

CASE NO.:
Appeal (crl.) 918-919 of 2001

PETITIONER:
JOGINDER SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 11/09/2001

BENCH:
U.C. Banerjee & N. Santosh Hegde

JUDGMENT:

SANTOSH HEGDE, J.

Leave granted.

Respondent Nos.3 to 5 in these appeals (hereinafter to be referred to as the said respondents) along with one Rachhpal Singh, their father, were convicted by the Chief Judicial Magistrate, 1st Class, Nabha on 13.8.1987 for offences punishable under Sections 326, 325, 324 read with Section 34 IPC. On an appeal filed against the said judgment and conviction, the learned Sessions Judge, Patiala, confirmed the convictions as against respondent Nos.3 to 5 and allowed the appeal of Rachhpal Singh and acquitted him of the charges alleged against him. Against the said judgment of the appellate court, the said respondents filed a revision petition before the High Court of Punjab & Haryana at Chandigarh and the learned Single Judge who heard the revision petition, dismissed the same on 17.7.1998 upholding the conviction and sentence awarded to the said respondents.

It is of importance to note that during the period of trial ending with confirmation of conviction in the revision petition by the High Court, respondents 3 to 5 almost all the time were on bail except for a period of about 2 months and 25 days when they were in jail, serving part of their sentence.

On the dismissal of the revision petition by the High Court, it is stated that the said respondents surrendered before the Superintendent, Central Jail, Patiala, on 29.7.1998 and on the very same day they were released by the jail authorities.

The appellant herein who was the complainant in the original criminal case on coming to know of the release of the said respondents, filed an application before the learned Chief Judicial Magistrate, Patiala, (for short the CJM) contending that the said respondents who had been awarded RI for one year and six months did not undergo the actual sentence and that they had been released by the jail authorities fraudulently because of their influence. The learned CJM on the basis of the said application called for a report from the Superintendent of

the Central Jail, Patiala, respondent No.2 herein, to assign reasons why the said respondents have been released on the very day on which they surrendered to serve their sentence. In reply to the said query of the Court, the Superintendent, Central Jail, Patiala vide his letter dated 18.9.1998 informed the Court that the said respondents had been released from jail by virtue of the benefit given to them by the Punjab Government regarding their remission of sentence as per the notifications issued from time to time between the period 13.7.1988 and 29.7.1998. The learned CJM accepting the said report closed the petition of the appellant.

Being aggrieved by the said closure of their petition, the appellant moved the Punjab & Haryana High Court by way of a criminal miscellaneous petition praying that the letter dated 18.9.1998 written by respondent No.2 wherein the said respondents were given the benefit of remission be quashed and that the said respondents be taken into custody for undergoing the remaining period of sentence. A learned Single Judge of the High Court as per his order dated 9.12.1999 after hearing the parties came to the conclusion that the said respondents were entitled to the remission given by the Government under various notifications issued by it during the period from 13.7.1988 to 29.7.1998. According to the learned Judge, if the periods of remission granted under various notifications are to be taken into consideration cumulatively then the said period would cover the period of sentence awarded to the said respondents and even though they had not in fact served the sentence by virtue of the fact that they were enlarged on bail, they would be deemed to have served the sentence. Hence, on that basis the criminal petition came to be dismissed. It is against that judgment of the High Court of Punjab & Haryana dated 9.12.1999 made in Criminal Miscellaneous Petition No.32414-M/98 that these appeals are preferred. On behalf of the appellant, it is argued by Mr. Rajesh Kumar Sharma, learned counsel that the court erred in interpreting the various notifications of remission issued by the State Government to mean that the remission so granted under the notifications is applicable to persons who are on bail and who have not served the sentence and has also erred in construing the various applications as giving the benefit cumulatively. According to him, an interpretation of this nature could render the punishments awarded in criminal cases nugatory. In support of his judgment, he also relied upon the judgments of this Court in State of Haryana & Ors. v. Mohinder Singh [2000 3 SCC 394], Sunil Fulchand Shah v. Union of India & Ors. [2000 3 SCC 409], State of Haryana v. Nauratta Singh & Ors. [2000 3 SCC 514] and Satpal & Anr. v. State of Haryana & Ors. [2000 5 SCC 170].

Defending the judgment of the High Court on behalf of the said respondents, Mr. Harbans Lal, learned senior counsel representing them contended that the High Court was correct in interpreting the notifications issued by the State Government remitting the sentences as giving benefit to the persons who are on bail also and the said benefit given under various notifications can be counted cumulatively for the purpose find out whether the period covered by them if taken cumulatively extinguishes the period of sentence imposed on the said respondents.

In our opinion, it would be appropriate for us to reproduce the argument of the learned counsel in the manner in which it was presented before us which is as follows :
According to the learned counsel for the said respondents, the

Government of Punjab has issued 7 notifications between the period from 13.7.1988 to 29.7.1998 and as per these notifications the following remissions were given :

As per the notification dt. 11.11.89, the said respondents would get a remission of	4 months
As per the notification dt. 5.4.92, the said respondents would get remission of	4 months
As per the notification dt. 27.1.94, the Said respondents would get remission of	4 months
As per notification dt. 6.3.95, the said respondents would get remission of	1 ½ months
As per notification dt. 18.12.96, the said respondents would get remission of	3 months
As per notification dt. 14.2.97, the respondents would get remission for the entire unexpired period up to	1 year
As per notification dt. 14.8.97, the respondents would get remission of	1 month

Therefore, according to the argument of the learned counsel, even without taking into consideration the notification dated 14.2.1997, the said respondents would be entitled to a total remission of 17 ½ months. Therefore, the said respondents even though have served just 2 months and 25 days and were on bail rest of the period in view of the various notifications referred to hereinabove, it is deemed that they have served their entire period of conviction which is only for a period of 18 months [1 ½ years]. So far as the 4 judgments referred to by the learned counsel for the appellant are concerned, it is contended on behalf of the said respondents that the notifications concerned in those judgments are not similar to the notification applicable to the present case. In 3 out of the 4 cases referred to hereinabove, the notifications were issued by the State Government of Haryana and in the said notifications, there is no reference to the periods covered by the order of bail and it is confined only to parole/furlough whereas, according to the learned counsel, in the notification issued by the State Government of Punjab, the word bail is specifically included along with the words parole and furlough. Therefore, the notification issued by the Punjab Government grants remission even to persons who are on bail irrespective of the actual period of sentence served by them. Therefore, the judgments cited by the appellant are distinguishable.

With respect, we are unable to agree with the learned counsel for the said respondents. In other words, acceptance of this argument, in our opinion, would reduce the criminal justice system to mockery as has been said by this Court in Nauratta Singhs case (supra). In the cases cited by the appellant, this Court has categorically held that there is substantial difference between the words parole and furlough on one hand and the expression bail on the other. These judgments have also held that persons who are enlarged on bail cannot claim the benefit of the period during which they were on bail for the purpose of counting the period of sentence already undergone to apply the remission given by the Government. In view of this clear enunciation of law, in our opinion, even by the inclusion of the

word bail in the notification of the Punjab Government an accused who has always remained on bail or has not served the substantial part of his sentence cannot take advantage of the remission notification.

In the case of Nauratta Singh (supra) which has considered the judgment of Mohinder Singh (supra) as well as that by the Constitution Bench in Sunil Fulchand Shah (supra) and held thus :

18. The clear fallacy of the approach made by the High Court can be demonstrated through an illustration. An accused was tried for an offence under Section 326 IPC. During trial period he was allowed to remain on bail and the trial prolonged up to, say, 3 years. Finally the court convicted him and sentenced him to imprisonment for three years. Should not the convicted person go to jail at all on the premise that he was on bail for three years and is hence entitled to remission of that period ?

19. Yet another illustration can be shown by stretching the above illustration a little farther. If the aforesaid convicted person filed an appeal and got his sentence suspended by the appellate court and the appellate court confirmed the conviction and sentence after a period of 3 years, is he entitled to claim that he need not go to jail at all as he was on bail for more than 3 years during the post-conviction stage also? If it is to be held that he is entitled to such remission, we are afraid, the criminal justice system would be reduced to a mockery. The absurdity of the claim of the respondent can thus be demonstrated.

It is clear from the above observations of this Court that grant of any such remission would indeed reduce the criminal justice system to mockery. Therefore, we cannot be persuaded to interpret the remission notification of the Punjab Government to run counter to the judgment of this Court referred to hereinabove.

In Mohinder Singh (supra) which is followed by the Constitution Bench in Sunil Fulchand Shah (supra), this Court held:

14. Parole is defined in Blacks Law Dictionary as a conditional release of a prisoner, generally under supervision of a parole officer, who has served part of the term for which he was sentenced to prison. Parole relates to executive action taken after the door has been closed on a convict. During parole period there is no suspension of sentence but the sentence is actually continuing to run during that period also.

In view of the pronouncement of this Court also, we are of the opinion that the High Court fell in error in accepting the argument of the said respondents that they are entitled for the benefit of the period of remission given by the various

notifications cumulatively to be counted against the period during which they were on bail. In our opinion, while applying the period of remission granted by the Government under any remission notification the period during which an accused person was on bail cannot be taken into account.

For the reasons stated above, the judgment of the High Court is set aside. We allow the appeals and also set aside the letter of the 2nd Respondent herein dated 18th of September, 1998 addressed to the CJM and direct the said respondents to serve the remainder period of their sentence. We make it clear if during the period of serving their sentence any fresh remission notification is issued by the concerned Government, the same will be made applicable on terms and conditions enumerated in the said notification if it is applicable to the said respondents. The appeals are accordingly allowed.

..J.
(U C Banerjee)

September 11, 2001.

.J.
(N Santosh Hegde)