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**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Writ Petition No. 295/2021

Rakesh, S/o Shri Srikishan, By Caste Harijan, R/o Pipar City,
Police Thana Pipar City, District Jodhpur. (At Present Lodged At
Open Air Camp, Barmer).

-----Petitioner

Versus

1. State, Through Secretary, Home Department, Jodhpur.

2. The District Collector, Jodhpur.

3. The Superintendent, District Jail, Barmer.

-----Respondents



For Petitioner(s) : By Post.

For Respondent(s) : Mr. Farzand Ali, AAG-cum-GA with
Mr. Abhishek Purohit.

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE MANOJ KUMAR GARG**

Judgment

28/07/2021

Reportable

The convict petitioner Rakesh is undergoing life imprisonment at the Open Air Camp, Barmer. As per the nominal roll, the convict had served imprisonment of 14 years, 3 months and 20 days by 19.07.2021. He filed an application for release on first parole of 20 days which has been accepted by the District Parole Advisory Committee, Jodhpur vide recommendations dated 24.02.2021. Citing poor family conditions and other impediments as reason, the convict petitioner has forwarded this writ petition from jail praying that the requirement of furnishing surety bonds imposed in the recommendations dated 24.02.2021 may be



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relaxed because he has no means to comply and continues to languish in custody.

We had directed Shri Farzand Ali to submit the family status report of the convict petitioner. In response to this direction, a letter dated 19.07.2021 sent by the Municipality, Pipar has been filed on record as per which, the convict petitioner does not have any movable/immovable property in Pipar.

Suffice it to say that the facts narrated above reveal a very pathetic state of affairs. The convict petitioner has served 14 years imprisonment and for the first time, has his case been considered for release on parole.

By way of advancing the spirit of Article 21 of the Constitution of India, the courts have held time and again that reformatory theory of punishment is the correct way to treat the convicts and to ensure their reintegration into the society.

In the case of **Hussainara Khatoon & Ors. vs. Home Secretary, State of Bihar, Patna, reported in AIR 1979 SC 1377**, Hon'ble the Supreme Court held that it was the State's duty to protect the constitutional right of the accused to secure legal service and it was observed as below:

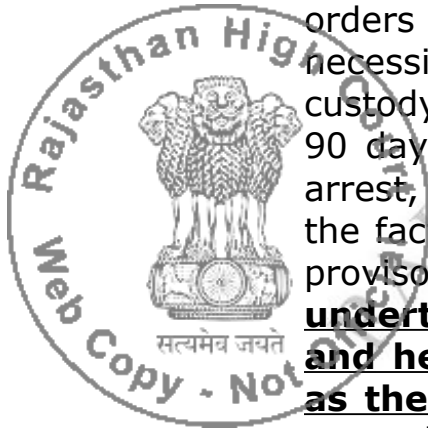
"3. We find that pursuant to the directions given by us in our order dated 9th March, 1979, Bhageshwari Prasad Pandey, Superintendent of the Patna Central Jail has filed an affidavit dated 4th April, 1979 along with a chart showing the dates on which petitioners Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 17 confined in the Patna Central Jail prior to their release on personal bond, were produced before the Magistrates in compliance with the proviso to Section 167 (2) of the Code of Criminal Procedure. A similar affidavit dated 4th April, 1979 has also been filed by Pradeep Kumar Gangoli, Superintendent of Muzaffarpur Jail along with a chart showing the dates on which petitioners Nos. 10, 11, 12, 13, 15, 16 and 18 who were previously confined in the Muzaffarpur Central Jail prior to their release on personal bond, were produced before the Magistrates in compliance with the requirement of the proviso to S. 167 (2). Bhuvan Mohan Munda, Superintendent of the Ranchi Central Jail has



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also filed an affidavit dated 12th April, 1979 together with a chart showing the dates on which some of the undertrial prisoners referred to in our Order dated 9th March, 1979 were produced before the Magistrates in compliance with the requirement of the proviso to Section 167 (2). It is apparent from these charts that some of the petitioners and other undertrial prisoners referred to in these charts have been produced numerous times before the Magistrates and the Magistrates have been continually making orders of remand to judicial custody. It is difficult to believe that on each of the countless occasions on which these undertrial prisoners were produced before the Magistrates and the magistrates made orders of remand, they must have applied their mind to the necessity of remanding those undertrial prisoners to judicial custody. We are also very doubtful whether on the expiry of 90 days or 60 days, as the case may be, from the date of arrest, the attention of the undertrial prisoners was drawn to the fact that they were entitled to be released on bail under proviso (a) of sub-section (2) of Section 167. **When an undertrial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days, as the case may, the Magistrate must, before making an order of further remand to judicial custody, point out to the undertrial prisoner that he is entitled to be released on bail.** The State Government must also provide at its own cost a lawyer to the undertrial prisoner with a view to enable him to apply for bail in exercise of his right under proviso (a) to sub-section (2) of Section 167 and the Magistrate must take care to see that the right of the undertrial prisoner to the assistance of a lawyer provided at State cost is secured to him and he must deal with the application for bail in accordance with the guidelines laid down by us in our Order dated 12th February, 1979. We hope and trust that every Magistrate in the country and every State Government will act in accordance with this mandate of the Court. This is the constitutional obligation of the State Government and the Magistrate and we have no doubt that if this is strictly carried out, there will be considerable improvement in the situation in regard to undertrial prisoners and there will be proper observance of the rule of law."

"6. We may point out that according to the law as laid down by us in our judgment dated 9th March, 1979, it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the State and the State is under a constitutional mandate to provide a lawyer to such accused person if the needs of justice so require. We do not know whether the State Government has set up any machinery for the purpose of providing free legal services to persons who are accused of offences involving possible deprivation of liberty and who are unable to engage a lawyer on account of poverty or





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indigence. This constitutional obligation cannot wait any longer for its fulfilment, since more than 30 years have passed from the date of enactment of the Constitution and no State Government can possibly have any alibi for not carrying out this command of the Constitution. We are repeating this observation once again in the present judgment because we find that barring a few, many of the State Governments do not seem to be alive to their constitutional responsibility in the matter of provision of free legal services in the field of administration of criminal justice. Let it not be forgotten that if law is not only to speak justice but also deliver justice, legal aid is an absolute imperative. Legal aid is really nothing else but equal justice in action. Legal aid is in fact the delivery system of social justice. It is intended to reach justice to the common man who, as the poet sang :

"Bowed by the weight of centuries he leans
Upon his hoe and gazes on the ground,
The emptiness of ages on his face,
And on his back the burden of the World."

We hope and trust that every State Government will take prompt steps to carry out its constitutional obligation to provide free legal services to every accused person who is in perial of losing his liberty and who is unable to defend himself through a lawyer by reason of his poverty or indigence in cases where the needs of justice s require. If free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Article 21 and we have no doubt that every State Government would try to avoid such a possible eventuality."

As per Rule 10 of the Rajasthan Prisoners Release on Parole Rules, 2021, every prisoner, who has served a particular part of his sentence (with the maximum being 5 years for life convicts) earns a right to be considered for release on parole. We have come across numerous cases wherein, the convicts languishing in jails for prolonged periods unable to avail the facility of parole because of poverty/ illiteracy and other trivial thereby, frustrating the spirit of the welfare legislation i.e. the Rules of 2021 (previously Rules of 1958).

It is indeed a pathetic state of affairs that the convict petitioner herein, has been granted first parole after serving



imprisonment of 14 years. We therefore direct the Member Secretary, Rajasthan State Legal Services Authority in coordination with the Director General of Prison, State of Rajasthan shall get prepared a computerized database of convicts lodged in the prisons all over the State of Rajasthan which may include the broad details viz. date of arrest of the convict; sentence served by him/her; jail punishment, if any; period of abscondance, if any; paroles granted, if any. The compliance report shall be submitted for the Court's perusal on 14.09.2021.

A prominent sign board shall be installed at the entries of all Central Jails in the State of Rajasthan displaying in Hindi the gist of Rule 10 of the Rajasthan Prisoners Release on Parole Rules, 2021. It shall be the duty of the Superintendent of jail concerned to inform all eligible prisoners of their right to be considered for being released on parole as soon as their cause becomes ripe.

Considering the fact that the convict petitioner has served 14 years imprisonment and is presently at the Open Air Camp, we deem it fit to grant him parole for a period of 40 days upon furnishing a personal bond in the sum of Rs.1,00,000/- only to the satisfaction of the Superintendent, District Jail, Barmer. He shall submit an undertaking to the Superintendent, District Jail, Barmer that he shall keep peace and good behaviour during the period of parole and shall not try to abscond failing which, his future opportunities of getting parole/ permanent parole/ staying in the Open Air Camp shall stand forfeited/ curtailed. The convict petitioner shall mark attendance at the concerned police station on every 10th day during the period of parole. The Superintendent, District Jail, Barmer shall be at liberty to impose other adequate and reasonable conditions to ensure return of the convict to the



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prison after availing the parole. The term of parole shall be computed from the date of actual release of the convict petitioner.

A copy of this order be sent to the Member Secretary, Rajasthan State Legal Services Authority and the Director General of Prison, Government of Rajasthan forthwith.

The parole writ petition is allowed accordingly.

List on 14.09.2021 for receiving compliance report.



(MANOJ KUMAR GARG),J

(SANDEEP MEHTA),J



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