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WA-860-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 9th OF APRIL, 2025WRIT APPEAL No. 860 of 2025*THE STATE OF MADHYA PRADESH AND OTHERS**Versus**SHYAMLAL*

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Appearance:

*Shri Sudeep Bhargava - Dy. Government Advocate for the
appellant/State.*

Shri Navendu Joshi - Advocate for respondent No.1.

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ORDER

Per. Justice Vivek Rusia

The State of Madhya Pradesh and others have filed this writ appeal under Section 2(1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 against the order dated 11.12.2024 passed by the Writ Court in W.P.No. 17580/2024 (Annexure A/1) whereby the writ petition has been allowed.

Facts of the case are as under :

2. The writ petitioner (respondent herein) was convicted under Section 302 and 120 B of the Indian Penal Code vide judgment dated 18.11.1985 passed by the 10th Additional Sessions Judge, Indore in S.T.No. 131/1985 and sentenced to undergo life imprisonment. The petitioner was



released on parole but he did not surrender and remained absconding for about 16 years. He was again arrested on 11.07.2015. He was against tried and prosecuted under Section 31(D) of the Prisoners Act, 1900 (hereinafter referred to as the 'Act of 1900') in criminal case No. 50168/2006 wherein he was sentenced to undergo RI for six months. In view of the subsequent conviction by virtue of provisions of Rule 701 of the M.P.Jail Manual, his remission was cancelled. Being aggrieved, petitioner preferred an appeal which has been rejected by the appellate authority vide order dated 19.12.2023. Hence, the petitioner filed writ petition No. 17580/2024 before this Court.

3. The respondent/State therein filed a reply. The Writ Court after considering the provisions of Section 31(D) of the Act of 1900 and Rule 701 of the M.P. Jail Manual has held that the remission has wrongly been cancelled by virtue of conviction under Section 31(D) of the Act of 1900 as the said Section is not included in it. Hence, this writ appeal before this Court.

We have heard learned counsel for the parties.

4. Under the MP Prisoners Release on Probation Act, 1954 (hereinafter referred to as the 'Act of 1954'), certain prisoners can be released on licence on conditions imposed by the Government. Section 2 of the Act of 1954 provides power to the government to release a prisoner by issuing licence on conditions. Section 9 empowers the government to frame the Rules consistent with this Act of 1954 for the form and conditions of licence on which prisoners may be released. The State Government framed the



Madhya Pradesh Prisoners Release on Probation Rules, 1964. Rule 3 of the Rules of 1964 provides classes of prisoners who are not entitled to be released. As per Rule 3(F), those who have been prosecuted and convicted for the breach of the Rules under Section 31(A) of the Act of 1900 shall not be released. Section 31(A) of the Act of 1900 inserted by the State of M.P. is reproduced hereunder :

“31-A. Grant of leave to Prisoners.—(1) Subject to the provisions to this part and to such conditions as may be prescribed, the State Government or any authority to which the State Government may delegate its powers in this behalf may grant leave to any prisoner who has been sentenced to a term of imprisonment of not less than three years, for a period not exceeding 39[forty two] days in a year, excluding the time required for journeys to the first place of his visit immediately after departure from the prison and from the place of last visit to the person back.

(2) The provisions of sub-section (1) shall not apply to a prisoner who has been classified as a habitual criminal for the purpose of the rules for the time being in force made under the Prisons Act, 1894 (IX of 1894) and who has more than three previous convictions.

(3) Leave shall not be admissible to a prisoner during a year under sub-section (1)—

(i) for more than 40[three] occasions;

(ii) for a period of less than 41[fourteen] days; and

(iii) unless a period of three months has elapsed since the expiration of leave last availed of during the year and the commencement of the leave applied for.

(4) No Prisoner shall be granted leave under sub-section (1), unless—

(a) he has at the time of the grant of leave served one-half of his sentence including remission, or a period of not less than years of his sentence, including remission, whichever is less;

(b) he has not been punished for a prison offence under Section 46 of the Prisons Act, 1894 (IX of 1894) during twelve months preceding the date of commencement of the leave applied for.

(5) The period of leave of a prisoner under sub-section (1) shall count towards the total period of his sentence.

(6) The authority directing the grant of leave to any prisoner under sub-section (1) may require him to enter into a bond with or without sureties for due observance of conditions specified in the direction.

(7) If any prisoner granted leave under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be



liable to penalty thereof.

(8) If a prisoner has violated the conditions of leave or bond, he shall not be entitled to leave under sub-section (1) during the remaining period of his sentence.

31-B. Power to grant leave to prisoners on grounds of emergency.—(1) Notwithstanding anything to the contrary contained in Section 31-A or in any other law for the time being in force, the State Government or any authority to which the State Government may delegate its powers in this behalf, may sanction emergency leave to a prisoner who is entitled to grant of leave under Section 31-A for a period not exceeding fifteen days, excluding the time required for journey to the first place of his visit immediately after departure from the prison and from the place of last visit to the prison back, subject to such conditions as may be prescribed and may, at any time cancel the leave.

(2) Emergency leave under sub-section (1) may be granted to a prisoner in case of death of his or her spouse, son daughter, father, mother, brother, sister, paternal or maternal grand father or grand mother or in case of his or her own marriage or the marriage of his or her son, daughter, brother and sister.

(3) The authority directing the grant to emergency leave to any prisoner under sub-section (1) may require him to enter into a bond with or without sureties for due observance of conditions specified in the direction.

(4) If any prisoner granted emergency leave under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to penalty thereof.

(5) No prisoner shall be granted emergency leave under sub-section (1) if he has been punished for a prison offence him under Section 46 of the Prisons Act, 1894 (IX of 1894), during twelve months proceeding the date of commencement of the leave applied for.

(6) The leave under sub-section (1) cannot be claimed as a matter of right.

(7) The period of leave under sub-section (1) shall not count towards the total period of his sentence.

31-C. Surrender by prisoner after the leave period.—(1) On the expiry of the period for which a prisoner was released on leave under sub-section (1) of Section 31-A or an emergency leave under sub-section (1) of Section 31-B, he shall surrender himself to the officer-in-charge of the prison from which he was released.

(2) If a prisoner does not surrender himself as required by sub-section (1), he may be arrested by any police officer without a warrant and shall be remanded to undergo the unexpired portion of his sentence.

31-D. Penalty.—Any prisoners who does not surrender himself as required by sub-section (1) of Section 31-C shall be liable upon conviction to be punished with imprisonment of either description for a term which may extend to two years, or with fine or with



both.

31-E. Power to make rule.—(1) The State Government may make rules for carrying out the purposes of this part.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) procedure to be followed in respect of the proceedings for grant of leave of emergency leave to prisoners;

(b) the conditions for grant of leave or emergency leave to prisoners under sub-section (1) of Section 31-A, or under sub-section (1) of Section 31-B, respectively, including conditions for the supervision during the period of such leave;

(c) travelling allowances for prisoners during the period of leave;

(d) restrictions on the movement of prisoners during the period of leave; and

(e) cancellation of leave any emergency leave or forfeiture of bond in case of violation of conditions of leave."

5. It is clear from the aforesaid provisions that those prisoners who have been prosecuted and convicted for the breach of Rule under Section 31(A) of the Act of 1900 i.e. Section 31(D) of the Act of 1900 are not entitled to be released. Hence, the petitioner is not entitled for release under the MP Prisoners Release on Probation Act, 1954.

6. Rule 701 of the M.P.Jail Manual is an independent provision for cancellation of remission of the prisoner who commits an offence under various Sections of the Indian Penal Code mentioned therein, after entering into the jail. Whereas, Section 31(D) of the Act of 1900 deals with the prisoners who are temporarily released from the jail but do not surrender or arrested, they are liable to be prosecuted under Section 31(D) of the Act of 1900. Hence, the Rule 3F of the Rules of 1964 has not been considered by the writ Court while allowing the writ petition.

7. In view of the aforesaid, we are of the considered opinion that the writ petitioner is not entitled for the benefit of remission for early release from jail under the Act of 1954. Accordingly, the appeal is allowed. The



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order impugned order dated 11.12.2024 passed in W.P.No. 17580/2024 by
is hereby set aside.

With the aforesaid, appeal stands disposed of.

(VIVEK RUSIA)
JUDGE

(GAJENDRA SINGH)
JUDGE

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