RAM CHANDER

v.

THE STATE OF CHHATTISGARH & ANR.

(Writ Petition (Crl.) No. 49 of 2022)

APRIL 22, 2022

[DR. DHANANJAYA Y CHANDRACHUD AND ANIRUDDHA BOSE, JJ.]

Code of Criminal Procedure, 1973: s. 432- Power to suspend or remit sentences – Application of a convict for premature release – On completion of 16 years of imprisonment without remission – Value of the Opinion of the Presiding Judge – There is nothing to indicate that the presiding judge took into account the factors for grant of remission – In his opinion dated 21 July 2021 the Special Judge, Durg referred to the crime for which the petitioner was convicted and simply stated that in view of the facts and circumstances of the case it would not be appropriate to grant remission – The opinion is in the teeth of the provisions of Section 432 (2) of the CrPC which require that the presiding judge's opinion must be accompanied by reasons – Halsbury's Laws of India (Administrative Law) notes that the requirement to give reasons is satisfied if the concerned authority has provided relevant reasons – Mechanical reasons are not considered adequate – Thus, an opinion accompanied by inadequate reasoning would not satisfy the requirements of Section 432 (2) of the CrPC – Further, it will not serve the purpose for which the exercise under Section 432 (2) is to be undertaken, which is to enable the executive to make an informed decision taking into consideration all the relevant factors – Petitioner's application for remission should be re-considered – Special Judge, Durg to provide an opinion on the application afresh accompanied by adequate reasoning that takes into consideration all the relevant factors that govern the grant of remission.

Constitution of India, 1950 – Art.32 – Penal Code, 1860 – ss.148,149,302 – Code of Criminal Procedure, 1973 – ss. 432, 433A - Chhattishgarh Prisons Rule 1968 - Rule 358- Pre-mature release - Remission of sentence - On 7 December 2010, trial court convicted the petitioner and other accused for assaulting the

complainant and killing his father and brother – Petitioner sentenced to life imprisonment – Sentence confirmed by High Court – Special leave petition filed by petitioner also got dismissed – Thereafter, on completion of 16 years of imprisonment without remission, petitioner applied for premature release to respondent under Rule 358 of Chhattishgarh Prisons Rule 1968 – As required to be taken u/s. 433 A CrPC, Jail Superintendent sought opinion of the Special Judge on whether the petitioner can be released on remission - On 2 July 2021, the Special Judge gave his opinion - That in view of all the facts and circumstances of the case, it would not be appropriate to allow remission of the remaining sentence of the petitioner - Opinion of Law Department also sought – Law Department stated that since the presiding judge of the sentencing court has not given a positive opinion, he cannot be released – Feeling aggrieved, present appeal filed - Held : The purpose of the procedural safeguard u/s 432 (2) of the CrPC would stand defeated if the opinion of the presiding judge becomes just another factor that may be taken into consideration by the government while deciding the application for remission – It is possible then that the procedure u/s. 432 (2) would become a mere formality – However, this is not to say that the appropriate government should mechanically follow the opinion of the presiding judge – If the opinion of the presiding judge does not comply with the requirements of s. 432 (2) or if the judge does not consider the relevant factors for grant of remission that have been laid down in Laxman Naskar v. Union of India *the government may request the presiding judge to consider the matter afresh – In the present case, there is nothing to indicate that the presiding judge took into account the factors which have been laid down in Laxman Naskar – Thus, an opinion accompanied by inadequate reasoning would not satisfy the requirements of s. 432 (2) of the CrPC – Further, it will not serve the purpose for which the exercise u/s. 432 (2) is to be undertaken, which is to enable the executive to make an informed decision taking into consideration all the relevant factors – Hence, the petitioner's application for remission should be re-considered – Special Judge is directed to provide an opinion on the application afresh accompanied by adequate reasoning that takes into consideration all the relevant factors that govern the grant of remission as laid down in* Laxman Naskar.

Power of Remission - Judicial Review - Discussed.

Allowing the writ petition, the Court A

HELD: 1. While a discretion vests with the government to suspend or remit the sentence, the executive power cannot be exercised arbitrarily. The prerogative of the executive is subject to the rule of law and fairness in state action embodied in Article 14 of the Constitution. The power of remission cannot be B **exercised arbitrarily. The decision to grant remission should be informed, fair and reasonable. [Para 12][1116-B-C]**

2. While the court can review the decision of the government to determine whether it was arbitrary, it cannot usurp the power of the government and grant remission itself. Where C **the exercise of power by the executive is found to be arbitrary, the authorities may be directed to consider the case of the convict afresh. The Court has the power to review the decision of the government regarding the acceptance or rejection of an application for remission under Section 432 of the CrPC to** D **determine whether the decision is arbitrary in nature. The Court is empowered to direct the government to reconsider its decision. [Paras 13 and 14][1116-F-G; 1120-A-B]**

3. Sub-section (2) of Section 432 of the CrPC provides that the appropriate government may take the opinion of the presiding E **judge of the court before or by which the person making an application for remission has been convicted on whether the application should be allowed or rejected, together with the reasons for such opinion. [Para 15][1120-B-C]**

4. There appears to be a difference of opinion between the F **High Courts on whether the opinion of the presiding judge is binding on the government. The High Court of Judicature at Bombay has held that the opinion of the presiding judge is binding. [Para 18][1123-F-G]**

5. On the other hand, the High Court of Patna has held that G **the opinion of the presiding judge is not binding but is only a guiding factor. The High Court observed that the State Sentence**

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Remission Board consists of high-level officials who can exercise their independent wisdom and are not bound by the opinion of the presiding judge. [Para 19][1124-H; 1125-A]

6. In *Sriharan*, the Court observed that the opinion of the presiding judge shines a light on the nature of the crime that has been committed, the record of the convict, their background and other relevant factors. Crucially, the Court observed that the opinion of the presiding judge would enable the government to take the 'right' decision as to whether or not the sentence should be remitted. Hence, it cannot be said that the opinion of the presiding judge is only a relevant factor, which does not have any determinative effect on the application for remission. The purpose of the procedural safeguard under Section 432 (2) of the CrPC would stand defeated if the opinion of the presiding judge becomes just another factor that may be taken into consideration by the government while deciding the application for remission. It is possible then that the procedure under Section 432 (2) would become a mere formality. However, this is not to say that the appropriate government should mechanically follow the opinion of the presiding judge. If the opinion of the presiding judge does not comply with the requirements of Section 432 (2) or if the judge does not consider the relevant factors for grant of remission that have been laid down in *Laxman Naskar v. Union of India's* case, the government may request the presiding judge to consider the matter afresh. [Paras 20 and 21][1125-G-H; 1126-A-C]

7. In the instant case, there is nothing to indicate that the presiding judge took into account the factors which have been laid down in *Laxman Naskar v. Union of India's* case. These factors include assessing (i) whether the offence affects the society at large; (ii) the probability of the crime being repeated; (iii) the potential of the convict to commit crimes in future; (iv) if any fruitful purpose is being served bykeeping the convict in prison; and (v) the socio-economic condition of the convict's family. These factors would be considered while deciding the application of a convict for premature release. [Para 22][1126-C-E]

State of Haryana v. Jagdish **(2010) 4 SCC 216 : [2010] 3 SCR 716;** *Laxman Naskar v. State of West Bengal* **(2000) 7 SCC 626 : [2000] 3 Suppl. SCR 62 – relied on.**

8. In his opinion dated 21 July 2021 the Special Judge, referred to the crime for which the petitioner was convicted and simply stated that in view of the facts and circumstances of the case it would not be appropriate to grant remission. The opinion is in the teeth of the provisions of Section 432 (2) CrPC which require that the presiding judge's opinion must be accompanied by reasons. The requirement to give reasons is satisfied if the concerned authority has provided relevant reasons. Mechanical reasons are not considered adequate. Thus, an opinion accompanied by inadequate reasoning would not satisfy the requirements of Section 432 (2) CrPC. Further, it would not serve the purpose for which the exercise under Section 432 (2) is to be undertaken, which is to enable the executive to make an informed decision taking into consideration all the relevant factors. [Paras 23 and 24][1126-F-G; 1127-D]

Halsbury's Laws of India (Administrative Law) (Lexis Nexis, Online Edition) – **referred to.**

9.The petitioner's application for remission should be re-considered. The Special Judge is directed to provide an opinion on the application afresh accompanied by adequate reasoning that takes into consideration all the relevant factors that govern the grant of remission as laid down in *Laxman Naskar v. Union of India*. [Para 25][1127-E-F]

Union of India v. Sriharan @ Murugan **(2014) 4 SCC 242 : [2014] 1 SCR 1093;** *Sangeet v. State of Haryana* **(2013) 2 SCC 452 : [2012] 13 SCR 85;** *State of Haryana v. Mohinder Singh* **(2000) 3 SCC 394 : [2000] 1SCR 698;** *Bhagwat Saran v. State of UP* **1983 (1) SCC 389;** *Yoshevel v. State of Bombay* **Crl. Writ Petition No 273 of 2019;** *Union of India v. Sriharan* **(2016) 7 SCC 1 : [2015] 14 SCR 613;** *State of Madhya Pradesh v.*

A *Ratan Singh* **(1976) 3 SCC 470 : [1976] 0 Suppl. SCR 552;** *Rajan v. Home Secretary, Home Department of Tamil Nadu* **(2019) 14 SCC 114 : [2019] 6 SCR 1035 – referred to.**

Case Law Reference

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[2014] 1 SCR 1093	**referred to**	**Para (9 v)**
[2012] 13 SCR 85	**referred to**	**Para (9 vi)**
[2000] 1 SCR 698	**referred to**	**Para (9 vii)**
C **[1983] 1 SCC 389**	**referred to**	**Para (9 viii)**
[2015] 14 SCR 613	**referred to**	**Para (10 iii)**
[1976] Suppl. SCR 552	**referred to**	**Para (10 iv)**
[2019] 6 SCR 1035	**referred to**	**Para (10 iv)**
D **[2000] 3 Suppl. SCR 62**	**relied on**	**Para 22**
[2010] 3 SCR 716	**relied on**	**Para 22**

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Crl) No. 49 of 2022.

E (UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

Mohd. Irshad Hanif, Rizwan Ahmad, Mujahid Ahmed, A. R. Siddiqui, Paras Nath Singh, Advs. for the Petitioner.

Sumeer Sodhi, Gaurav Arora, Advs. for the Respondents.

F The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. The petition under Article 32 of the Constitution has been instituted by a convict, who is undergoing a sentence of imprisonment for life upon being convicted for the commission of offences punishable, *inter alia*, under Section 302 read with Section 149 of the Indian Penal Code[1]. He seeks the issuance of a writ directing the first respondent to grant him pre-mature release. The factual background has been set out below.

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H [1] "**IPC**"

Factual Background

2. The petitioner and co-accused came in a tractor carrying deadly weapons and assaulted the complainant and killed his father and brother, when they were sitting near a village pond along with other villagers. The cause of the enmity between the parties was the confiscation of *shisham* wood belonging to one of the co-accused by the forest department and the damage caused to his motorcycle and tractor, for which the accused persons suspected the complainant and his family. The trial court[2] convicted the petitioner and the other accused on 7 December 2010. The petitioner was convicted of offences under Sections 147, 148, 302/149 and 324/149 of the IPC and sentenced to life imprisonment. While a charge was also framed under Section 3(2) (5) of the Scheduled Castes and Tribes Act 1989 since the complainant and his family belonged to a Scheduled Caste, the trial court acquitted all the accused of the charge because no evidence was found to show that the complainant or the deceased were humiliated or intimidated on the basis of their caste. The sentence was confirmed by the High Court of Chhattisgarh[3] on 10 May 2013. Aggrieved by the judgement of the High Court, the petitioner preferred a special leave petition[4] before this Court which was dismissed.

3. On 25 September 2021, the petitioner completed 16 years of imprisonment without remission and submitted an application for premature release to the respondent under Rule 358 of the Chhattisgarh Prisons Rule 1968[5]. Rule 358 provides thus:

> **"Rule 358 – Premature Release of Prisoners Sentenced to Life Imprisonment**
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> .....
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> (3)(A). The matter of every male or female prisoner who is serving a sentence of life imprisonment after 17th December, 1978 and who are convicted under the punishable offences under Section 121, 132, 302, 307 and 396 of IPC or under any other criminal laws, in which capital punishment is one of the sentences, shall be

[2] ST No 16/2006
[3] Criminal Appeal No. 933/2010
[4] Special Leave Petition (Criminal) No. 1348-49 of 2015
[5] "**Prison Release Rules**"

A taken into consideration for him/her premature release from the jail with this condition where such convict has completed the period of imprisonment of 14 years necessary sentence of imprisonment without remission subject to the consideration of such prisoners shall not be prohibited under legal provisions.

B (B) The matter to premature release of all other male prisoners serving the sentence of life imprisonment shall only be taken into consideration only in that condition if they have spent the period of minimum 14 years imprisonment without remission and if they have completed actual imprisonment of 10 years without remission.

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(D) The matter to premature release of all such prisoners serving the sentence of life imprisonment shall only be taken into consideration only in that condition if they have attained the age of 65 years and if they have completed actual imprisonment of 7 years without remission. "

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4. The State Government is empowered under Section 432 of the Code of Criminal Procedure[6] to suspend or remit sentences. Sub-section (2) of Section 432 provides that the appropriate government may take the opinion of the presiding judge of the court before or by which the person making an application for remission has been convicted on whether the application should be allowed or rejected, together with the reasons for such opinion. Sub-section (2) of Section 432 reads thus:

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"Section 432- Power to suspend or remit sentences.

....

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(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.

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H [6] "**CrPC**"

5. Section 433-A of the CrPC lays down the restriction on powers of remission in the following terms:

> "**433A. Restriction on powers of remission or commutation in certain cases**.-Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

6. By a letter dated 1 May 2021, the Jail Superintendent of the Central Jail at Durg sought the opinion of the Special Judge, Durg on whether the petitioner can be released on remission. On 2 July 2021, the Special Judge gave his opinion that in view of all the facts and circumstances of the case, it would not be appropriate to allow remission of the remaining sentence of the petitioner. The relevant portions of the letter containing the opinion of the Special Judge are reproduced below:

> "Perused the documents filed alongwith the present application. Perused the judgement dated 07.12.2010 passed in Special Case No. 16/2006 "State Vs. Anil & Ors." under Section 147, 148, 302/ 149, 302/ 149, 307/149 and 3 (2) (5) Scheduled Caste Schedule Tribe, (Prevention of Corruption) Act. Accused Ramchander son of Khajaan Singh alongwith 8 other co-accused persons has assembled against the law and by using deadly weapons sword, axe, wooden stick (Danda), has killed Kartikram and Puneet, in relation to this case the accused is undergoing imprisonment.
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> Then in this situation keeping in view all the facts and circumstances, it does not seem appropriate to allow remission of the remaining sentence of the above prisoner, therefore not recommending for the same."

7. The application for remission of the petitioner, along with the opinion of the Special Judge, was forwarded to the Director General, Jail and Correctional services. On 30 September 2021, the Director General presented the case of the petitioner to the Home Department, Government of Chhattisgarh by a letter addressed to the Additional Chief

A Secretary, Jail Department. Thereafter, the Jail Department in a note sheet dated 6 October 2021 forwarded the case of the petitioner to the Law Department of the State Government. The Under Secretary of the Law Department shared his opinion through a note sheet dated 27 November 2021 stating that the petitioner cannot be given the benefit of the provisions of Section 433-A CrPC because the presiding judge opined against releasing the petitioner on remission.

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8. On 2 March 2022. the Director General, Jail and Correctional Services again forwarded the case of the petitioner to the Additional Chief Secretary, Jail Department to be considered for remission since the petitioner had completed 20 years of imprisonment with remission. The Jail Department sought the opinion of the Law Department, which stated that since the presiding judge of the sentencing court has not given a positive opinion with regard to the release of the petitioner, he cannot be released.

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Submissions of Counsel

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9. Mr MD Irshad Hanif, counsel appearing on behalf of the petitioner, made the following submissions:

(i) A convict-prisoner can be considered for pre-mature release under Section 433-A of the CrPC after the completion of 14 years even without the consent of the presiding judge of the sentencing court;

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(ii) Under Section 432 (2) of the CrPC, the appropriate Government has the discretion to seek the opinion of the presiding judge of the sentencing court;

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(iii) There is absence of clarity in Section 432(2) of the CrPC to indicate whether the presiding judge whose opinion is to be sought should be the same as the judge who recorded the conviction since he would not have observed the conduct of the accused-convict during the trial;

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(iv) The petitioner is entitled to be considered for pre-mature release under Rule 358 (3) (A), (B) and (D) of the Prison Rules;

(v) While the government is bound to seek the opinion of the sentencing court under Section 432 (2) of the CrPC, it is not bound by the opinion itself. The decision of this Court in

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Union of India v. **Sriharan @ Murugan**[7] is indicative in this regard;

(vi) In **Sangeet** v. **State of Haryana**[8], this Court has held that the opinion of the presiding judge of the sentencing court must be accompanied by reasons;

(vii) In **State of Haryana** v. **Mohinder Singh**[9], this Court has held that the power of remission cannot be exercised arbitrarily. The decision to grant remission should be informed, fair and reasonable;

(viii) The presiding judge has simply stated in his opinion that in view of all the facts and circumstances, it is not appropriate to allow the application of remission. There is nothing to indicate that the judge took into consideration the following three factors to grant remission – (i) antecedents of the petitioner; (ii) conduct of the petitioner in prison; and (iii) the likelihood of the petitioner committing a crime if released. In **Bhagwat Saran** v. **State of UP**[10], this Court has held that a "bald statement without any attempt to indicate how law and order is likely to be adversely affected by their release cannot be accepted";

(ix) The policy applicable at the time of conviction must be considered for deciding the application of pre-mature release in terms of the decision of this Court in **State of Haryana** v. **Jagdish**[11]. Thus, the rules as applicable at the time of petitioner's conviction in 2010 would be applicable for considering his application for remission; and

(x) In **Laxman Naskar** v. **Union of India**[12], this Court laid down that the following factors must be reported by the police in respect of the grant of pre-mature release:

(a) Whether the offence is an individual act of crime that does not affect the society;

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[7] (2014) 4 SCC 242
[8] (2013) 2 SCC 452
[9] (2000) 3 SCC 394
[10] Writ Petition (Criminal) Nos. 1145-1149 of 1982 dated 6 December 1982
[11] (2010) 4 SCC 216
[12] (2000) 2 SCC 595

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(b) Whether there is a chance of the crime being repeated in future;

(c) Whether the convict has lost the potentiality to commit crime;

(d) Whether any purpose is being served in keeping the convict in prison; and

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(e) Socio-economic conditions of the convict's family.

10. Mr Sumeer Sodhi, counsel appearing on behalf of the respondents, made the following submissions:

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(i) Petitioner's case can be considered only under Rule 358 (3) (A) of the Prison Rules and not under Rule 358 (3) (B) or 358 (3) (D);

(ii) A Full Bench of the High Court of Bombay[13] has held that the opinion given by the presiding judge in terms of Section 432(2) of the CrPC is binding on the government;

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(iii) In **Union of India** v. **Sriharan**[14], this Court has held that the ultimate order of suspension or remission should be guided by the opinion of the presiding officer of the sentencing court and that a convict does not have a right to remission, but only a right to claim remission; and

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(iv) In **State of Madhya Pradesh** v. **Ratan Singh**[15], this Court has held that the government has the sole discretion to remit or refuse to remit the sentence of the convict. No writ can be issued to the government to release the prisoner. The decisions of this Court in **Rajan** v. **Home Secretary, Home Department of Tamil Nadu**[16] and **Sriharan** (supra) uphold the same principle.

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Analysis

A. Judicial Review of the Power of Remission

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11. The respondents submit that the appropriate government has the absolute discretion to decide whether the application for remission

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[13] Yoshevel v. State of Bombay, Crl. Writ Petition No 273 of 2019

[14] (2016) 7 SCC 1; "**Sriharan**"

[15] (1976) 3 SCC 470

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[16] (2019) 14 SCC 114

should be allowed. Indeed, in **Ratan Singh** (supra), this Court has observed that the State has an undoubted discretion to remit or refuse to remit the sentence and no writ can be issued to direct the State Government to release the petitioner. The Court was interpreting Section 401 of the Code of Criminal Procedure 1898, which corresponds to Section 432 of the CrPC. Section 401 empowered the appropriate government to remit the whole or any part of the punishment sentence. The Court while summarizing the propositions that govern the exercise of the power of the remission, observed:

> "9. From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following propositions emerge:
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> "(1) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Penal Code, 1860. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure;
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> **(2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner;**
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> (3) that the appropriate Government which is empowered to grant remission under Section 401 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor State and not the transferee State where the prisoner may have been transferred at his instance under the Transfer of Prisoners Act; and
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> (4) that where the transferee State feels that the accused has completed a period of 20 years it has merely to forward the request of the prisoner to the concerned State Government, that is to say, the Government of the State where the prisoner was convicted and sentenced and even if this request is rejected by the State

A Government the order of the Government cannot be interfered with by a High Court in its writ jurisdiction."

(emphasis supplied)

12. While a discretion vests with the government to suspend or remit the sentence, the executive power cannot be exercised arbitrarily. The prerogative of the executive is subject to the rule of law and fairness in state action embodied in Article 14 of the Constitution. In **Mohinder Singh**(supra), this Court has held that the power of remission cannot be exercised arbitrarily. The decision to grant remission should be informed, fair and reasonable. The Court held thus:

> "9. The circular granting remission is authorized 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 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 a 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."

In **Sangeet** (supra), this Court reiterated the principle that the power of remission cannot be exercised arbitrarily by relying on the decision in **Mohinder** (supra).

13. While the court can review the decision of the government to determine whether it was arbitrary, it cannot usurp the power of the government and grant remission itself. Where the exercise of power by the executive is found to be arbitrary, the authorities may be directed to consider the case of the convict afresh.

In **Laxman Naskar** v. **State of West Bengal**[17], while the jail authorities were in favour of releasing the petitioner, the review committee constituted by the government recommended the rejection of the claim for premature release on the grounds that (i) the two witnesses who had deposed during the trial and people of the locality were apprehensive

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[17] (2000) 7 SCC 626

that the release of the petitioner will disrupt the peace in the locality; (ii) the petitioner was 43 years old and had the potential of committing a crime; and (iii) the crime had occurred in relation to a political feud which affected the society at large. The Court while placing reliance on **Laxman Naskar** v. **Union of India** (supra) stipulated the factors that govern the grant of remission, namely:

> "6…(i) Whether the offence is an individual act of crime without affecting the society at large.
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> (ii) Whether there is any chance of future recurrence of committing crime.
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> (iii) Whether the convict has lost his potentiality in committing crime.
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> (iv) Whether there is any fruitful purpose of confining this convict any more.
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> (v) Socio-economic condition of the convict's family."

Based on the above factors, the Court found that the government's decision to reject the claim of remission was based on reasons that were irrelevant or devoid of substance. The Court quashed the order of the government and directed it to decide the matter afresh. The Court held thus:

> "8. If we look at the reasons given by the Government, we are afraid that the same are palpably irrelevant or devoid of substance. Firstly, the views of the witnesses who had been examined in the case or the persons in the locality cannot determine whether the petitioner would be a danger if prematurely released because the persons in the locality and the witnesses may still live in the past and their memories are being relied upon without reference to the present and the report of the jail authorities to the effect that the petitioner has reformed himself to a large extent. Secondly, by reason of one's age one cannot say whether the convict has still potentiality of committing the crime or not, but it depends on his attitude to matters, which is not being taken note of by the Government. Lastly, the suggestion that the incident is not an individual act of crime but a sequel of the political feud affecting society at large, whether his political views have been changed or still carries the same so as to commit crime has not been examined by the Government.

A 9. On the basis of the grounds stated above the Government could not have rejected the claim made by the petitioner. In the circumstances, we quash the order made by the Government and remit the matter to it again to examine the case of the petitioner in the light of what has been stated by this Court earlier and our comments made in this order as to the grounds upon which the B Government refused to act on the report of the jail authorities and also to take note of the change in the law by enacting the West Bengal Correctional Services Act 32 of 1992 and to decide the matter afresh within a period of three months from today. The writ petition is allowed accordingly. After issuing rule the same is C made absolute."

14. In **Rajan** (supra), the court observed that while the grant of remission is the exclusive prerogative of the executive and the court cannot supplant its view, the Court can direct the authorities to re-consider the representation of the convict. The Court made the following D observations:

"18. The petitioner would, however, rely on the unreported decision of this Court in Ram Sewak [Ram Sewak v. State of U.P., 2018 SCC OnLine SC 2012] , to contend that this Court may direct the authorities to release the petitioner forthwith and that there is no E point in directing further consideration by the State as the petitioner had already undergone over 30 years of sentence and with remission, over 36 years. The order passed by this Court in Ram Sewak [Ram Sewak v. State of U.P., 2018 SCC OnLine SC 2012] , is obviously in the facts of that case. **As a matter of fact, it is well settled by now that grant or non-grant of remission is** F **the prerogative to be exercised by the competent authority and it is not for the court to supplant that procedure. Indeed, grant of premature release is not a matter of privilege but is the power coupled with duty conferred on the appropriate Government in terms of Sections 432 and 433 CrPC, to be** G **exercised by the competent authority after taking into account all the relevant factors, such as it would not undermine the nature of crime committed and the impact of the remission that may be the concern of the society as well as the concern of the State Government.**

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20. Thus understood, we cannot countenance the relief claimed by the petitioner to direct the respondents to release the petitioner forthwith or to direct the respondents to remit the remaining sentence and release the petitioner. The petitioner, at best, is entitled to the relief of having directions issued to the respondents to consider his representation dated 5-2-2018, expeditiously, on its own merits and in accordance with law. We may not be understood to have expressed any opinion either way on the merits of the claim of the petitioner. The fact that the petitioner's request for premature release was already considered once and rejected by the Advisory Board of the State Government, in our opinion, ought not to come in the way of the petitioner for consideration of his fresh representation made on 5-2-2018. We say so because the opinion of the Advisory Board merely refers to the negative recommendation of the Probation Officer, Madurai and the District Collector, Madurai. The additional reason stated by the State Government seems to be as follows:

"(4) The proceedings of the Advisory Board held on 20-1-2010 is as follows:

(*i*) The case is heard and examined the relevant records. The accused is a Srilankan National and lodged at Special Camp at Chengalpet before the commission of this grave offence.

(*ii*) The Probation Officer, Madurai and the District Collector, Madurai have not recommended the premature release.

(*iii*) Also this prisoner has not repented for his act.

(*iv*) The plea for premature release is 'Not-Recommended'.

(5) The Government after careful examination accept the recommendation of the Advisory Board, Vellore and the premature release of Life Convict No. 23736, Rajan, s/o Robin, confined in Central Prison, Vellore is hereby rejected."

With the passage of time, however, the situation may have undergone a change and, particularly, because now the claim of the petitioner for premature release will have to be considered only in reference to the sentence of life imprisonment awarded to him for the offences under Section 302 (3 counts) and Section 307 (4 counts) of IPC, respectively."

(emphasis supplied)

A The above discussion makes it clear that the Court has the power to review the decision of the government regarding the acceptance or rejection of an application for remission under Section 432 of the CrPC to determine whether the decision is arbitrary in nature. The Court is empowered to direct the government to reconsider its decision.

B **B. The Value of the Opinion of the Presiding Judge**

15. Sub-section (2) of Section 432 of the CrPC provides that the appropriate government may take the opinion of the presiding judge of the court before or by which the person making an application for remission has been convicted on whether the application should be allowed C or rejected, together with the reasons for such opinion.

16. In **Sangeet** (supra), the Court held that sub-sections (2) to (5) of Section 432 lay down procedural safeguards to check arbitrary remissions. The Court observed that the government is required to approach the presiding judge of the court to opine on the application for D remission. The Court observed thus:

> "61. It appears to us that an exercise of power by the appropriate Government under sub-section (1) of Section 432 CrPC cannot be suo motu for the simple reason that this sub-section is only an enabling provision. The appropriate Government is enabled to E "override" a judicially pronounced sentence, subject to the fulfilment of certain conditions. Those conditions are found either in the Jail Manual or in statutory rules. Sub-section (1) of Section 432 CrPC cannot be read to enable the appropriate Government to "further override" the judicial pronouncement over and above what is permitted by the Jail Manual or the statutory rules. The F process of granting "additional" remission under this section is set into motion in a case only through an application for remission by the convict or on his behalf. On such an application being made, the appropriate Government is required to approach the Presiding Judge of the court before or by which the conviction was made or G confirmed to opine (with reasons) whether the application should be granted or refused. Thereafter, the appropriate Government may take a decision on the remission application and pass orders granting remission subject to some conditions, or refusing remission. Apart from anything else, this statutory procedure seems quite reasonable inasmuch as there is an application of mind to the H issue of grant of remission. It also eliminates "discretionary" or

en masse release of convicts on "festive" occasions since each release requires a case-by-case basis scrutiny. A

"62. It must be remembered in this context that it was held in State of Haryana v. Mohinder Singh [(2000) 3 SCC 394 : 2000 SCC (Cri) 645] that the power of remission cannot be exercised arbitrarily. The decision to grant remission has to be well informed, B reasonable and fair to all concerned. The statutory procedure laid down in Section 432 CrPC does provide this check on the possible misuse of power by the appropriate Government."

17. In **Sriharan** (supra) a Constitution Bench of this Court held that the procedure stipulated in Section 432(2) is mandatory. The Court C did not specifically hold that the opinion of the presiding judge would be binding, but it held that the decision of the government on remission should be guided by the opinion of the presiding officer of the concerned court. The Court had framed the following question:

"143..Whether suo motu exercise of power of remission under D Section 432(1) is permissible in the scheme of the section, if yes, whether the procedure prescribed in sub-section (2) of the same section is mandatory or not?"

Answering the above question, the Court held as follows:

"148. Keeping the above principles in mind, when we analyse E Section 432(1) CrPC, it must be held that the power to suspend or remit any sentence will have to be considered and ordered with much more care and caution, in particular the interest of the public at large. In this background, when we analyse Section 432(1) CrPC, we find that it only refers to the nature of power available F to the appropriate Government as regards the suspension of sentence or remission to be granted at any length. Extent of power is one thing and the procedure to be followed for the exercise of the power is different thing. There is no indication in Section 432(1) that such power can be exercised based on any application. What is not prescribed in the statute cannot be imagined or inferred. G Therefore, when there is no reference to any application being made by the offender, that cannot be taken to mean that such power can be exercised by the authority concerned on its own. More so, when a detailed procedure to be followed is clearly set out in Section 432(2). It is not as if by exercising such power H

under Section 432(1), the appropriate Government will be involving itself in any great welfare measures to the public or the society at large. It can never be held that such power being exercised suo motu any great development act would be the result. After all, such exercise of power of suspension or remission is only going to grant some relief to the offender who has been found to have committed either a heinous crime or at least a crime affecting the society at large. Therefore, when in the course of exercise of larger constitutional powers of similar kind under Articles 72 and 161 of the Constitution it has been opined by this Court to be exercised with great care and caution, the one exercisable under a statute, namely, under Section 432(1) CrPC which is lesser in degree should necessarily be held to be exercisable in tune with the adjunct provision contained in the same section. Viewed in that respect, we find that the procedure to be followed whenever any application for remission is moved, the safeguard provided under Section 432(2) CrPC should be the sine qua non for the ultimate power to be exercised under Section 432(1) CrPC.

149. By following the said procedure prescribed under Section 432(2), the action of the appropriate Government is bound to survive and stand the scrutiny of all concerned, including the judicial forum. It must be remembered, barring minor offences, in cases involving heinous crimes like, murder, kidnapping, rape, robbery, dacoity, etc., and such other offences of such magnitude, the verdict of the trial court is invariably dealt with and considered by the High Court and in many cases by the Supreme Court.Thus, having regard to the nature of opinion to be rendered by the Presiding Officer of the court concerned will throw much light on the nature of crime committed, the record of the convict himself, his background and other relevant factors which will enable the appropriate Government to take the right decision as to whether or not suspension or remission of sentence should be granted. It must also be borne in mind that while for the exercise of the constitutional power under Articles 72 and 161, the Executive Head will have the benefit of act and advice of the Council of Ministers, for the exercise of power under Section 432(1) CrPC, the appropriate Government will get the

valuable opinion of the judicial forum, which will definitely throw much light on the issue relating to grant of suspension or remission.

150. Therefore, it can safely be held that the exercise of power under Section 432(1) should always be based on an application of the person concerned as provided under Section 432(2) and after duly following the procedure prescribed under Section 432(2). We, therefore, fully approve the declaration of law made by this Court in *Sangeet* [*Sangeet* v. *State of Haryana*, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] in para 61 that the power of appropriate Government under Section 432(1) of the Criminal Procedure Code cannot be *suo motu* for the simple reason that this section is only an enabling provision. **We also hold that such a procedure to be followed under Section 432(2) is mandatory. The manner in which the opinion is to be rendered by the Presiding Officer can always be regulated and settled by the High Court concerned and the Supreme Court by stipulating the required procedure to be followed as and when any such application is forwarded by the appropriate Government. We, therefore, answer the said question to the effect that the *suo motu* power of remission cannot be exercised under Section 432(1), that it can only be initiated based on an application of the persons convicted as provided under Section 432(2) and that ultimate order of suspension or remission should be guided by the opinion to be rendered by the Presiding Officer of the court concerned**."

(emphasis supplied)

18. There appears to be a difference of opinion between the High Courts on whether the opinion of the presiding judge is binding on the government. The High Court of Judicature at Bombay[18] has held that the opinion of the presiding judge is binding. The High Court has placed reliance on **Sriharan** (supra) to arrive at the following conclusion:

29. The Constitution Bench of the Supreme Court in the case of Union of India vs. V. Sriharan @ Murugan & Others (supra) has answered referral questions pertaining to the provisions of Section 432(2) of Cr.P.C. and held that ultimate order of suspension or remission should be guided by the opinion to be rendered by the

[18] Yovehel v. State of Bombay, Crl. Writ Petition No 273 of 2019

A Presiding Judge of the court concerned and exercise of the powers under Section 432 (1) of Cr.P.C. must be in accordance with the procedure as enumerated under Section 432 (2) of Cr.P.C. In view of the same, to our mind, seeking opinion of the Presiding Judge of the court or by which conviction was had or confirmed as to whether the application filed under Section 432(1) of Cr.P.C. should be granted or refused, as not an empty formality. It is true that if we read Section 432 (2) of Cr.P.C. the word "may" is used. If we consider the said exercise of calling opinion of the Presiding Judge of the court as merely relevant circumstance, the object of the said provision will be defeated. It is well settled that in construing the provisions of the statute, the court should be slow to adopt the construction which tends to make any part of the statute meaningless or ineffective. If we read sub-section (2) of Section 432 of Cr.P.C. as a whole, it appears that the requirement of seeking opinion of the Presiding Judge of the Court as to whether the application filed in terms of Section 432(1) of Cr.P.C. should be granted or refused. In the language of sub-section (2) of section 432 of Cr.P.C. it is also incumbent upon such Presiding Judge of the Court to state his opinion together with his reasons for such opinion.

…

30. …..For this reason, in our considered opinion, the Presiding Judge of the court is best equipped and likely to be more correct in his view for achieving the purpose and performing the task satisfactorily. He is an expert in the field and as such a greater weight to his opinion is required to be attached. It would be a fallacy to grant remission to the hardened criminal, who has committed the offence with extreme brutality etc., by treating the opinion of the Presiding Judge of the Court as a relevant circumstance without having any binding effect. We afraid that if the answer to the referral question No.(iii) is recorded as "relevant circumstances" that would open floodgates to the authorities to treat it as "irrelevant circumstances" and grant benefit of remission to the unscrupulous prisoners."

19. On the other hand, the High Court of Patna[19] has held that the opinion of the presiding judge is not binding but is only a guiding factor. The High Court observed that the State Sentence Remission Board

consists of high-level officials who can exercise their independent wisdom and are not bound by the opinion of the presiding judge. The High Court held thus:

> "7. Now we may come to the function of the Board. From what has been noted above, it appears that the Board felt bound by the opinion of the Judicial Officer, however irrelevant it may be. Is this stand of the Board correct? In our view, it is not. Board consists of very high level officials. It consists of the Law Secretary, the Home Secretary, the Inspector General of Prison, the District and Sessions Judge, Patna amongst other officials. It is an independent statutory body which has to exercise its independent wisdom in accordance with law. It is not bound by the opinion of any other person. The opinions of the Jail Superintendent, the Superintendent of Police, the Probationary Officer, the trial Judge are guiding factors to enable the Board to come to an independent opinion. It is not bound by what is said in any one or all of the opinions. We will not try and illustrate this inasmuch as the Board having been constituted by senior responsible officers, they would exercise the power keeping in view the legislative policy as enacted in Section 432 of Cr P C in respect of a convict of a heinous offence and who has served the sentence substantially. It is only such person who are to be considered for release. The object of the Section is not to condemn such persons but to ensure that having spent a substantial period of their sentence, they be permitted to come back into society. It is only when there is serious apprehension about their future conduct, serious and inevitable apprehension about their future conduct upon their release which is bona fide born out from the records that the Board would be legitimately justified in refusing to release the convict otherwise it is not bound by the opinion of the authorities though, as noted above, they are guiding factors to be taken into account."

20. In **Sriharan** (supra), the Court observed that the opinion of the presiding judge shines a light on the nature of the crime that has been committed, the record of the convict, their background and other relevant factors. Crucially, the Court observed that the opinion of the presiding judge would enable the government to take the *'right'* decision as to whether or not the sentence should be remitted. Hence, it cannot be said that the opinion of the presiding judge is only a relevant factor, which

[19] Ravi Pratap Mishra v. State of Bihar, Crl. Writ Jurisdiction Case No 272 of 2017

A does not have any determinative effect on the application for remission. The purpose of the procedural safeguard under Section 432 (2) of the CrPC would stand defeated if the opinion of the presiding judge becomes just another factor that may be taken into consideration by the government while deciding the application for remission. It is possible then that the procedure under Section 432 (2) would become a mere formality.

B

21. However, this is not to say that the appropriate government should mechanically follow the opinion of the presiding judge. If the opinion of the presiding judge does not comply with the requirements of Section 432 (2) or if the judge does not consider the relevant factors for grant of remission that have been laid down in **Laxman Naskar** v. **Union** C **of India** (supra), the government may request the presiding judge to consider the matter afresh.

22. In the present case, there is nothing to indicate that the presiding judge took into account the factors which have been laid down in **Laxman Naskar** v. **Union of India** (supra). These factors include assessing (i) D whether the offence affects the society at large; (ii) the probability of the crime being repeated; (iii) the potential of the convict to commit crimes in future; (iv) if any fruitful purpose is being served by keeping the convict in prison; and (v) the socio-economic condition of the convict's family. In **Laxman Naskar** v. **State of West Bengal** (supra) and **State** E **of Haryana** v. **Jagdish**[20], this Court has reiterated that these factors will be considered while deciding the application of a convict for premature release.

23. In his opinion dated 21 July 2021 the Special Judge, Durg referred to the crime for which the petitioner was convicted and simply F stated that in view of the facts and circumstances of the case it would not be appropriate to grant remission. The opinion is in the teeth of the provisions of Section 432 (2) of the CrPC which require that the presiding judge's opinion must be accompanied by reasons. Halsbury's Laws of India (Administrative Law) notes that the requirement to give reasons is satisfied if the concerned authority has provided relevant reasons. G Mechanical reasons are not considered adequate. The following extract is useful for our consideration:

> "**[005.066] Adequacy of reasons** Sufficiency of reasons, in a particular case, depends on the facts of each case. It is not

H [20] (2010) 4 SCC 216

necessary for the authority to write out a judgement as a court of law does. However, at least, an outline of process of reasoning must be given. It may satisfy the requirement of giving reasons if relevant reasons have been given for the order, though the authority has not set out all the reasons or some of the reasons which had been argued before the court have not been expressly considered by the authority. A mere repetition of the statutory language in the order will not make the order a reasoned one.

Mechanical and stereotype reasons are not regarded as adequate. A speaking order is one that speaks of the mind of the adjudicatory body which passed the order. A reason such as 'the entire examination of the year 1982 is cancelled', cannot be regarded as adequate because the statement does explain as to why the examination has been cancelled; it only lays down the punishment without stating the causes therefor."[21]

24. Thus, an opinion accompanied by inadequate reasoning would not satisfy the requirements of Section 432 (2) of the CrPC. Further, it will not serve the purpose for which the exercise under Section 432 (2) is to be undertaken, which is to enable the executive to make an informed decision taking into consideration all the relevant factors.

25. In view of the above discussion, we hold that the petitioner's application for remission should be re-considered. We direct the Special Judge, Durg to provide an opinion on the application afresh accompanied by adequate reasoning that takes into consideration all the relevant factors that govern the grant of remission as laid down in **Laxman Naskar** v. **Union of India** (supra). The Special Judge, Durg must provide his opinion within a month of the date of the receipt of this order. We further direct the State of Chhattisgarh to take a final decision on the petitioner's application for remission afresh within a month of receiving the opinion of the Special Judge, Durg.

26. The petition under Article 32 of the Constitution is allowed in the above terms.

27. Pending application(s), if any, stand disposed of.

Nidhi Jain Writ Petition allowed.
(Assisted by : Tamana, LCRA)

[21] Halsbury's Laws of India (Administrative Law) (Lexis Nexis, Online Edition).