Asfaq vs The State Of Rajasthan on 11 September, 2017

Equivalent citations: AIR 2017 SUPREME COURT 4986, 2017 (15) SCC 55, AIR 2018 SC (CRIMINAL) 37, 2017 CRILR(SC&MP) 1029, (2017) 2 WLC(SC)CVL 646, (2017) 4 BOMCR(CRI) 795, (2017) 5 ALL WC 5300, (2018) 1 MADLW(CRI) 299, (2017) 124 CUT LT 922, (2017) 3 GUJ LH 655, (2017) 4 CURCRIR 15, (2018) 69 OCR 371, (2017) 180 ALLINDCAS 258 (SC), (2017) 3 CURCC 494, 2017 CRILR(SC MAH GUJ) 1029, (2017) 11 SCALE 346, (2017) 4 JCR 296 (SC), (2018) 102 ALLCRIC 263, (2017) 2 ORISSA LR 792, (2018) 1 MAD LW 13, (2017) 4 CRILR(RAJ) 1029, (2018) 2 CALLT 53, 2018 (1) SCC (CRI) 390

Author: A.K. Sikri

Bench: Ashok Bhushan, A.K. Sikri

REPORTA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10464 OF 2017
(ARISING OUT OF SLP (C) NO. 16803 OF 2017)

ASFAQ .....APPELLANT

VERSUS

STATE OF RAJASTHAN AND OTHERS .....RESPONDENT(S

JUDGMENT

A.K. SIKRI, J.

Serial bomb blasts took place in five trains on December 06, 1993 at the behest of certain miscreants on the first anniversary of the Babri Masjid demolition. As per the allegations of the prosecution, a conspirational meeting was held in this behalf in Lucknow a couple of months before, to carry out the aforesaid operations. Six separate First Information Reports (FIRs) came to be registered where this bomb blast had taken place, namely, at Kota, Allahabad, Kanpur, Gujarat, Malkajgiri and Karjat. Five of these FIRs were clubbed together and the Central Bureau of Investigation (CBI) took

up the investigation. During the course of investigation, the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA') were also invoked. The appellant herein was one of the accused persons and one of the allegations levelled against him was that he had supplied explosive material to accused No.1 for which he was paid money by the said accused. Outcome of the trial by the CBI Court was that the appellant, along with others, was convicted under TADA and awarded life imprisonment on February 28, 2004. This conviction has been upheld by this Court as well and, therefore, the conviction and sentence of the appellant has attained finality. In this appeal, the issue pertains to grant of parole to the appellant.

2) The appellant had submitted an application for grant of regular parole for twenty days before the District Parole Advisory Committee (hereinafter referred to as the 'Advisory Committee') in the year 2014. His request was rejected by the said Committee on the ground that it did not have the jurisdiction to entertain parole for TADA prisoners. This action of the Advisory Committee was challenged by the appellant in the form of writ petition under Article 226 of the Constitution of India, which was filed in the High Court of Rajasthan. The High Court disposed of this writ petition vide order dated March 21, 2014 with the direction that his application be forwarded to the Advisory Committee to examine the same in accordance with law. In compliance of the aforesaid order, the Advisory Committee considered the application of the appellant for parole on merits and rejected it on the premise that the appellant had been convicted under TADA and, therefore, his application could not be considered in view of the Rajasthan Prisoners Release on Parole Rule, 1958. The appellant again approached the High Court of Rajasthan by means of another writ petition, which was disposed of by the High Court on June 30, 2015 granting him liberty to file a fresh application before the concerned competent authority for grant of parole in terms of rules framed by the Government of India in this behalf vide Notification dated November 9, 1955. Armed with this order, the appellant preferred another parole application with the Government of India. This was, however, rejected by the Ministry of Home Affairs, Government of India vide orders dated November 10, 2015. It may be noted that the appellant had simultaneously moved an application for parole before the State of Rajasthan as well. That application also came to be rejected vide order dated November 16, 2015 on the ground that the Union of India had already rejected the parole of the appellant. For the third time the appellant approached the High Court seeking a prayer to the effect that he be released on parole for twenty days. This petition was dismissed vide order dated May 01, 2016 with the following observations:

> "Having heard the rival submissions of the parties and after going through the relevant record, we are of the considered opinion that it is a case of serious and heinous crime where parole cannot be claimed as a matter of right. Further, in view of the fact that appeal has been decided by the Hon'ble Supreme Court, it would not be appropriate for exercise of discretion in favour of the petitioner.
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> The writ petition is accordingly dismissed. However if the petitioner, so desirous (sic – desires), may approach the Hon'ble Supreme Court for appropriate relief." Correctness of this order is the subject matter of the present appeal.

3) As is clear from the above, the High Court did not deem it proper to exercise its discretion and left the matter to this Court. It is notwithstanding the fact that in the earlier paragraph, than the paragraphs quoted above, the High Court has referred to some of the judgments which were relied upon by the counsel for the appellant. However, there is no discussion of those judgments or applicability thereof to the facts of the present case.

4) In view of the aforesaid background, submission made by the learned counsel for the appellant was that merely because the appellant was convicted of an offence which was of serious or heinous nature would not be a ground to reject the plea of parole outrightly. It was argued that the cases which were cited by the counsel for the appellant before the High Court were also those cases where the convicts were held guilty under the provisions of TADA. It was argued that the purpose behind grant of parole was altogether different and, therefore, the nature of offence would be an irrelevant consideration.

5) Learned counsel appearing for the respondents refuted the aforesaid arguments with the submission that the case of the appellant was duly considered and rejected after finding that it was not recommended by the District Magistrate and Superintendent of Police of Dausa, Social Justice Department of the State of Rajasthan and the Superintendent of Jail, Jaipur. It was argued that all the aforesaid authorities had given adverse reports about the appellant.

6) We have given our serious consideration to the respective submissions made by counsel for the parties on either side.

7) We may state at the outset that the reason because of which the High Court dismissed the writ petition filed by the appellant herein is not an apposite one and does not meet the test of law. The petition is dismissed only on the ground that the appellant is convicted in a case of serious and heinous crime and, therefore, parole cannot be claimed as a matter of right. As per the discussion that would follow hereinafter, the conviction in a serious and heinous crime cannot be the reason for denying the parole per se. Another observation made by the High Court is that since this Court had decided the appeal of the appellant affirming the conviction, it would not be appropriate for the High Court to exercise its discretion in favour of the appellant and if he so desires he may approach this Court for the said purpose. This again amounts to abdication of the power vested in the High Court. Insofar as conviction for the offence for which he was charged, i.e. under the provisions of TADA, is concerned, no doubt that has been upheld till this Court. However, the issue before the High Court was entirely different. It was as to whether the appellant is entitled to the grant of parole for twenty days which he was claiming. Merely because the matter of conviction of the appellant had come up to this Court would not mean that the appellant has to be relegated to this Court every time, even when he is seeking the reliefs unconnected with the main conviction. It is more so when in the

first instance it is the High Court which is supposed to decide such a prayer for parole made by the appellant. With these remarks, we advert to the issue at hand.

8) In the first instance, it would be necessary to understand the meaning and purpose of grant of parole. It would be better understood when considered in contrast with furlough. These terms have been legally defined and judicially explained by the Courts from time to time.

9) There is a subtle distinction between parole and furlough. A parole can be defined as conditional release of prisoners i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the convict is released before the expiration of his term. Thus, the parole is granted for good behaviour on the condition that parolee regularly reports to a supervising officer for a specified period.

Such a release of the prisoner on parole can also be temporarily on some basic grounds. In that eventuality, it is to be treated as mere suspension of the sentence for time being, keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies. Such paroles are normally granted in certain situations some of which may be as follows:

(i) a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill; or

(ii) the marriage of the prisoner himself, his son, daughter, grandson, grand daughter, brother, sister, sister's son or daughter is to be celebrated; or

(iii) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation of his land or his father's undivided land actually in possession of the prisoner; or

(iv) it is desirable to do so for any other sufficient cause;

(v) parole can be granted only after a portion of sentence is already served;

(vi) if conditions of parole are not abided by the parolee he may be returned to serve his sentence in prison, such conditions may be such as those of committing a new offence; and

(vii) parole may also be granted on the basis of aspects related to health of convict himself.

10) Many State Governments have formulated guidelines on parole in order to bring out objectivity in the decision making and to decide as to whether parole needs to be granted in a particular case or not. Such a decision in those cases is taken in accordance with the guidelines framed. Guidelines of some of the States stipulate two kinds of paroles, namely, custody parole and regular parole. 'Custody parole' is generally granted in emergent circumstances like:

death of a family member;

marriage of a family member;

serious illness of a family member; or any other emergent circumstances.

As far as 'regular parole' is concerned, it may be given in the following cases:

(i) serious illness of a family member;

(ii) critical conditions in the family on account of accident or death of a family member;

(iii) marriage of any member of the family of the convict;

(iv) delivery of a child by the wife of the convict if there is no other family member to take care of the spouse at home;

(v) serious damage to life or property of the family of the convict including damage caused by natural calamities;

(vi) to maintain family and social ties;

(vii) to pursue the filing of a special leave petition before this Court against a judgment delivered by the High Court convicting or upholding the conviction, as the case may be.

11) Furlough, on the other hand, is a brief release from the prison. It is conditional and is given in case of long term imprisonment. The period of sentence spent on furlough by the prisoners need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission.

12) A convict, literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict.

It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment.

13) This Court, through various pronouncements, has laid down the differences between parole and furlough, few of which are as under:

(i) Both parole and furlough are conditional release.

(ii) Parole can be granted in case of short term imprisonment whereas in furlough it is granted in case of long term imprisonment.

(iii) Duration of parole extends to one month whereas in the case of furlough it extends to fourteen days maximum.

(iv) Parole is granted by Divisional Commissioner and furlough is granted by the Deputy Inspector General of Prisons.

(v) For parole, specific reason is required, whereas furlough is meant for breaking the monotony of imprisonment.

(vi) The term of imprisonment is not included in the computation of the term of parole, whereas it is vice versa in furlough.

(vii) Parole can be granted number of times whereas there is limitation in the case of furlough.

(viii) Since furlough is not granted for any particular reason, it can be denied in the interest of the society.

{See State of Maharashtra and Another v. Suresh Pandurang Darvakar1; and State of Haryana and Others v. Mohinder 1 (2006) 4 SCC 776 Singh2}.

14) From the aforesaid discussion, it follows that amongst the various grounds on which parole can be granted, the most important ground, which stands out, is that a prisoner should be allowed to maintain family and social ties. For this purpose, he has to come out for some time so that he is able to maintain his family and social contact. This reason finds justification in one of the objectives behind sentence and punishment, namely, reformation of the convict. The theory of criminology, which is largely accepted, underlines that the main objectives which a State intends to achieve by punishing the culprit are: deterrence, prevention, retribution and reformation. When we recognise reformation as one of the objectives, it provides justification for letting of even the life convicts for

short periods, on parole, in order to afford opportunities to such convicts not only to solve their personal and family problems but also to maintain their links with the society. Another objective which this theory underlines is that even such convicts have right to breathe fresh air, al beit for periods. These gestures on the part of the State, along with other measures, go a long way for redemption and rehabilitation of such prisoners. They are ultimately aimed for the good of the 2 (2000) 3 SCC 394 society and, therefore, are in public interest.

15) The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

16) Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

17) Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.

18) To sum up, in introducing penal reforms, the State that runs the administration on behalf of the society and for the benefit of the society at large cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a Court) of having perpetrated a criminal act. One of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It is, therefore,

understandable that while meting out humane treatment to the convicts, care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough, the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large for the time-being under the furlough leave granted to him by way of a measure of penal reform.

19) Another vital aspect that needs to be discussed is as to whether there can be any presumption that a person who is convicted of serious or heinous crime is to be, ipso facto, treated as a hardened criminal. Hardened criminal would be a person for whom it has become a habit or way of life and such a person would necessarily tend to commit crimes again and again. Obviously, if a person has committed a serious offence for which he is convicted, but at the same time it is also found that it is the only crime he has committed, he cannot be categorised as a hardened criminal. In his case consideration should be as to whether he is showing the signs to reform himself and become a good citizen or there are circumstances which would indicate that he has a tendency to commit the crime again or that he would be a threat to the society. Mere nature of the offence committed by him should not be a factor to deny the parole outrightly. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced. We may hasten to put a rider here, viz. in those cases where a person has been convicted for committing a serious office, the competent authority, while examining such cases, can be well advised to have stricter standards in mind while judging their cases on the parameters of god conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquillity etc.

20) There can be no cavil in saying that a society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and services and recourse made available to the prisoners. Being in a civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. {See – Sunil Batra (II) v. Delhi Administration3, Maneka Gandhi v. Union of India and Another4, and Charles Sobraj v. Superintendent Central Jai, Tihar, New Delhi5}.

21) It is also to be kept in mind that by the time an application for parole is moved by a prisoner, he would have spent some time in the jail. During this period, various reformatory methods must have been applied. We can take judicial note of this fact, having regard to such reformation facilities available in modern jails. One 3 (1980) 3 SCC 488 4 (1978) 1 SCC 248 5 (1978) 4 SCC 104 would know by this time as to whether there is a habit of relapsing into crime in spite of having administered correctional treatment. This habit known as “recidivism” reflects the fact that the correctional therapy has not brought in the mind of the criminal. It also shows that criminal is hardcore who is beyond correctional therapy. If the correctional therapy has not made in itself, in a particular case, such a case can be rejected on the aforesaid ground i.e. on its merits.

22) We are not oblivious of the fact that there may be hard core criminals who by reason of their crime and the methods of dealing with the crime, form associations, loyalties and attitudes which tend to persist. There may be even peer pressure when such convicts are out to commit those crimes again. There may be pressure of ostracised from delinquent groups which may lead them to commit the crime again. Persistence in criminal behaviour may also be due to personality traits, most frequently due to pathological traits of personality, such as mental defectiveness, emotional instability, mental conflicts, ecocentrism and psychosis. In regard to relapse or recidivism, Frank Exner, a noted criminologist and sociologist, points out that the chances of repeating increase with the number of previous arrests and the interval between the last and the next offence becomes shortened as the number of previous crimes progresses 6. The purpose of the criminological study is the prognosis of the improvable occasional offenders and that of the irredeemable habitual offender and hardcore criminal. To differentiate the recidivists from non-recidivists and dangerous and hard-core criminals from occasional criminals had been enumerated by Exner in the following flow-sheet:

2) Hereditary weakness in the family life.

3) Increasing tempo of criminality.

4) Bad conditions in the parental home.

5) Bad school progress (especially in deportment and industriousness).

6) Failure to complete studies once begun.

7) Irregular work (work shyness).

8) Onset of criminality before 18 years of age.

9) More than four previous sentences.

10) Quick relapse of crime.

11) Interlocal criminality (mobility).

12) Psychopathic personality (diagnosis of institutional doctor).

13) Alchoholism.

6 Frank Exner, Kriminologie, pp. 115-120

a4) Release from institution before 36 years of age.

15) Bad conduct in the institution.

16) Bad social and family relations during period of release.

At the same time, as criminality is the expression of the 'symptom' of certain disorder in the offenders, they can be easily reformed if they are rightly diagnosed and correct treatment is administered to them.

23) We find that the Rules of the Central Government, in this behalf, are of the year 1955, which are skeleton in nature. There is an imperative and immediate need for updating these Rules thereby including comprehensive provisions, in the light of the discussion contained above, incorporating the aforesaid and other principles so as to provide suitable guidelines to those who have to consider such applications for grant of parole. We are hopeful that this aspect shall be given due consideration at the appropriate level by the Government of India. For this purpose, a copy of this judgment may also be sent to the Ministry of Law & Justice, Government of India.

24) Having discussed the parameters which are to be kept in mind while considering the request of a convict for parole, we advert to the case at hand.

25) As already noted above, the appellant has been convicted under TADA and given the life imprisonment. As per the Jail Custody Certificate dated April 13, 2017 produced before us, the appellant had undergone 09 years 10 months and 29 days of incarceration till that date. It means that as of now, the appellant has undergone the sentence of more than ten years. We have mentioned above about the request of the appellant for release on parole and rejection thereof. The communication dated November 10, 2015 of the Government of India to the Home Department of the State of Rajasthan conveys that the appellant's case for twenty days of parole has been rejected in view of the adverse reports of the concerned authorities. The concerned authorities mentioned therein are the District Magistrate and Superintendent of Police of Dausa, Social Justice Department of the State of Rajasthan and the Superintendent of Jail, Jaipur.

26) We have gone through the reports of the aforesaid authorities. Reasons given in these reports are to the effect that if the appellant is released on parole, it may lead to untoward incidents in the society or even among unsocial elements and may have adverse effect on the young generation as well. It is also mentioned that there is a possibility that the appellant may threaten those who had deposed against him and may even physically harm them. It is recorded that his release on parole may adversely affect peace in the society. Further, having regard to the nature of the crime he had committed, there may even be a threat to his life as well because of the reason that there is a feeling of anger and annoyance in the society against him and, therefore, possibility of a member of public physically harming the appellant cannot be ruled out. There is even a danger to the appellant's life as well.

27) Having regard to the aforesaid reports, it cannot be said that the authorities have not taken into account relevant considerations while rejecting the request of parole made by the appellant. We, therefore, are of the opinion that it is not a fit case for grant of parole to the appellant particularly at this stage.

28) The appellant is a life convict. Therefore, he is supposed to remain in jail during his life unless remission is given to him. In such a situation, the appellant can, after some time, renew his request for parole when the present atmosphere prevailing outside undergoes a change for better. Otherwise, his conduct in the jail has been reported as satisfactory. When a request for parole is made after some time, which of course should not be in immediate future, the same can be considered again in the light of the principles laid down by this Court in this judgment.

29) For the foregoing reasons, this appeal is dismissed.

.....J. (A.K. SIKRI) .....J. (ASHOK BHUSHAN)
NEW DELHI;

SEPTEMBER 11, 2017.

ITEM NO.1501 COURT NO.5 SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 10464/2017

ASFAQ Appellant(s)

VERSUS

THE STATE OF RAJASTHAN & ORS. Respondent(s)

Date : 11-09-2017 This matter was called on for pronouncement of judgment today.

For Appellant(s) Mohd. Irshad Hanif, AOR
Mr. Muzahid Ahmad, Adv.
Mr. Arif Ali Khan, Adv.
Mr. Shahid Nadeem Ansari, Adv.

For Respondent(s)

Hon'ble Mr. Justice A.K. Sikri pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ashok Bhushan.

Appeal is allowed in terms of signed Reportable Judgment.

Pending applications, if any, stand disposed of.

(B.PARVATHI)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed reportable judgment is placed on the file)