

A

STATE OF HARYANA AND ORS.

v.

MOHINDER SINGH

FEBRUARY 7, 2000

B

[S. SAGHIR AHMAD AND D. P. WADHWA, JJ.]

C

Criminal Procedure Code, 1973—Section 432—Remission of sentence—Issuance of circular by State Government—Applicability of—Circular provides remission of sentence to all convicts who are confined in jail and are on parole or furlough from the jail on a specified date—But remission not granted to the prisoners convicted of rape or dowry death—Held, remission of sentence not available to prisoners on bail and those convicted for rape—Further, merely because when bail granted to prisoner his conviction was not suspended, the convict would not become entitled to remission under the circular for the period he was on bail—Punjab Jail Manual.

D

Words and Phrases :

Bail, furlough and Parole—Distinction between.

E

In exercise of powers conferred under Section 432 of Code of Criminal Procedure the State Government issued circulars for grant of remission of sentence. It granted special remission to the prisoners confined in jail and remission to all convicts on parole/furlough from the jail on a specified date. However, remission of sentence was not granted to prisoners convicted of rape or dowry death. Five respondents were on bail and the sixth one was convicted of an offence under section 376 I.P.C. As regards the respondent convicted for an offence under section 376 IPC, High Court considered paras 633, 635 and 637 of the Punjab Jail Manual as applicable in the State of Haryana. It held that the prisoner was entitled to remission as it was granted to those prisoners who were on parole/furlough or were in jail on the date of the circular granting remission. Hence, these appeals by the State.

F

G

Allowing these appeals, the Court

H

HELD : 1.1. The respondents on bail are not entitled to the benefits of remission of sentence under the circular issued by the State Government

under section 432 of the Criminal Procedure Code. When a circular specifically applies to the prisoners who are undergoing sentence and are confined in jail and even to those who are on parole or furlough, the circular cannot extend to convicts who are on bail and thus court cannot carve out another category to which they are not entitled under section 432 of the Code. [716-D; 717-D; 715-G-H] A

1.2. The respondent convicted of an offence under section 376 of the Indian Penal Code is not entitled to remission of sentence under the Government circular issued under section 432 of the Criminal Procedure code as the circular is not applicable to a person convicted of an offence under section 376 IPC. [716-C-D] B

1.3. The circular granting remission is authorised under the law. It prescribes limitations both as regards the prisoners who are eligible and those who have been excluded. Conditions for remission of sentence to the prisoners who are eligible are also prescribed by the circular. Prisoners have no absolute right for remission of their sentence except what is prescribed by law and the circular issued thereunder. Special remission not apply to a prisoner convicted of a particular offence can certainly be relevant consideration for the State Government not to exercise power of remission in that case. Power of remission cannot be exercised arbitrarily. Decision to grant remission has to be well informed, reasonable and fair to all concerned. [705-H; 706-A-B] C

Jai Prakash & Ors. v. State of Haryana and Others, [1987] 4 SCC 296, held applicable. D

Nalamolu Appala Swamy & Ors. v. State of Andhra Pradesh, [1989] Supp. 2 SCC 192, distinguished. E

2.1. Bail is granted by the officer-in-charge of a police station or by the court when a person is arrested and is accused of an offence other than non-bailable offence. Court grants bail when a person apprehends arrest in case of non-bailable offence or is arrested of a non-bailable offence. When a person is convicted of an offence he can be released on bail by the appellate court till his appeal is decided. If he is acquitted his bail bonds are discharged and if appeal is dismissed he is taken into custody. Bail can be granted subject to conditions. It does not appear to be quite material that during the pendency of appeal though his sentence is H

A suspended he nevertheless remains a convict. For the exercise of powers under section 432 Cr.P.C. the State Government may remit the whole or any part of the punishment to which a person has been sentenced even though his appeal against conviction and sentence was pending at that time. [706-C-E]

B 2.2. 'Furlough' and 'parole' are two distinct terms being used in the Jail Manuals or laws relating to temporary release of prisoners. These two terms have acquired different meanings in the statute with varied results. When a prisoner is on parole his period of release does not count towards the total period of sentence while when he is on furlough he is eligible to have the period of release counted towards the total period of his sentence undergone by him. [709-C; 711-E]

Poonam Lata v. M.L. Wadhawan & Others, [1987] 3 SCC 347, relied on.

D *Dictionary of American Penology*, by Vergil L. Williams; *Furlough Programs and Conjugal Visiting in Adult Correctional Institutions* by Carson W. Markley; *Black's Law Dictionary*, (6th Edn.); *Concise Oxford Dictionary - New Edition*; *Report of the All Committee on Jail Reforms 1980-83 (Volume-I)*, referred to.

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 141 of 2000 Etc. Etc.

From the Judgment and Order dated 12.11.98 of the Punjab & Haryana High Court in CrI. M. No. 26398-M of 1998.

F Mahabir Singh, S.R. Sharma, Shikha Roy Pabbi, S.K. Pabbi and Prem Malhotra for the Appellants.

Rao Ranjit, Kishan Datta, (Dayan Krishnan) for the Respondents.

G The Judgment of the Court was delivered by

D.P. WADHWA, J. Leave granted.

In five of the appeals (arising from SLP (CrI.) Nos. 1810/99, 145/2000, 1812/99, 2033-34/99 and 2151/99) out of the batch of six question involved

H is if the respondent, a convict, is entitled to remission of his sentence for

the period during which he is on bail. In the sixth appeal (arising from SLP (Crl.) 643/99) question is if the prisoner, who is convicted of an offence under Section 376 of Indian Penal Code (IPC), though confined in jail, is entitled to remission of his sentence when the Government circular issued under Section 432 of the Code of Criminal Procedure ('Code' for short) does not grant such remission to an inmate who has been convicted under Section 376, IPC.

High Court in batch of five appeals observed that conviction and sentence are two separate terms and that the moment a person is convicted he becomes stigmatic. High Court said that at that point of time he is a convict and if he has been granted bail by the appellate court it is by virtue of provision of Section 389 of the Code and his sentence stands suspended and not that his conviction is suspended and that with the dismissal of appeal of such convict stigma of conviction is not wiped off. High Court was, therefore, of the opinion that such a convict would be entitled to remission for the period he was on bail when the circular gave the benefit of remission to a prisoner on parole/furlough. High Court gave direction to the State Government to reconsider the case of the convict who, it said, should be entitled to the remission as per the circular during the period he was on bail.

In the sixth appeal (arising from SLP (Crl.) No. 643/99), where the respondent was convicted for an offence under Section 376 IPC. High Court considered various provisions of the Punjab Jail Manual as applicable in the State of Haryana (Paras 634, 635 and 637 of the Jail Manual) and held that the prisoner in this case was also entitled to remission as was granted to those prisoners who were on parole/furlough or were in jail on the date of the circular granting remission.

Before we consider the rival contentions it would be appropriate to set out the circulars granting remission to the prisoners. These circulars have been issued under Section 432 of the Code and their language is same. They were issued on different dates on July 22, 1987; March 16, 1988; August 14, 1989; August 14, 1991; January 29, 1992; April 29, 1993; and August 14, 1995. First such circular dated July 22, 1987 is applicable from July 6, 1987 and is as under :

"In exercise of the powers conferred under section 432 of the Code of Criminal Procedure, 1973, the Governor of Haryana

A hereby grants special remission to the prisoners who happen to be confined in Jails in the State of Haryana on 6th July, 1987 and who have been convicted by Civil Courts of criminal jurisdiction (Criminal Court of Competent jurisdiction) in the State of Haryana. The remission is granted on the following scale :-

B Remission

- | | |
|---|-----------|
| (i) Those who have been sentenced
for a period exceeding 10 years | 1 years |
| (ii) Those who have been sentenced
for a period exceeding 2 years and upto
10 years | 6 months. |
| (iii) Those who have been sentenced
for a period upto 2 years | 3 months |

D Provided that :

- | |
|--|
| (i) No remission will be granted to persons convicted of rape or
dowry deaths. |
| (ii) The remission will not exceed 1/4th of the period of sentence. |
| (iii) The minimum effective imprisonment will be three months
(or less where the actual sentence is less than 3 months) |

F 2. Remission will also be granted to all the convicts who were on parole/furlough from the jail on 6th July 1987 subject to the condition that they surrender at the jail on the due date after the expiry of parole/furlough period for undergoing unexpired portions of their sentences.

G 3. Sentence of imprisonment imposed in default of payment of the fine shall not be treated as substantive for the purpose of grant of this remission.

H 4. All the prisoners convicted by Civil Courts of criminal jurisdiction (Criminal Court of Competent Jurisdiction) in Haryana but undergoing their sentences in jails outside Haryana shall be entitled to the grant of remission on the above scale.

5. The remission will not be admissible to :-

A

(i) Detenus of any class.

(ii) The persons sentenced under the Foreigners Act 1948 and the Passport Act, 1967;

B

(iii) Pakishtani Nationals;

(iv) The persons sentenced under Sections 2 and 3 of Criminal Law Amendment Act, 1961 and sections 121 to 130 of the Indian Penal Code, 1860;

C

(v) The persons sentenced under sections 3, 4, 5, 6 to 10 of the Official Secrets Act, 1930;

(vi) The persons imprisoned for failing to give security for keeping peace for their good behaviour under sections 107/109 of the Criminal Procedure Code, 1973;

D

(vii) The persons who committed any major jail offence during the last two years and were punished for the same under the relevant provisions of Punjab Jail Manual; and

(viii) The persons who got the benefit of such a remission during the past one year from 6.7.87. The grant of this remission to life convicts will not effect the provisions of section 433-A Cr.P.C.

E

Dated Chandigarh.
the 22.7.87

M.C. GUPTA
Financial Commissioner & Secy.
to Govt. Haryana, Jails
Department."

F

Section 432 of the Code under which circular has been issued we reproduce :-

G

"432. *Power to suspend or remit sentences.* - (1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the

H

A punishment to which he has been sentenced.

B (2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

C (3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

E (4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

F (5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

G Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the persons sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and —

(a) where such petition is made by the person sentenced, it is presented through the officer-in-charge of the jail; or

H (b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a criminal court under any section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property. A

(7) In this section and in Sec. 433, the expression "appropriate Government" means. - B

(a) In cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under any law relating to a matter to which the executive power of the Union extends, the Central Government; C

(b) In other cases, the Government of the State within which the offender is sentenced or the said order is passed".

Article 161 of the Constitution also grants power to the Governor to grant pardons, etc. Though that Article may not be quite relevant in the present appeals but we may note the same - D

"161. Power of Governor to grant pardons, etc. and to suspend, remit or commute sentences in certain cases. — The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends." E

It is not disputed that the circulars have been issued by the State Government in the exercise of powers conferred under Section 432 of the Code. Its authority to issue the circulars has not been questioned. From the language of the circular aforesaid it is relevant to note three points for the purpose of these appeals : (1) It grants special remission to the prisoners, who are confined in jails in the State of Haryana on July 6, 1987 (2) Remission is also to be granted to all the convicts who are even on parole/furlough from the jail on July 6, 1987 (3) The remission of sentence cannot be granted to prisoners convicted of rape or dowry deaths. F G

The circular granting remission is authorised under the law. It prescribes limitations both as regards the prisoners who are eligible and those who have been excluded. Conditions for remission of sentence to the H

- A prisoners who are eligible are also prescribed by the circular. Prisoners have no absolute right for remission of their sentence unless except what is prescribed by law and the circular issued thereunder. That special remission shall not apply to a prisoner convicted of a particular offence can certainly be relevant consideration for the State Government not to exercise power of remission in that case. Power of remission, however, cannot be exercised arbitrarily. Decision to grant remission has to be well informed, reasonable and fair to all concerned.

- Terms bail, furlough and parole have different connotations. Bail is well understood in criminal jurisprudence. Provisions of bail are contained in Chapter XXXIII of the Code. It is granted by the officer-in-charge of a police station or by the court when a person is arrested and is accused of an offence other than non-bailable offence. Court grants bail when a person apprehends arrest in case of non-bailable offence or is arrested of a non-bailable offence. When a person is convicted of an offence he can be released on bail by the appellate court till his appeal is decided. If he is acquitted his bail bonds are discharged and if appeal dismissed he is taken into custody. Bail can be granted subject to conditions. It does not appear to be quite material that during the pendency of appeal though his sentence is suspended he nevertheless remains a convict. For the exercise of powers under Section 432 it may perhaps be relevant that the State Government may remit the whole or any part of the punishment to which a person has been sentenced even though his appeal against conviction and sentence was pending at that time. Appeal in that case might have to abate inasmuch as the person convicted has to accept the conditions on which State Government remits the whole or in part of his punishment.

In Dictionary of American Penology, by Vergil L. Williams 'furlough' is described as under :-

- G "Furloughs are variously known as temporary leaves, home visits, or temporary community release. For decades, prisons have occasionally granted short furloughs to inmates who were suddenly faced with a severe family crisis such as a death or grave illness in the immediate family. Furloughs of that type are treated as special circumstances, and often the inmate must be accompanied by an officer as part of the terms of the temporary release".
- H

In the article 'Furlough Programs and Conjugal Visiting in Adult Correctional Institutions' by Carson W. Markley in Volume. "Federal Probation" it is mentioned that "the term 'furlough' is frequently confused with special leave, which most adult institutions have long been willing to grant under extenuating circumstances, such as family crises. A prisoner on special leave customarily travels under escort, while on furlough he is on his own".

'Furlough' according to Black's Law Dictionary (6th edn.) means "a leave of absence; e.g. temporary leave of absence to one in the armed service of the country; an employee placed in a temporary status without duties and pay because of lack of work or funds or for other non-disciplinary reasons. Also the document granting leave of absence." According to The Concise Oxford Dictionary (new edition) "Furlough" means : "leave of absence, esp. granted to a member of the services or to a missionary".

Parole is defined in these two dictionaries as under :

The Concise Oxford Dictionary - New Edition

"The release of a prisoner temporarily for a special purpose or completely before the expiry of a sentence, on the promise of good behaviour; such a promise, a word of honour".

Black's Law Dictionary - Sixth Edition

"Release from Jail, prison or other confinement after actually serving part of sentence; conditional release from imprisonment which entitles parolee to serve remainder of his term outside confines of an institution, if he satisfactorily complies with all terms and conditions provided in parole order."

In *Poonam Lata v. M.L. Wadhawan and Others*, [1987] 3 SCC 347 this Court was considering the nature and scope of parole in a case of preventive detention. It said :-

"There is no denying of the fact that preventive detention is not punishment and the concept of serving out a sentence would not legitimately be within the purview of preventive detention. The grant of parole is essentially an executive function and instances of release of detenus on parole were literally unknown until this

- A Court and some of the High Courts in India in recent years made orders of release on parole on humanitarian considerations. Historically 'parole' is a concept known to military law and denotes release of a prisoner of war on promise to return. Parole has become an integral part of the English and American systems of criminal justice intertwined with the evolution of changing attitudes of the society towards crime and criminals. As a consequence of the introduction of parole into the penal system, all fixed-term sentences of imprisonment of above 18 months are subject to release on licence, that is, parole after a third of the period of sentence has been served. In those countries parole is taken as an act of grace and not as a matter of right and the convict prisoner may be released on condition that he abides by the promise. It is a provisional release from confinement but is deemed to be a part of the imprisonment. Release on parole is a wing of the reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is thus a grant of partial liberty or lessening of restrictions to a convict prisoner, but release on parole does not change the status of the prisoner. Rules are framed providing supervision by parole authorities of the convicts released on parole and in case of failure to perform the promise, the convict released on parole is directed to surrender to custody. (See *The Oxford Companion to Law*, edited by Walker, 1980 edn. p.931; *Black's Law Dictionary*, 5th edn., p. 1006; *Jowitt's Dictionary of English Law*, 2nd edn., Vol. 2, p. 1320; *Kenny's Outlines of Criminal Law*, 17th edn., pp.574-76; *The English Sentencing System* by Sir Rupert Cross at pp.31-34, 87 et. seq., *American Jurisprudence*, 2nd edn., Vol. 59, pp.53-61; *Corpus Juris Secundum*, Vol. 67; *Probation and Parole, Legal and Social Dimensions* by Louis P. Carney) It follows from these authorities that parole is the release of a very long term prisoner from a penal or correctional institution after he has served a part of his sentence under the continuous custody of the State and under conditions that permit his incarceration in the event of misbehaviour.
- B
- C
- D
- E
- F
- G

Para 20.8 in Chapter XX dealing with "System of Remission, Leave and Premature Release" of the Report of the All India Committee on Jail Reforms, 1980-83 (Volume-1) refers to leave which can be granted to the

H petitioner. The relevant portion is as under :

"Different concepts such as parole, furlough, ticket of leave, home leave, etc., are used in different States to denote grant of leave or emergency release to a prisoner from prison. The terminology used is not uniform and is thus confusing. There is also no uniformity with regard to either the grounds on which leave is sanctioned or the level of authority empowered to sanction it. There is also a lot of diversity in the procedure for grant of leave. The scales at which these leaves are granted also different from State to State; for example in some States parole is granted for a period extending upto 15 days while in other States it is restricted to 10 days only."

'Furlough' and 'parole' are two distinct term now being used in the Jail Manuals or laws relating to temporary release of prisoners. These two terms have acquired different meanings in the statute with varied results. Dictionary meanings, therefore, are not quite helpful. In this connection we may refer to the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 which has repealed the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962. Punjab act was earlier applicable in the State of Haryana. Language of both the Acts is same and it may be useful to refer Sections 3 and 4 of any of these two Acts to understand the difference between parole and furlough :

"3. *Temporary release of prisoners on certain grounds.* - (1) The State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the Official Gazette and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2), any prisoner, if the State Government is satisfied that -

- (a) a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill; or
- (b) the marriage of prisoner himself, his son, daughter, grandson, grand-daughter, brother, sister, sister's son or daughter is to be celebrated; or
- (c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any

A other agricultural operation on his land or his father's undivided land actually in possession of the prisoner; or

(d) it is desirable to do so for any other sufficient cause.

B (2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed :-

(a) where the prisoner is to be released on the ground specified in clause (a) of sub-section (1), three weeks;

C (b) where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and

D (c) where the prisoner is to be released on the ground specified in clause (c) of sub-section (1), six weeks :

Provided that the temporary release under clause (c) can be availed more than once during the year, which shall not, however, cumulatively exceed six weeks.

E (3) The period of release under this section shall not count towards the total period of sentence of a prisoner.

(4) The State Government may, by notification, authorise any officer to exercise its powers under this section in respect of all or any other ground specified thereunder.

F 4. *Temporary release of prisoners on furlough.* - (i) The State Government or any other office authorised by it in this behalf may, in consultation with such other officer as may be appointed by the State Government, by notification, and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than four years and who --

G (a) has, immediately before the date of his temporary release, undergone continuous imprisonment for a period of three years, inclusive of the pre-sentence detention, if any ;

H

- (b) has not during such period committed any jail offence (except an offence punished by a warning) and has earned at least three annual good conduct remissions: A

Provided that nothing herein shall apply to a prisoner who -

- (i) is a habitual offender as defined in sub-section (3) of section 2 of Punjab Habitual Offenders (Control and Reform) Act, 1952; or B
- (ii) has been convicted of dacoity or such other offence as the State Government may, by notification, specify. C

(2) The period of furlough for which a prisoner is eligible under sub-section (1) shall be three weeks during the first year of his release and two weeks during each successive year thereafter.

(3) Subject to the provisions of clause (d) of sub-section (3) of section 8 the period of release referred to in sub-section (1) shall count towards the total period of the sentence undergone by a prisoner. D

It would be thus seen that when a prisoner is on parole his period of release does not count towards the total period of sentence while when he is on furlough he is eligible to have the period of release counted towards the total period of his sentence undergone by him. Delhi Jail Manual also uses the same terminology which we may set out as under :- E

"Part I (Parole) F

1.(i) A prisoner may be released on parole for such period as government may order in cases of serious illness or death of any member of prisoner's family or his nearest relatives. For this purpose the prisoner's family or his nearest relatives mean his/her parents, brothers, sisters, wife/husband and children. A prisoner may similarly be released on parole to arrange for the marriage of his issue for a period of not exceeding four weeks. G

(ii) The period spent on parole will not count as part of the sentence. H

A 2.

3.

Part II (Furlough)

B 1. (i) A prisoner who is sentenced to 5 years or more of rigorous imprisonment and who has actually undergone three years imprisonment excluding remission may be released on furlough. The first spell may be three weeks and subsequent spells of two weeks each, per annum, provided that -

C (a) his conduct in jail has been good; he has earned three Annual Good Conduct Remissions and provided further that he continues to earn good conduct remission or maintains good conduct.

D (b) that he is not a habitual offender;

(c) that he is not convicted of robbery with violence, dacoity and arson;

E (d) that he is not such a person whose presence is considered highly dangerous or prejudicial to public peace and tranquility by the District Magistrate of his home district.

(ii) The period of furlough will count as sentence undergone except any such period during which the prisoner commits an offence outside.

F 2 to 6

Chapter XX of the Punjab Jail Manual as applicable in the State of Haryana contains remission system. paras 633, 633A, 635, 637, 644 and 645 are relevant for our purpose which we set out hereunder :

G "633. Cases in which ordinary remission not earned. - No ordinary remission shall be earned in the following cases, namely ;

H (1) in respect of any sentence of imprisonment amounting, exclusive of any sentence passed in default of payment of fine, to less than three months;

- (2) in respect of any sentence of simple imprisonment except for any continuous period not being less than one month during which the prisoner labours voluntarily:

633-A. Ordinary remission not earnable for certain offences committed after admission to jail. - If a prisoner is convicted of an offence committed after admission to jail under sections 147, 148, 152, 224, 302, 304, 304-A, 306, 307, 308, 323, 324, 325, 326, 332, 333, 352, 353 or 377 of the Indian Penal Code, or of an assault committed after admission to Jail on a warder or other officer or under section 6 of the Good Conduct Prisoners Probational Release Act, 1926 (X of 1926), the remission of whatever kind earned by him under these rules up to the date of the said conviction may, with the sanction of the Inspector-General of Prisons, be cancelled.

635. Scale of award or remission - Ordinary remission shall be awarded on the following scale :-

- (a) two days per month for thoroughly good conduct and scrupulous attention to all prison regulations.
- (b) two days per month for industry and the due performance of the daily task imposed.

637. Application of remission of system - Subject to the provisions of paragraph 634 remission under paragraph 635 shall be calculated from the first day of the calendar month next following the date of prisoner's sentence; any prisoner who after having been released on bail or because its sentence has been temporarily suspended is afterwards re-admitted in the jail shall be brought under the remission system on the first day of the calendar month next following his re-admission, but shall be credited on his return to jail with any remission which he may have earned previous to his release on bail or the suspension of his sentence. Remission under paragraph 636 shall be calculated from the first day of the next calendar month following the appointment of the prisoner as convict warder, convict overseer or convict night watchman.

A 644. *Special remission.* - (1) Special remission may be given to any prisoner whether entitled to ordinary remission or not other than a prisoner undergoing a sentence referred to in paragraph 632, for special service as for example. -

For the existing para the following shall be substituted.

B (1) Special remission may be given to any prisoner whether entitled to ordinary remission or not other than a prisoner undergoing a sentence referred to in paragraph 632, for special services as for example.

C (a) assisting in detecting or preventing breaches of prison discipline or regulations,

(b) success in teaching handicrafts,

D (c) special excellence in, or greatly increased out-turn of work of good quality,

(d) protecting an officer of the prison from attack,

(e) assisting an officer of the prison in the case of outbreak of fire or similar emergency,

E (f) economy in wearing clothes,

(g) donating blood to the Blood Bank provided that the scale of special remission for this service shall be fifteen days for each occasion on which blood is donated subject to the limit laid down in sub-para (3),

F (h) voluntarily undergoing vasectomy operation by a prisoner, having three children, provided that the scale of special remission for such service shall be 30 days, subject to the limits laid down in sub-para (3).

G (2) Special remission may also be given to any prisoner released under the Good Conduct Prisoners' Probational Release Act, 1926 for special services as :

H (i) Special excellence in, of greatly increased out- turn or good quality,

- (ii) Assisting employer in case of out-break or fire or protecting his life or property from theft and other meritorious services. A

(3) Special remission may be awarded :-

- (i) by the Superintendent to an amount not exceeding three days in one year. B

- (ii) by the Chief Probation Officer in the case of prisoners released under the provisions of the Good Conduct Prisoners' Probational Release Act, 1926 to an amount not exceeding 30 days in one year. C

- (iii) by the Inspector-General of the Local Government to an amount not exceeding sixty days in one year.

EXPLANATION:- For the purpose of this rule, years shall be reckoned from the date of sentence and any fraction of a year shall be reckoned as a complete year. D

(4) An award of special remission shall be entered on the history ticket of the prisoner as soon as possible after it is made, and the reasons for every award of special remission by a Supdt. shall be briefly recorded, and in case of prisoners released under the Good Conduct Prisoners' Probational Release Act, 1926, such entries and reasons thereof shall be recorded by the Probation Officer. E

645. *Total remission not to exceed one-fourth part of sentence.* - The total remission awarded to a prisoner under all these rules shall not without the special sanction of the Local Government, exceed one-fourth part of his sentence. F

Provided in every exceptional and suitable cases the Inspector-General of Prisons may grant remission amounting to not more than one-third of the total sentence." G

When a circular specifically applies to the prisoners who are undergoing sentence and are confined in jail and even to those who are on parole or furlough were cannot extend this circular to convicts who are on bail and thus carve out another category to which Court is not entitled under Section 432 of the Code. As noted above, validity of the circular has not H

A been challenged on any other ground.

B In the case of Harphool Singh, who was convicted of rape, circular specifically is not applicable to the prisoner convicted of an offence of rape or other dowry offences. Perhaps, this provision was not brought to the notice of the High Court when it held that circular would also apply in the case of Harphool Singh. It was submitted by Mr. Dayan Krishnan, learned *amicus curiae* that nevertheless Harphool Singh might have already undergone the sentence after earning remission under the Punjab Jail Manual and present appeal in his case would be infructuous. It will be for the State Government to consider, if Harphool Singh has served out his sentence in C normal course without getting any remission under the circular on the basis of the impugned judgment of the High Court. It is not disputed that Harphool Singh has already got benefit of remission to which he was entitled under Chapter XX of the Punjab Jail Manual. He is certainly not entitled to remission under the circular as that is not applicable to a person convicted of an offence under Section 376 IPC. D

From para 637 as reproduced above a convict on bail is not entitled to the benefit of remission system. In fact question is no longer *res integra* as it is covered by the decision of this Court in *Jai Prakash and Others v. State of Haryana and Ors.*, [1987] 4 SCC 296. While considering the scope of para 637 this Court held:- E

"On a reading of the aforesaid provision it is manifest that a prisoner who has been released on bail or whose sentence has been temporarily suspended and has afterwards been re-admitted in jail will be brought under remission system on the first day of the calendar month next following his re-admission. In other words, a prisoner is not eligible for remission of sentence during the period he is on bail or his sentence is temporarily suspended. The submission that the petitioners who were temporarily released on bail are entitled to get the remission earned during the period they were on bail, is not at all sustainable." F G

In the appeals where the convicts were on bail High Court in the impugned judgments relied on a decision of this Court in *Nalamolu Appala Swamy and Others v. State of Andhra Pradesh*, [1989] Supp. 2 SCC 192 H where this Court observed as under :

"We find merit in the contention because the scheme of remission formulated under the GO is with reference to the period of sentence actually undergone by different classes of prisoners and in the case of some the period of actual sentence together with the remissions earned for reckoning the total sentence. The GO does not stipulate that in order to get the benefit of remission the prisoners must actually be in jail on the date the GO was issued."

Decision of this Court in the case of *Nalamolu Appala Swamy* aforesaid, however turns on the facts of that case. The GO which granted remission has not been set out in the judgment though the judgment noticed that GO has been issued by the Government for granting remission to certain categories of prisoners "to commemorate the occasion of the anniversary of formation of the Andhra Pradesh State on November 1, 1984 and the restoration of democratic rule in the State". The Court also noticed the argument of the appellants that GO nowhere sets out that benefit of remission would be confined to prisoners who were actually in jail on the date of the GO and not to others who were on bail.

We are of the opinion that the High Court was not right in the judgments impugned in these appeals holding that the respondents were entitled to remission of their sentences under the circulars in question issued under Section 432 of the Code of Criminal Procedure. These appeals are, therefore, allowed and the impugned judgments of the High Court are set aside.

We place on record our appreciation of the valuable assistance rendered to us by Mr. Dayan Krishnan, Advocate who appeared as *amicus curiae*

N.J.

Appeals allowed.