviction would be applicable. Whereas in the case of *State of Haryana vs. Jagdish* it has been held that when a liberal policy is in force at the time of release of the prisoner, the same shall be applied.

16] It is also submitted by Ms. Gupta that there is no document filed on record to demonstrate that the petitioner was ever served a copy of the aforesaid order passed in LPA no. 307/2002, hence he cannot be punished for the non-service of the aforesaid order.



17] In rebuttal, counsel for the respondent has submitted that since the petitioner's advocate had appeared in the aforesaid case, it has to be presumed that the petitioner had the knowledge of the case being disposed of with a direction to him surrender immediately.

18] Heard the counsel for the parties and perused the record.

19] Before proceeding with the merits of the case, it would be relevant to referred to the applicable provisions of the Act of 1954 as also the Rules made thereunder the Rules of 1964.

20] So far as the preamble of the Act of 1954 is concerned, the relevant provisions of the same reads as under :-

Preamble: **An Act to provide for the release of certain prisoners on condition imposed by the Madhya Bharat Government.**

Sections 2, 3, 4 & 6 of the same read as under:

2. Power of Government to release by licence on conditions imposed by it.- Notwithstanding anything contained in section 401 of the Code of Criminal Procedure, 1898, where a person is confined in a prison under a sentence of imprisonment, and it appears to the Government from his antecedents and his conduct in the prison that he is likely to abstain from crime and lead a peaceable life, if he is released from prison, the Government may, by licence, permit him to be released on condition that he be placed under the supervision or authority of a Government Officer or of a person professing the same religion as the prisoner or such Institution or Society as may be recognized by the Government for the purpose, provided such other person, institution or society is willing to take charge of him.

3. Period for which licence is to be in force.- A licence granted under the provisions of Section 2 shall be in force until the date on which the person released would in the execution of the order of warrant authorizing his imprisonment have been discharged from prison had he not been released on licence, or until the licence is revoked, whichever is earlier.

4. Period of release to be reckoned as imprisonment for computing period of sentence served.- The period during which a person is absent from prison under the provisions of this Act *on a licence which is in force* shall be reckoned as part of the period of



imprisonment to which he was sentenced, for the purpose of computing the period of his sentence and for the purpose of computing the amount of remission of sentence which might be awarded to him under any rules in force relating to such remissions.

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6. Power to revoke licence.- The Government may at any time for reasons to be recorded in writing revoke a licence granted under the provisions of Section 2 :

Provided that no licence shall be revoked on the ground of a breach of a condition of the licence without giving an opportunity to the person concerned to present his case before the District Magistrate of the District in which he is residing at the time.

(2) An order of revocation passed under the provision of sub-section (1) shall specify the date with effect from which the licence shall cease to be in force, and shall be served, in such manner as the Government may by rule prescribe, upon the person whose licence has been revoked.

and Rules 4, 10 & 11 of the Rules of 1964:-

Rule 4 of the Rules of 1964 as it existed prior to 18.04.2008 or the Notifiacation dated 24.03.2008 relied upon by the Respondent in their reply:

Rule 4. Eligibility for release.- *Save the prisoners specified in rule 3 any other prisoner who has served one third of his sentence of imprisonment or a total period of five years with remissions, whichever is less, may be released by the Government on licence.*

Amended Rule 4 reads as under:-

Rule 4. Eligibility for release.- Save the prisoners specified in Rule 3 any other prisoner who has served one-third of his sentence of imprisonment or a total period of five years [without remission], whichever is less, may be released by the Government on licence:

[Provided that in case of such prisoners who have been sentenced for life imprisonment, under Sections 302 and 305 of the Indian Penal Code, 1860 (No. 45 of 1860) or under the provisions of other penal laws in which death sentence is also one of the punishments subject to the conditions



that such prisoners are not barred for such consideration under the provisions of such laws, will be considered for premature release from the prison. The eligibility for release shall be after undergoing the sentence of 14 years of actual imprisonment without remission of his sentence :

Provided further that all other prisoners, undergoing the sentence of life imprisonment, will be considered for premature release only after they have undergone at least 10 years of imprisonment with remission and after the completion of 7 years of actual imprisonment without remission in sentence :

Provided also that nothing in the above provisions shall apply to the prisoners whose cases are being sent to the Hon'ble Governor for consideration under Article 161 of the Constitution of India, on special reasons of humanitarian grounds].

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10. Revocation.- (1) The District Magistrate, on receiving information from the guardian or any other source, of the breach by the licensee of the conditions of the licence, shall cause a notice to be served on the licensee to show cause why his licence should not be revoked. If the licensee presents himself in response to the notice, then, after hearing him and, if he does not present himself, then without hearing him, the District Magistrate shall consider and decide whether or not to recommend to the Government for the revocation of the prisoner's licence and shall act accordingly.

(2) In case the District Magistrate decides to recommend the revocation of the licence, he may, at the same time, if he considers that the licensee is unfit to be allowed to remain at large under the licence, order his arrest and detention in the prison pending the receipt of the orders of the Government.

(3) The Government shall on receipt of the District Magistrate's recommendation pass such orders as it may deem proper.

(4) An order of revocation of licence shall be in Form 'E' and shall be served upon, the licensee if detained in



prison by the Superintendent, and, if not detained in prison by the officer in charge of police station.

(5) The order of revocation shall be noted on the licence and in the registers maintained by the District Magistrate and the Superintendent.

(6) If a prisoner released on licence under the Act escapes from the supervision or authority of a guardian or fails to return to prison on revocation of his licence, the guardian shall immediately inform the District Magistrate and the Superintendent and report to the nearest police station, and action shall be taken against the prisoner as in a cognizable case.

11. Warrant of commitment.- On release of a prisoner under the Act the Superintendent shall retain the warrant under which the prisoner was committed to a prison by the Court which sentenced him until the period of his sentence with remissions, if any, earned by him during the period of his confinement in jail has expired. The period during which a prisoner is absent from prison under the provisions of the Act on a licence which is in force shall be reckoned as part of the period of imprisonment to which he was sentenced for the purpose of computing the period of his sentence. When the convict released on licence has finished the sentence, the Superintendent shall return the warrant or warrants to the Court which issued it or them.”

21] A perusal of the record reveals that this Court in Writ Petition No.1523/2001 vide its order dated 17.4.2002, had directed that the petitioner-Lachu @ Laxminarayan be released on probation, as per the Rules applicable, and pursuant to which, he was also released from jail on 31.05.2002. According to the respondents the State had also preferred LPA No.307/2002 against the order passed by the Writ Court dated 17.4.2002, and the Division Bench of this Court on 21.10.2003, while setting aside the order passed by the Writ Court, directed the petitioner to surrender forthwith, failing which appropriate action was to be taken against him to secure his custody.



22] As provided under Section 3 of the Act, a licence granted under the provisions Section 2 shall be in force until the entire period of imprisonment for which the prisoner was sentenced, has expired or until the licence is revoked which ever is earlier. Whereas, the revocation of licence takes place under Section 6 which also provides for an opportunity of hearing to the prisoners before revocation of his licence. Whereas, as per Section 4, it is provided that the period during which a person is absent from prison under provisions of this Act, on a licence which is in force shall be reckoned as part of period of imprisonment to which he was sentenced for the purposes of commuting the period of his sentence as also his remission. Thus, when the order dated 21.10.2003, which was passed by the Division Bench of this Court in LPA No.307/2003, filed by the State, was not served on the petitioner and there was no notice issued by the State also informing the petitioner that his licence stands cancelled on account of the court order and there is nothing on record to suggest that during all this period he ever remained absconded, this Court is of the considered opinion that the petitioner deserves to be given the benefit of Section 4 of the Act of 1954, i.e., *the period during which a person is absent from prison under provisions of this Act, on a licence which is in force shall be reckoned as part of period of imprisonment to which he was sentenced for the purposes of commuting the period of his sentence as also his remission*; as also s.6, which prescribes that no licence shall be revoked without affording an opportunity of hearing to the convict.

23] It is also found that in the license dated 31.05.2002, issued to the



petitioner pursuant to the order dated 17.04.2002, passed by the Writ Court in W.P.No.1523/2001, there is no mention that it was for any limited period only, although it is also apparent that the order dated 21.10.2003, passed by the Division Bench in LPA No.307/2002, was in the presence of the counsel for the petitioner, however, according to the petitioner, it was never communicated to him either by his counsel or by any other State authority, and in rebuttal of the same, there is nothing on record filed by the respondents to demonstrate that this order was indeed served on the petitioner.

24] It is also found that that even the respondents have also not complied with the aforesaid order passed by the Division Bench on 21.10.2003 in LPA, of securing the custody of the petitioner after the order was passed. So far as the presence of the counsel for the petitioner in the LPA No.307/2002 is concerned, again, in the absence of any evidence to the contrary, this court cannot presume that the order dated 21.10.2003, passed by the Writ Appellate Court was actually served on the petitioner when he contends that it was not served on him, thus he deserves the benefit of Rule 11 of the Rules of 1964 also which provides that, “The period during which a prisoner is absent from prison under the provisions of the Act on a licence which is in force shall be reckoned as part of the period of imprisonment to which he was sentenced for the purpose of computing the period of his sentence”.

25] It is true that the petitioner and the respondents were required to comply with the order passed by the Division Bench in its true letter and spirit, however, in absence of any intimation to the petitioner, he cannot be held liable for the non-compliance of the same.



26] In such circumstances, taking into account the aforesaid provisions of the Act of 1954 and the Rules made thereunder, this court is of the considered opinion that after the order was passed in LPA, although no separate order of cancellation of licence was required to be passed, but it was incumbent upon the respondents to serve a copy of the said order to the petitioner. Whereas, there is nothing on record to suggest that the respondents ever made any efforts to serve the said order to the petitioner, and it is also not the case of the respondents that the petitioner was absconding since last 24 years.

27] The respondents have also relied upon the Notification dated 24.3.2008, in which, Rule 4 of the Rules of 1964 has been amended to the effect that in place of five years it should be read as fourteen years in cases, in which, the accused has been convicted under Sections 302 and 304 of the IPC.

28] Apparently, the aforesaid provision was not enforced at the time when the petitioner's licence was initially issued on 31.05.2002, on which date he was released on probation under Section 2 of the Act of 1954, and it is trite that such change of law which is penal in nature and affects the right of a person, cannot be applied retrospectively, as has also been held by the Division Bench of this Court in the case of *Gori Shankar vs. State of Madhya Pradesh and others {Writ Petition No.9034/2008 decided on 16.3.2009}* authored by Shri Deepak Mishra J. as His Lordship then was, para 24 of which reads as under:-

“24. The next limb of submission of Mr.Bhargava and Mr. Pateria, learned counsel, is that the cases of the petitioners should have been considered under the old rules as the amended provisions rule cannot be made applicable to them. To bolster the said submission, they have



commended us to the decisions rendered in *Mahendra Singh (supra)* and *State of Haryana v. Bhup Singh and others, JT 2009 (1) SC 535*. To appreciate the said submission, we have carefully perused both the decisions. It is perceivable that the decision in *Bhup Singh (supra)* is based on *Mahendra Singh*. In the case of *Mahendra Singh (supra)*, their Lordships were dealing with the validity of the policy decision *vis a vis* Prison Rules and in that context, held that the Rules would prevail keeping in view that the right to ask for remission of sentence by a life convict would be under the law as was prevailing on the date on which the judgment of conviction and sentence was passed. In the case at hand, the Rules have been amended. Needless to emphasize, they are statutory in nature. They have been framed in exercise of powers vested under Section 9 of the 1954 Act. They are not executive instructions. In view of the aforesaid, the decisions rendered in *Mahendra Singh (supra)* and *Bhup Singh (supra)* are distinguishable.”

29] This Court is also of the considered opinion that although the effect of the order passed by the Division Bench of this Court in LPA was the revocation of the licence of the petitioner however, in the absence of the service of the aforesaid order on the petitioner, it cannot be said that his licence should be deemed to be held cancelled from the date of the order passed in LPA, especially when the order of probation/licence issued to the petitioner after his writ petition was allowed, clearly demonstrate that it was not an order for any specific period although the respondents’ contention is that it was for a period of one month only, and thus, the petitioner was under the *bonafide* belief that his licence continued to remain in force until he was arrested.

30] In such facts and circumstances of the case, the entire time from **17.04.2002 to 21.10.2003**, spent by the petitioner on *bonafide* belief that his licence was in operation during all these years, is liable to be treated as the period already undergone or suffered by him in jail as prescribed



under the Act of 1954. Thus, this Court is of the considered opinion that the petitioner has made out a case for interference.

31] Accordingly, the petition stands *allowed* and the impugned order dated 25.08.2023 (Annexure P/6) is hereby quashed. Since the petitioner has deemed to have suffered the entire period of incarceration, he be released forthwith from prison under licence under the provisions of Sections 2/3 of the Act of 1954, if not required in any other case.

32] The Writ Petition stands *allowed* and *disposed of*.

(SUBODH ABHYANKAR)

JUDGE

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