

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

Criminal Appeal No.1944/2011

BANSHI

Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH

Respondent(s)

([PART-HEARD BY HON'BLE SANJAY KISHAN KAUL AND HON'BLE M.M.
SUNDRESH, JJ.])

Date : 02-03-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESHFor Appellant(s) Mr. Sushil Kumar Jain, Sr. Adv.
Mr. Puneet Jain, Adv.
Ms. Christi Jain, Adv.
Mr. Umang Mehta, Adv.
Ms. Shruti Singh, Adv.
Ms. Pratibha Jain, AORFor Respondent(s) Ms. Swarupama Chaturvedi, Addl. A.G., M.P.
Mr. Gopal Jha, AOR
Ms. Saumya Kapoor, Adv.
Mr. Siddhant Yadav, Adv.
Ms. Himanshi Goel, Adv.
Mr. Mukesh Kumar, Adv.
Mr. Nishant Verma, Adv.
Mr. Shreyash Bhardwaj, Adv.UPON hearing the counsel the Court made the following
O R D E RAn incident took place on 23.8.1992 at 09:00 a.m. at village
Sonthwa, Distt. Shivpura Gaon, Madhya Pradesh. As per the

complainant, his two brothers died in the incident while his father and certain other persons were injured. The allegation is of political rivalry. FIR was registered under Sections 302, 307 & other provisions of IPC and charge-sheet was filed. Post trial, six accused were convicted by the trial Court including the appellant before us under Section 302 r/w Section 149 IPC and sentenced to life imprisonment. Appeals were filed both by the State and the convicted accused and one more accused got the benefit of doubt and thus the High Court convicted four accused. One of the accused convicted by the High Court, the appellant filed the appeal which is pending consideration before us.

It may be noted at the inception itself that by an Order dated 29.1.2010, in view of a medical certificate produced by the appellant that he is visually impaired and is suffering from 100% blindness, the appellant was granted exemption from surrendering and finally on 18.10.2011 leave was granted and the appellant was granted bail on terms and conditions to the satisfaction of the trial Court.

We are informed that the appellant has already undergone sentence of 9 years 10 months and 6 days including remission (actual period 8 years 1 month and 23 days).

The appeal was taken up for final hearing on 17.2.2022 when the learned counsel for the appellant submitted that instead of canvassing the appeal on merits, an alternative course may be adopted. This alternative course arose on account of Rule 363 of

the M.P. Prison Rules, 1968 (hereinafter to be referred as the "said Rule"). The rule reads as under:-

"363 (1). Where the Medical Officer of the prison is of the opinion that the convicted prisoner has gone completely and incurably blind not as a result of any voluntary act of the prisoner or that a convict prisoner has become completely decrepit or has become disabled on account of incurable physical infirmity which incapacitated him from the commission of further crime on his release and as such where the release of such a prisoner is not likely to be attended with mischief or danger, he shall report the case of the prisoner to the Superintendent.

(2) On receipt of such a report the Superintendent shall request the District Medical Officer for constitution of the District Medical Board before whom the case of the prisoner will be placed for a certificate to the effect that the prisoner has gone absolutely and incurably blind or that he has been so completely physically incapacitated that he is incapable of committing any crime on his release and his release is not likely to be attended with any mischief and danger.

3) On receipt of the report of the Medical Board the Superintendent shall refer the case to the District Magistrate of the District in which the prisoner's offence was committed stating all the facts and obtaining his opinion. After the receipt of the District Magistrate's opinion the Superintendent shall forward the case to Inspector General who shall submit it for Government's order in case the report of the Medical Officer is corroborated by the Medical Board and the release of the prisoner is recommended. In all 3 cases the papers would be filed by him."

The submission of the appellant was that since the appellant is visually impaired to the extent of suffering permanently from 100% blindness and that is not a result of any voluntary act of the prisoner, this section would come to the aid of the appellant for consideration of his case for release from serving out the remaining sentence.

Learned counsel for the respondent was called upon to file an appropriate affidavit which has been filed on 28.2.2022. It is accepted that the medical certificate dated 10.11.2003 filed in the paper-book indicates blindness of the appellant. However, the appellant is not in custody, being on bail, and at the relevant time was even exempted from surrendering on account of the condition of his eye-sight. It has been stated in the affidavit that if the appellant submits an application under Rule 363 of the said Rules, the same shall be considered as per law.

We have heard learned counsel for parties.

It is the say of the learned counsel for the respondent that in order for the appellant to avail of the process as envisaged under Rule 363 of the said Rules, the appellant would be required to make an application under that provision which will be processed as per the requirement of the said rule. She also submitted by relying on the recent judgment of this Court in *State of Haryana & Ors. Vs. Raj Kumar @ Bitto (2021) 9 SCC 292* to contend that the benefit of remission can only be granted by the State Government if a prisoner has undergone a minimum period of imprisonment of 14 years without remission. In this behalf reference has been made to the provisions of 432, 433 & 433A of the CrPC read with Article 161 of the Constitution of India. It is her say that the appropriate legal position would be that the State can recommend and the power would have to be exercised by the Governor under Article 161 of the Constitution of India albeit on the aid and advise of the State.

Learned counsel also refers to the fact that since the

appellant is on bail for considerable period of time the difficulty would be in compliance of Rule 363(1) as the medical officer of the prison would have to opine and report the case of the prisoner to the Superintendent.

We see no impediment in the process as the appellant can be asked to report to the Medical Officer of the prison and if for observation a few days are required, that can also be conveniently done. If the medical officer opines in consonance with the report already submitted, the Superintendent would be required to request the District Medical Officer for constitution of a District Medical Board and the appellant would have to then report to the Medical Board for the said purpose. It is on appraisal of all this material that the Superintendent of the Jail would be required to refer the case to the District Magistrate of the District in which the prisoner's offence was committed stating all the facts and obtain his opinion. In view of the past history of the appellant, the material already available with the appellant should naturally be also handed over to the Medical Officer of the jail to be carried forward to the Board. Once the District Magistrate gives an opinion, and if it is favourable, it will go for passing of the appropriate Government order. This process would naturally have to be followed.

On the aforesaid process being followed, the case would have to be referred to the Governor for exercise of power under Article 161 of the Constitution of India.

It is the say of the learned counsel for the respondent-State that the appropriate course for the appellant may be to submit an application under Article 161 of the Constitution of India.

We are of the view that in the given factual scenario, specially as the appellant is not in custody, it would be appropriate for the appellant to invoke Rule 363 of the said rules and make an application with all the relevant material within three weeks from today. The appellant may also simultaneously apply to the Governor under Article 161 of the Constitution of India and that application would naturally await the recommendation to be made by the State Government since we have already put in process through the present order the scrutiny under Rule 363 of the said Rules.

We expect the State Government to complete the process under Rule 363 of the said Rules within two months from the date of the application submitted by the appellant and thereafter to be forwarded to the Governor for his consideration.

We consider it appropriate to list the appeal for directions as we are not considering the appeal on merits at this stage in view of the course of action suggested by the learned counsel(s).

List for directions on 19th July, 2022.

(RASHMI DHYANI)
COURT MASTER

(POONAM VAID)
COURT MASTER