2025:CGHC:283-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 504 of 2024

Parmeshwar @ Parsiya @ Shiva S/o Vyakanti @ Ishwar Kale Aged About 49 Years R/o Kekta Changali P.S. Gebrai District Beed (Maharashtra) --- Presently In Central Jail Durg, Chhattisgarh.

... Petitioner(s)

versus

1. State of Chhattisgarh Through - Secretary Home (Jail), Department, Mahanadi Bhavan, Mantralaya, Atal Nagar, Nava Raipur, District Raipur, Chhattisgarh.

2. The Director General of Police, Jail and Correctional Services Chhattisgarh, Jail Head Quarter, Raipur, Chhattisgarh.

3. The Jail Superintendent, Central Jail Durg, District Durg, Chhattisgarh.

4. District Magistrate Durg, District Durg, Chhattisgarh.

...Respondents

For Petitioner	:	Mr. Rajesh Kumar Jain, Advocate.
For Respondents/State	:	Mr. Sangharsh Pandey, Government Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

***Per* Ramesh Sinha, Chief Justice**

03.01.2025

1. Heard Mr. Rajesh Kumar Jain, learned counsel for the petitioner. Also heard Mr. Sangharsh Pandey, learned Government Advocate, appearing for the respondents/State.

2. The present writ petition has been filed by the petitioner with the following prayers:

> *"10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records pertaining to the grievance of the petitioner from the respondent authorities.*
>
> *10.2 That, the Hon'ble High Court may kindly be pleased to quash and set aside the opinion given by trial Court dated 17.11.2023 (Annexure P/1), issued by the trial Court and declare it to be non-est, without authority of law and contrary to the principle of natural justice.*
>
> *10.3 That, the Hon'ble High Court may kindly be pleased to quash and set aside the impugned order 20.07.2023 (Annexure P/2), issued by the respondent No. 1 and declare it to be non-est, without authority of*

law and contrary to the principle of natural justice.

10.4 That this Hon'ble Court may kindly be pleased to direct the respondent authorities to release the petitioner under the provision of Section 432 of the Cr.P.C. as he has admittedly completed more the 25 of years of jail sentence including remission and a recommendation in this regard has also been made by the concerned respondent authorities.

or

Kindly be issued writ/suitable direction towards the respondent to reconsider the application made by the petitioner under Section 432 of the Cr.P.C. for grant of remission of remaining sentence under the provision of law and within time.

10.5 Cost of the litigation/petition be allowed.

10.6 Any other relief(s) may be given to the petitioner, which this Hon'ble Court deem fit and proper in the facts and circumstances of the case."

3. Learned counsel for the petitioner submits that the petitioner has been convicted for the offences punishable under Sections 395, 302 read with Section 396 and Section 307 read with Section 397 of the IPC and of the IPC and sentenced to life imprisonment in Session Trial No. 141 of 2006, vide order dated 12.08.2009 passed by the learned 8th Additional Session Judge (FTC), Durg, District Durg (C.G.). Being aggrieved with the

judgment of conviction and sentence, petitioner preferred CRA No. 721 of 2009 before this Court and this Court vide its judgment dated 13.04.2011, partly allowed the appeal and convicted the petitioner for offences punishable under Section 395 read with Section 397 and Section 302 read with Section 396 and Section 307 of the IPC without interfering with the jail sentence.

4. It is further submitted by the learned counsel for the petitioner that the petitioner had moved an application under Section 432 of the Cr.P.C. which was rejected by the respondent No. 1 vide order dated 04.10.2021. He also submits that the against the order dated 04.10.2021 passed by the respondent No. 1, the petitioner preferred a writ petition bearing WPCR No. 762 of 2022 before this Court and the same was allowed vide order dated 03.03.2023 setting aside the order dated 04.10.2021 passed by the respondent No. 1 and remitted back the matter to the authorities for fresh consideration. In view of the order dated 03.03.2023 passed in the WPCR No. 762 of 2022, respondent No. 3 forwarded the fresh application under Section 432 of the Cr.P.C. to the learned 8th Additional Session Judge, Durg for obtaining opinion for releasing the petitioner on remission.

5. Learned counsel for the petitioner states that while considering application for petitioner, the learned 8th Additional Session Judge, Durg has rejected the application of petitioner without following due process of law and procedure under Section 432 of the Cr.P.C. and without giving proper opportunity of hearing and passed the order dated 17.04.2023. The application of the petitioner under Section 432 of the Cr.P.C. has been also placed before respondent No. 1 through respondents No. 2 and 3.

6. It is further contended by the learned counsel for the petitioner that the respondent No. 1 without going through the provision of Section 432 of the Cr.P.C. has simply rejected the petitioner's application on the basis of non-corrective opinion of the concerned Court vide its order dated 20.07.2023. He also contended that the petitioner completed actual imprisonment of 19 years and 08 months and 17 days and earned remission 05 years and 06 months 23 days as on 11.12.2024, thereby including remission, the petitioner has completed 25 years 03 months and 10 days of imprisonment as on 11.12.2024, therefore, the authorities are the duty bound to consider the legitimate aspect of the petitioner. The respondent No. 1 in a mechanical manner has rejected the petitioner's application only on the basis of opinion given by the presiding Judge which is *prima facie* in violation of under Section 432(2) of the Cr.P.C., while non considering of relevant fact of grant of remission which is laid down by the Hon'ble Supreme Court in the case of ***Laxman Naskar vs. Union of India***, reported in ***(2000) 2 SCC 595*** as follows:

> "*(a) Whether the offence is an individual act of crime that does not affect the society;*
>
> *(b) Whether there is a chance of the crime being repeated in future.*
>
> *(c) Whether the convict has lost the potentially to commit crime.*
>
> *(d) Whether any purpose is being served in keeping the convict in prison; and*
>
> *(e) Socio-economic condition of the convict's family.*"

7. Learned counsel for the petitioner submits that while deciding the application of the petitioner authority not followed the ratio laid down by the Apex Court in ***Laxman Naskar*** (supra) therefore, this Court may kindly be pleased to allow the application of remission and set aside the order dated 20.07.2023 passed by the respondent No. 1 and further direct to the respondents to release the petitioner forthwith.

8. On the other hand, learned State counsel opposes the petitioner's application for remission and submits that the authorities have rightly rejected the prayer for grant of remission.

9. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.

10. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 432 of the Cr.P.C (now under Section 473 of the Bharatiya Nagarik Suraksha Sanhita, 2023) which states as under :-

> "***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.

(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.

(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.

(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:

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 person 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

(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.

(7) In this section and in Section 433 of the Cr.P.C. (now under Section 474 of the BNSS), the expression "appropriate Government" means,—

(a) in cases where the sentence is for an offence against, or the Criminal Appeal @ Special Leave Petition (Crl.) No. 6166 of 2023 (page 7 to 17) 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;

(b) in other cases, the Government of the State within

> *which the offender is sentenced or the said order is passed." (emphasis added) Under sub-section (1) of Section 432 of the CrPC, the appropriate Government has the power to remit the whole or any part of the punishment of a convict. The remission can be granted either unconditionally or subject to certain conditions. As expressly provided under sub-section (1) of Section 432, actual remission takes effect only after the convict accepts the conditions. Thus, there is no doubt that there exists a power in the appropriate Government to grant remission subject to compliance with conditions.*"

11. Insofar as the exercise of power under sub-section (1) of Section 432 of the Cr.P.C. is concerned, the Constitution Bench in the case of ***Union of India vs. V. Sriharan alias Murugan & Others***, reported in ***(2016) 7 SCC 1*** has approved the view taken by the Hon'ble Supreme Court in the case of ***Mohinder Singh vs. State of Punjab***, reported in ***(2013) 3 SCC 294***. The view taken is that the decision to grant remission has to be well-informed, reasonable and fair to all concerned.

12. In ***Mafabhai Motibhai Sagar v. State of Gujarat & Others,*** in **CRA No. 4370 of 2024**, decided on **21.10.2024**, the Hon'ble Apex Court has observed as under:

> "*11. It is no doubt true that the power to remit a sentence under Section 432(1) of the Cr.P.C. is discretionary. One of the considerations for the exercise of the discretion can be public interest. The gravity and*

nature of the offences committed by the convict are also factors to be considered. The antecedents of the convict are also relevant. Almost all the States have a written policy on the grant of remission under Section 432(1) of the Cr.P.C. For example, the 1st respondent, the State of Gujarat, has a policy that forms part of the Government Resolution dated 23rd January 2014, which was amended from time to time. The said Government Resolution incorporates guidelines/policy for consideration of cases for grant of remission and premature release of prisoners. The existence of a rational policy is necessary to prevent the arbitrary exercise of power to grant a remission under Section 432(1) of the Cr.P.C. A convict cannot seek remission as a matter of right. However, he has a right to say that his case for the grant of remission ought to be considered in accordance with the law. The power under sub-section (1) of Section 432 of the CrPC has to be exercised in a fair and reasonable manner. Therefore, conditions imposed while exercising the power under sub-section (1) of Section 432 of the Cr.P.C. must be reasonable. The conditions must stand the test of scrutiny of Article 14 of the Constitution of India. If the conditions imposed are arbitrary, the conditions will stand vitiated due to violation of Article 14 of the Constitution of India. Such arbitrary conditions

may also violate the convict's rights under Article 21 of the Constitution of India.

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17. Our conclusions can be summarised as under:

(i) Under subsection (1) of Section 432 of the CrPC or sub section (1) of Section 473 of the BNSS, the appropriate Government has the power to remit the whole or any part of the punishment of a convict. The remission can be granted either unconditionally or subject to certain conditions;

(ii) The decision to grant or not to grant remission has to be well informed, reasonable and fair to all concerned;

(iii) A convict cannot seek remission as a matter of right. However, he has a right to claim that his case for the grant of remission ought to be considered in accordance with the law and/or applicable policy adopted by the appropriate Government;

(iv) Conditions imposed while exercising the power under subsection (1) of Section 432 or subsection (1) of Section 473 of the BNSS must be reasonable. If the conditions imposed are arbitrary, the conditions will stand vitiated due to violation of Article 14. Such arbitrary conditions may violate the convict's rights

under Article 21 of the Constitution;

(v) The effect of remitting the sentence, in part or full, results in the restoration of liberty of a convict. If the order granting remission is to be cancelled or revoked, it will naturally affect the liberty of the convict. The reason is that when action is taken under subsection (3) of Section 432 of the CrPC or subsection (3) of Section 473 of the BNSS, it results in the convict being taken to prison for undergoing the remaining part of the sentence. Therefore, this drastic power cannot be exercised without following the principles of natural justice. A show cause notice must be served on the convict before taking action to withdraw/cancel remission. The show cause notice must contain the grounds on which action under sub section (3) of Section 432 of the CrPC or subsection (3) of Section 473 of BNNS is sought to be taken. The concerned authority must give the convict an opportunity to file a reply and of being heard. After that, the authority must pass an order stating the reasons in brief. The convict can always challenge the order of cancellation of remission by adopting a remedy under Article 226 of the Constitution of India.; and

(vi) Registration of a cognizable offence against the convict, per se, is not a ground to cancel the remission order. The allegations of breach of condition cannot be

> *taken at their face value, and whether a case for cancellation of remission is made out will have to be decided in the facts of each case. Every case of breach cannot invite cancellation of the order of remission. The appropriate Government will have to consider the nature of the breach alleged against the convict. A minor or a trifling breach cannot be a ground to cancel remission. There must be some material to substantiate the allegations of breach. Depending upon the seriousness and gravity thereof, action can be taken under subsection (3) of Section 432 of the CrPC or subsection (3) of Section 473 of the BNSS of cancellation of the order remitting sentence.*"

13. Considering the fact that the petitioner completed imprisonment of 19 years and 08 months and 17 days and earned remission 05 years and 06 months 23 days as on 11.12.2024, thereby including remission petitioner completed 25 years 03 months and 10 days of imprisonment as on 11.12.2024, and further from perusal of the impugned order dated 20.07.2023 passed by the respondent No. 1, it is evident that the application under Section 432 of the Cr.P.C. (now Section 474 of the BNSS) had been rejected only on the ground that the Presiding Officer of the trial Court has not given the opinion in affirmative, but has failed to consider the judgment of the Hon'ble Apex Court as is enumerated above and also in the light of the latest judgment of the Hon'ble Apex Court in ***Mafabhai Motibhai Sagar*** (supra), the impugned order cannot be justified.

14. Consequently, this Court is of the opinion that the impugned order dated 20.07.2023 passed by the respondent No. 1 cannot be sustained in the eyes of law in view of the forgoing discussions made above, hence, the same is hereby set aside and the petitioner is directed to be released on remission in accordance with law subject to the terms and conditions and to the satisfaction of the competent authority.

15. With the aforesaid observations / directions, the instant writ petition stands **allowed**. No order as to cost(s

Sd/-	**Sd/-**
(Ravindra Kumar Agrawal)	**(Ramesh Sinha)**
Judge	**Chief Justice**

Brijmohan

Head Note

The power to remit a sentence considering gravity and nature of offence is discretionary, but must stand the scrutiny of Article 14 and 21 of the Constitution of India.