**Serial No. 01**
**Regular List**

# HIGH COURT OF MEGHALAYA
# AT SHILLONG

W.P.(Crl.) No. 5 of 2022

Date of Decision: 24.03.2025

Shri. Nabam Tai
S/o (L) H. Nagam Tagam
R/o Itanagar, Bapung, P.S. Daimukh
Dist. Daimukh, Arunachal Pradesh

.....Petitioner

–Versus–

1. The State of Meghalaya represented by the Secretary, Political Department, Government of Meghalaya.
2. The Secretary to the Government of Meghalaya, Shillong.
3. The Home Secretary, Department of Jail and Prison, Government of Meghalaya
4. The Director General of Police, Department of Jail and Prison, Government of Meghalaya
5. The Inspector General of Prisons and Correctional Home, Meghalaya, Shillong.
6. The Superintendent, District Prison and Correctional Home, Shillong

.....Respondents

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**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

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**Appearance:**

For the Petitioner/Appellant(s) : Mr. B. Deb, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Ms. R. Colney, GA

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

**J U D G M E N T**

1. The genesis of this instant petition preferred under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 dates back to the year 2005, to the effect that on 12.12.2005 at about 1:15 pm or so, some persons hired a Tourist Taxi, bearing registration No. ML-05-D-5296 driven by Gaytam Gurung.

2. Since the said Tourist Taxi did not return home, the owner reported the matter to the President of the Shillong Greater Tourist Taxi Association, who in turn lodged an FIR dated 15.12.2005 with the Officer In-charge, Shillong Sadar Police Station. The same was registered as Shillong Sadar P.S. Case No. 194(12) of 2005 under Section 382/302/201/34 IPC.

3. On investigation launched, the petitioner herein along with four other accused persons were arrested and eventually made to stand trial for the offences under the IPC, including murder, that is, under Section 302 IPC.

4. In course of trial, the learned Sessions Judge, Shillong has examined a number of witnesses and brought on record certain material exhibits produced by the prosecution and vide judgment and order dated 05.03.2008, had convicted the petitioner herein as well as one Jatin Rabha for having committed the offence of murder and theft. Upon

conviction for the offences under Section 302, 382 and 201 IPC, they were accordingly sentenced to undergo imprisonment for varying periods and more specifically, to undergo imprisonment for life as regard the offence under Section 302 IPC. However, all the sentences are to run concurrently, reads the sentence. A fine of ₹ 1000/- was also imposed.

5. It may also be pointed out that out of a total of five accused persons, three of them, viz; Chandra Singh Chetri, Namgil Dorjee and Rahul Pegoo were let off by the Trial Court on benefit of doubt given to them.

6. The petitioner has sought relief of remission of sentence, primarily on the ground that he has completed more than 14 years of imprisonment as provided under Section 432 read with Section 433A of the Code of Criminal Procedure (Cr.P.C.) 1973. To this effect, an application dated 14.08.2020 was filed by the petitioner with a prayer for remission of his sentence. Again, on 05.12.2020 another application was filed before the relevant authority through his brother Akil Tam. Since there was no response to the said applications, the petitioner had filed another application on 02.08.2021.

7. Finding no answer to his petition dated 14.08.2020, the petitioner sent a reminder dated 21.07.2022 to the concerned authority and the said authority being unresponsive, the petitioner was compelled to approach this Court by way of a writ petition being W.P.(Crl.) No. 4 of 2022 inter alia, with a prayer for direction to the authorities to release the petitioner by remitting the rest of his sentence.

8. It was only in course of the proceedings of the said writ petition

before this Court that on the filing of the counter affidavit by the relevant respondents, the petitioner came to know of the order dated 23.09.2022 passed by the Secretary to the Government of Meghalaya, Department of Prisons & Correctional Services whereby his petition seeking remission was rejected, the same being based on the opinion of the learned District Judge, Shillong, who, vide opinion dated 14.07.2022 has opined that the remission should not be considered as the manner in which the crime was committed was brutal in nature and that the petitioner has the potential to repeat the crime and secondly, that the crime was committed by a syndicate who are still on the run.

9. Thus being highly aggrieved and dissatisfied with the said opinion dated 14.07.2022 and the effective order dated 23.09.2022, the petitioner has now approached this Court with this instant petition with a prayer to set aside and quash the same and to direct release of the petitioner by remitting the rest of his sentence.

10. Heard Mr. B. Deb learned counsel for the petitioner who has submitted that firstly, the learned District Judge has failed to appreciate the main ingredients required to be considered in a case of prayer for remission of sentence, since nothing has been reflected in his opinion as to the (i) antecedents of the petitioner (ii) his conduct in prison and (iii) the likelihood of him committing a crime, if released.

11. It is the submission of the learned counsel that the petitioner is now in custody for about 19 years and during such time, there is no complaint whatsoever as far as his character and conduct is concerned. In fact, during his period of imprisonment, he has undergone a certificate course in handicraft and candle making and was given a certificate by the

WISE Social Service Centre, St Mary's Convent, Shillong in this respect. He was also recognised in his efforts to help his fellow inmates in many areas for which the Meghalaya State Legal Services Authority has also recommended that he be appointed as one of the Para Legal Volunteers. This was conveyed vide the relevant letter dated 18.08.2015. It is noteworthy to say that he has also completed a course in theology and as such, is well prepared to be reintegrated in society if granted remission of sentence, further submits the learned counsel.

12. What the learned District Judge has opined is only to the manner in which the said crime was committed, that it was brutal in nature and also that the crime was committed by a syndicate who is still on the run. This, according to the learned counsel are not relevant factors to be considered as admittedly, the petitioner has been convicted for the crime committed. There is however, no evidence or materials on record to indicate that there is a syndicate involved in the commitment of the crime.

13. The learned counsel has further submitted that the relevant Government authority has failed to exercise its mind to the facts of the case of prayer for remission by the petitioner and has simply relied on the opinion of the learned District Judge that the petition of the petitioner cannot be allowed since the crime was committed by a syndicate who is still on the run.

14. In support of his case, the learned counsel has cited the case of Ram Chander v. State of Chattisgarh & Anr., reported in 2022 SCC Online SC 500, particularly para 9(vi), (vii), (viii), (x), 12, 14, 15, 17, 18, 21 & 30.

15. Mr. N.D. Chullai, learned AAG along with Ms. R. Colney, GA appearing for the State respondent has opposed the prayer made in this petition and has submitted that a perusal of the records pertaining to the case of the petitioner would reveal that it is not a fit case for grant of remission of sentence as far as the petitioner is concerned.

16. The learned AAG has admitted that an application dated 14.08.2020 was indeed filed before the competent authority with a prayer for remission of the rest of the sentence of the petitioner. On receipt of such application, the opinion of the learned District Judge was sought for and on his opinion dated 14.07.2022, the Secretary to the Government of Meghalaya, Department of Prisons & Correctional Services vide communication dated 23.09.2022 has passed the order rejecting the prayer made by the petitioner.

17. It is the submission of the learned AAG that the learned District Judge has rightly given his opinion inasmuch as from the evidence on record, it is seen that the victim who was brutally murdered by the petitioner herein along with the other co-accused, Jatin Rabha was committed in a manner which was indeed horrific. Further, the learned District Judge has also observed that there is a syndicate at work when the said murder was committed and the members of such syndicate are on the run. This only indicates that if released on remission of sentence, the petitioner most likely will repeat such kind of offences. Hence, the opinion given is found acceptable and the resultant order of rejection of the related application cannot be faulted, submits the learned AAG.

18. In support of his case, the learned AAG has cited the case of Rajo alias Rajwa alias Rajendra Mandal v. State of Bihar & Ors., reported in

2023 SCC Online SC 1068, para 11, 12, 14 and 22. The case of Laxman Naskar (Life Convict) v. State of W.B. & Anr., (2000) 7 SCC 626, para 3 as well as the case of Bilkis Yakub Rasool v. Union of India & Ors., (2024) 5 SCC 481, para 124, 168, 169 and 170.

19. It is the contention of the learned AAG that under the circumstances, reiterating the opinion made by the learned District Judge, the petitioner is not eligible for grant of remission of his sentence and is to serve the same till the end of his natural life.

20. The learned AAG has also referred to the Notification dated 31.01.2025 issued by the Secretary to the Government of Meghalaya, Department of Prisons & Correctional Services by which the Government of Meghalaya has notified "The Remission Policy, 2025" wherein is found the details of the manner and mode of how remission and pre-mature release of convicts is to be considered. This was done keeping in mind the relevant directions of the Hon'ble Supreme Court passed in Suo Moto Writ Petition (Criminal) No. 4 of 2021, titled In Re Policy Strategy for Grant of Bail, wherein all the States are directed to frame/modify their policies for grant of remission or additional remission under Section 473 of the Bharatiya Nagarik Suraksha Sanhita, 2023 or Section 432 of the Code of Criminal Procedure, 1973, the same is therefore applicable to the case of the petitioner hererin, further submits the learned AAG.

21. Chapter XXXII of the Code of Criminal Procedure, 1973 is headlined as "Execution, Suspension, Remission and Commutation of Sentences". It contains about 24 Sections starting from Section 413 to 435. Part E of the same deals with matters relating to the issue of

remission of sentence and runs through Section 432 to Section 435.

22. The fact that this part dealing with remission of sentence is found in the Code only exhibits the intent of the lawmakers to adopt and apply the principles of reformation in the criminal jurisprudence of the Country. Even in a case of conviction for murder, the scope of reformation is extended, where more often than not, a sentence for commission of murder carries with it a term of life imprisonment.

23. In this respect, it would be but proper to look at the relevant provisions under the Code which provides for the same. Section 432, 433 and 433A being such provisions. To be more precise, relevant to the case in hand, section 432 (1) (2), 433(b) and 433A are reproduced herein as follows:

> "**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 punishment to which he has been sentenced.
> (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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> **433**. …
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> b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;
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> [**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 laws, or where a sentence of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.]"

24. Facts as indicated above would show that the petitioner had gone through the proper process seeking remission of his life sentence to be remitted for the remaining part of his sentence, inter alia, on the ground that he has completed more than 14 years of imprisonment. In fact, as on date, he has crossed 19 years of imprisonment.

25. Apparently, when the petition of the petitioner was placed before the relevant State authority, it is presumed that due process was followed and the opinion of the Presiding Judge of the court before or by which the conviction was confirmed was sought for in this regard.

26. The learned District Judge who has rendered such opinion as was found in the impugned communication dated 14.07.2022 has referred to the findings of the then learned Trial Judge to say that the manner in which the crime was committed was brutal and gruesome which is disturbing, also that there is a possibility that the crime may be repeated if released on remission and finally that the crime was committed by a syndicate which is still on the run.

27. At the outset, what is noticed is that the impugned opinion, dated 14.07.2022 was passed by the learned District Judge, East Khasi Hills in connection with Sessions Case No. 10 of 2006 under Section 302/382/201 IPC. The Secretary to the Government of Meghalaya, Department of Prisons & Correctional Services vide his communication dated 23.09.2022 issued upon the Inspector General of Prisons &

Correctional Services, Meghalaya while conveying the rejection of the prayer for remission of sentence on behalf of the two convicts, the petitioner being one of them, has quoted the opinion of the learned District Judge (supra) in so doing.

28. As noticed, what is mandated under Section 432 of the Code is that the opinion of the presiding judge of the court who had passed the sentence was required to be obtained. It can only mean the Sessions Judge, since a criminal case is always taken up by the Sessions Judge in a sessions triable cases such as the one in question. Even if the judge who had passed the sentence is no longer available as in the present case, it would be but proper for the opinion to be sought for or to be given by the succeeding Sessions Judge of the concerned court. The fact that the opinion was given by the District Judge, Shillong who has not stated that he has done so in his capacity as the Sessions Judge, would, in the considered opinion of this Court render any such opinion given as not tenable in law. Therefore, the relevant authority while passing the impugned order dated 23.09.2022 (supra) could not have relied on the opinion of the District Judge, such impugned order passed was on a wrong premise.

29. Be that as it may, another aspect of the matter to be considered when a case of application for remission of sentence is made is that certain factors are to be taken into account, which factors form part of the several guidelines issued by the Supreme Court in related cases, some of which are found at para 6 of the case of Laxman Naskar (Life Convict) v. State of W. B. & Anr., reported in (2000) 7 SCC 626, duly reproduced herein below as:

> "6. This Court also issued certain guidelines as to the basis on which a convict can be released prematurely and they are as under:
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> "(i) Whether the offence is an individual act of crime without affecting the society at large.
> (ii) Whether there is any chance of future recurrence of committing crime.
> (iii) Whether the convict lost his potentiality in committing crime.
> (iv) Whether there is any fruitful purpose of confining this convict any more.
> (v) Socio-economic condition of the convict's family."

30. In this regard, it would have been convenient for the relevant authority to seek the report of the prison authorities to study the case of the applicant/convict within the parameters of the abovementioned guidelines. However, there is nothing on record that such a report has been sought for or that the learned District Judge has taken such guidelines into consideration while giving his opinion (supra). Instead, the opinion of the learned District Judge has reflected only the observations made based on the judgment of the Trial Court passed in the case, that too, only on the observations that the crime committed was done so in a brutal manner and furthermore, that there appears to be a syndicate at work which is still at large, meaning that the applicant/convict is also part of such syndicate, when no such observations or findings was ever made by the learned Trial Judge who has passed the initial judgment. This part of the observation being taken cognizance of by the relevant authority while considering the petition for remission has further caused prejudice to the petitioner's cause.

31. Even if one study the proposition of law propounded in the many authorities cited by the parties herein, what is observed in these judgments is that there is a common pattern of principles set out

whenever a case of remission of sentence is under examination by the authorities concerned.

32. Some of the principles and factors relevant in this regard would be:

i) Grant of remission is statutory-

a) Section 432 Cr.P.C.

b) Bilkis Yakub Rasool v. Union of India & Ors., (2024) 5 SCC 481, para 169

c) Ram Chander v. State of Chhattisgarh and Anr., 2022 SCC Online SC 500, para 21

ii) Opinion of the presiding judge of the convicting court is required-

a) Section 432(2) Cr.P.C.

b) Ram Chander v. State of Chhattisgarh & Anr., 2022 SCC Online SC 500, para 21(supra)

c) Bilkis Yakub Rasool v. Union of India & Ors., (2024) 5 SCC 481, para 169 (supra)

iii) Power of remission cannot be exercised arbitrarily, must conform to factors that govern the grant of remission-

a) Ram Chander v. State of Chhattisgarh & Anr., 2022 SCC Online SC 500, para 9(viii),

b) Laxman Naskar (Life Convict) v. State of W.B. & Anr., (2000) 7 SCC 626, para 6

c) Bilkis Yakub Rasool v. Union of India & Ors., (2024) 5 SCC 481, para 170 (supra)

33. It must be noted that the Notification dated 31.01.2025, notifying the State "Remission Policy, 2025" may not be applicable to the case of

the petitioner herein as the cause of action of this case dates back to the year 2022 or so, nevertheless, even if an observation of the details of the said policy of 2025 is made herein, it may be pointed out that the policy has conformed with the relevant stated statutory provisions and the methodology adopted when dealing with an application for grant of remission, includes forwarding of such application by the Superintendent of Prison to the Department of Prisons & Correctional Services, which in turn, after scrutinizing as to its correctness and eligibility of the candidate, will seek the opinion of the Presiding Officer of the Convicting Court or the Confirming Court who shall render his opinion with reasons. Thereafter, the matter being placed before the Sentence Review Committee for the final decision of whether remission is to be granted or not and the same to be conveyed to the convict in question.

34. Coming back to the facts and circumstances of this case in hand, what has been observed hereinabove, is that the authorities concerned has failed to seek the relevant report of the Superintendent of the Prison wherein the petitioner was interned and as a result, while seeking the opinion of the learned District Judge, he has also failed to give his opinion based on the factors which ought to have been considered, some of which are found stipulated by the Hon'ble Supreme Court as was done in the case of Laxman Naskar (supra). This, in turn, has resulted in the final decision rendered by the authority concerned to reject the prayer of the petitioner. The premise relied upon is therefore unfounded.

35. In view of the above observations, this Court holds that the said impugned opinion and order have been passed without any application of mind and law and therefore, the case of the petitioner for grant of

remission is required to be reviewed.

36. The operation of the impugned order dated 23.09.2022 of the Secretary to the Government of Meghalaya, Department of Prisons & Correctional Services as well as the opinion dated 14.07.2022 of the learned District Judge, East Khasi Hills, Shillong are hereby set aside and quashed.

37. Without the necessity of the petitioner having to file a fresh application, the concerned authorities would take up the same from the records and reconsider the same following due procedure. This exercise is preferably to be completed within 45(forty five) days from the date of communication of this order to the Secretary to the Government of Meghalaya, Department of Prisons & Correctional Services.

38. Petition disposed of. No costs.

**Judge**