

---

## **CASE COMMENT: SADHU SINGH VS. STATE OF PUNJAB**

### **AIR 1984 SC 739**

---

Ritul Nagarkar, Symbiosis Law School Nagpur

#### **INTRODUCTION**

#### **FACTS**

- The Supreme Court's Landmark judgment of Sadhu Singh vs State of Punjab displays the intersection of the rules given under the Punjab Prison Manual and the executive instructions issued in 1971 and 1976 which override the rules given in the manual.
- The issue was whether the rules had statutory force, and such authorities had a power to amend the rules, and alter by executive instructions
- The remission rules were governed by Para 516-B of the Punjab jail manual which provided remission rules for the premature release of adult prisoners and female prisoners and young convicts below the age of 20 years.
- The petitioners in the case were lifers (convicts sentenced to life imprisonment before 18 December 1978 when section 433 Crpc came into force which provides for procedure of commutation of sentence
- The qualifying period for adult male prisoners was 14 years inclusive of remission and qualifying period for female and young offenders was 10 years. In 1971 the state government issued instructions which amended and altered the rules provided in the manual.
- 1971 instructions modified the rules pertaining to the premature release of the prisoners, it provided that the adult prisoners who completed 8 ½ years and the female prisoners and the offenders below the age of 20 who completed 6 years were eligible to have their case for premature release.
- After completion of the sentence for premature release, the Punjab Government was

supposed to issue the case to the Inspector General of prison of Punjab with a request to direct the superintendent of jail to submit cases for premature release.

- Again in 1976 the Punjab government issued instructions for the prisoners who were sentence to death and later their sentence got commuted to life imprisonment by mercy petition and provided that such convicts should complete 14 years of sentence to consider their case for premature release.

## **BACKGROUND**

The petitioners in the present case had approached the Hon'ble Supreme Court by filing a criminal writ petition under article 32 by challenging the state's refusal to consider their case for premature release. This case was initiated by bench of justices V. D Tulza Purkar, R. S Pathak, Sabyasachi Mukherji. This case revolves around the prisoners who were sentenced to life imprisonment prior to the enforcement of section 433A CrPC. The Prisoners in the current case contented that they were eligible to consider their case for premature release after completion of the relevant sentence prescribed in Para 516-B of the Punjab Jail Manual. The petitioners in the writ petition challenged the 1971 and 1976 instructions by contending that the concerned state authorities were not giving their case to consider for premature release despite qualifying their case for premature release. The Petitioner argued that the 1976 instructions violated their fundamental right under article 14 by discriminating between the convicts whose death sentence was commuted to life imprisonment and the prisoners undergoing life imprisonment. In the formal case they had to complete 14 years and, in the latter, had to complete 8 ½ years for consider their case Premature release. The Contentions of petitioners were on the basis that since the rules under the manual had a statutory force the government had no power to amend or alter by any executive instructions, hence they contended that they were entitled to have their case considered for premature release, since they had fulfilled the eligibility criteria for premature release under the para 516-B of the Punjab jail manual. Hence the petitioner filed a criminal writ petition under article 32 and 21 by challenging the 1971 and 1976 instructions issued by the state government. The petitioners contended that since the remission rules in the prison manual of Punjab had a statutory force the government had no power to amend, alter by any executive instructions, in other words the action was outside the purview of the government as the rules were legislative in character and it had no power to amend the rule or alter it by any executive actions. TThe Supreme Court

finally held that the prisoners who are completing their life sentence are eligible to claim their premature release only by way commutation of his sentence under section 55 IPC or section 433(b) Crpc. The court held that without any order of commutation, they cannot claim early release under the remission rules given under the Punjab Jail Manual, Para 516-B. It further ruled that the Para of jail manual contains executive instructions without any statutory force and the government was authorized to amend, alter from time to time. The issue pertaining to 1976 instructions it held that the convicts against whom death sentence has been passed are considered distinct class and hence and not entitled to claim equality under article 14 of COI with those undergoing life sentence

### ISSUES RAISED

- Whether Para 516-B of the Punjab Jail Manual had a statutory force such that the subsequent executive instructions in 1971 and 1976 cannot infringe the petitioner's right to consider their case for premature release?
- Whether the distinction made by State of Punjab for premature release between the convict's sentence to death but later commuted to life imprisonment and the convict's sentence to life imprisonment valid?

### ANALYSIS

The counsel for the petitioners argued that after completing the sentence prescribed in the manual to consider their case for premature release, they were entitled to have their case consider for premature release, However the subsequent instructions in 1971 and 1976 prevented the petitioner to be premature released as the concerned authorities relied on the instructions and were not submitting their case for premature release of the convicts. Despite completing the requirement sentence, they were not considered for premature release.

The concept related to commutation were to be governed by section 55 of IPC<sup>1</sup> which provides that when a punishment for life imprisonment has been imposed, then in every case the state government may (discretion) without the consent of the offender commute the sentence of life imprisonment for a year's not exceeding 14 years. Section 433 A of Crpc stands on a similar parlance which provides for the procedure of commutation of sentences, it talks about the

---

<sup>1</sup> Section 55 IPC

power of the state government to commute the sentence where there is death sentence, then it would be commuted to any other punishment mentioned in IPC, sentence of life imprisonment to imprisonment not exceeding 14 years, rigorous imprisonment to simple imprisonment.

In the given case no such commutation order was passed by the concerned state government, and in absence of formal order under section 433A, the remission rules though are statutory but are not applicable to the petitioners. The court was with a similar view and observed that a sentence for life imprisonment is a sentence for the rest of natural life of the convicts and hence it is not feasible to release such convicts earlier without being notified by the formal order of the government.<sup>2</sup> The court viewed that none of the convicts has presented a commutation order from the government and were merely arguing on para 516- B of the said Punjab jail manual which could not be applicable because no such order was passed, and no question arises of releasing the convicts earlier without any commutation order.<sup>3</sup> In the following the cases the court was with a similar opinion. In *Kartar Singh vs State of Haryana through inspector general of prison, Chandigarh*<sup>4</sup>, the court was with a view that Remission rules contained in Jail Manuals cannot override statutory provisions contained in the IPC and sentence of imprisonment for life must be construed as sentence for remainder of life. In *Mary Ram vs Union of India*,<sup>5</sup> the court observed that life imprisonment signifies imprisonment for remaining period of natural life and merely relying on remission was absurd. In *Gopal Vinayak Godse vs State of Maharashtra and Ors*<sup>6</sup>, the court held that section 57 is limited to calculate fractional remission only, it does not convert an indefinite life term into 20 years across the board.

“Life Sentence” including transportation thus will remain indeterminate, which would extend until the convict’s death, unless the executive authority steps in under statutory rules to commute or remit the sentence.

In *Kishori Lal vs Emperor*<sup>7</sup>, the court held that no formal order of commutation was passed,

---

<sup>2</sup> Para 5, *Sadhu Singh vs State of Punjab* (1984) AIR SC 739

<sup>3</sup> Para 5, *Sadhu Singh vs State of Punjab*, (1984) AIR SC 739

<sup>4</sup> Para 6,4

*Kartar Singh vs State of Punjab through inspector general of prison, Chandigarh*, (1982) INSC 66

<sup>5</sup> *Mary Ram vs Union of India*, AIR 1980 2147

<sup>6</sup> Para 10, *Gopal Vinayak Godse vs State of Maharashtra and Ors*, AIR 1961 SC 600

<sup>7</sup> Para 7, *Kishori Lal vs Emperor*, AIR (1945) PC 64

remission did not substitute for execution orders.

The second issue is pertaining to the rules prescribed in the manual. The Counsel contented that the rules prescribed under the manual had statutory force and hence the government cannot amend, alter or by way of executive instructions. The action of the government was outside its domain. The power to amend, alter rest with the legislature and not with the executive. The counsel for the state (respondent) stated that the provisions contained in para 516-B were themselves executive instructions and not statutory provisions as these could be amended, altered by the executive. The court emphasized that the provisions of the Punjab Jail Manual were based on a Government of India Resolution, 1905 as the marginal note in the provisions itself clearly dealt with issues pertaining to the place of transportation of the concerned prisoners, what is the nature of their punishment, the remission of sentences, and cases for PR.

The resolution itself directed the local government to consider the PR at their own discretion by considering different circumstances. The local government was supposed to consider the conduct of each prisoner, and his probability of reverting back to criminal habits, or provoking others to commit these crimes.<sup>7</sup> By following the manual which derives its existence from the government of India resolution which contains of executive instructions not legislative rules. The Concerned authorities were undertaking administrative duties as the action was taken to give effect to the policy of the government which is the government of India Resolution. From the above it is clear that the rules were executive in nature the authorities were supposed to act at their discretion by taking into consideration the conduct of prisoners by granting the claim of PR.

Other Contentions raised by the petitioners that they were being discriminated by the prisoners who were sentenced to life imprisonment, and they had to complete 8 ½ years to qualify the case for PR. But in case of the petitioners whose death sentence was commuted to life imprisonment had to complete 14 years to qualify the case for PR. The main crux in the above issue is that prisoners against whom death sentence was being passed constitute a distinct class and will be governed by 1976 instructions.

## CONCLUSION

From the above analysis, it is clear that executive instructions cannot override statutory

---

<sup>7</sup> Para 6, *Sadhu Singh vs State of Punjab*, AIR 1984 SC 739

provisions which were held in the case of Kartar Singh case. The contentions made by the petitioners about the statutory characteristic of the manual is not justified as those were executive instructions and can be time to time amended, altered by the government. The contentions made by the petitioner about the discriminatory procedure for the PR is also not justified as prisoners against whom death sentence has been passed comes under different footing and it is necessary for them to complete 14 years of imprisonment and only after a formal commutation order of government, they can become eligible. Sentence of life imprisonment is a sentence for remaining life period and no question arises of releasing the convict earlier without any formal order. In the current provisions pertaining to remission rules, for better administration the concerned authorities must strictly follow the rules while granting the claim of the prisoners. The authorities must consider the factors like conduct of the prisoner, his likelihood to disrupt the public safety concerns, his past criminal antecedents, and the nature and motive of the crime

They are plethora of cases which have retaliated the same principle which was laid down in Sadhu Singh Case. In subsequent case in *Mohd Munna vs Union of India 2005*<sup>8</sup>, the court held that life imprisonment is not same imprisonment for 14 years or 20 years. Life sentence means sentence of remaining period of natural life. It was observed that there was no provision either in IPC or in Crpc, where life imprisonment can be treated as either 14 years or 20 years without passing a formal order of local government. In other case of *Ramraj@Nanhoo@Bihun vs State of Chattisgarh*<sup>9</sup>, it was observed that the convict sentence to life imprisonment is bound to complete the remainder of sentence in the prison until the sentence was commuted or remitted by the appropriate authority.

---

<sup>8</sup> Mohd. Munna vs Union of India, (2005) 7 SCC 417

<sup>9</sup> Para 5, Ramraj@Nanhoo@Bihun vs State of Chattisgarh, 2010 AIR SC 420