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2026 INSC 1281

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 204/2023

TELUGU UMADEVI KRISHNAIAH & ANR. … PETITIONERS

VERSUS

THE STATE OF BIHAR & ORS. … RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

"JUSTICE CONSISTS NOT IN BEING NEUTRAL BETWEEN RIGHT AND WRONG, BUT FINDING OUT THE RIGHT AND UPHOLDING IT, WHEREVER FOUND, AGAINST THE WRONG."

– Theodore Roosevelt[1]

Essentially what (former) President Roosevelt meant to say is that justice requires taking a side – the side of the law and righteousness, and not to remain a silent spectator between right and wrong.

2. Inspired by what President Roosevelt had observed more than a century back, we are of the considered opinion that the duty of this Court exercising high prerogative writ jurisdiction under Article 32 of the Constitution of India[2] demands the Court to be an active seeker of truth, and a firm upholder of it. The Court's duty is to find out where

[1] Fear God and Take Your Own Part, 1916
[2] Constitution

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the right lies in law and on facts, and to uphold it against the wrong, wherever it is found. Judicial review is not an empty formality of supervision. It is the active vindication of legality, fairness, and justice against arbitrary State action. If State action is wrong, it has to be set right and the rule of law restored. With these prefatory words, which would likely influence our ultimate decision, we embark on our journey of seeking the truth.

3. The first petitioner is the widow of a deceased member of the Indian Administrative Service[3]. At the material time, her husband[4] (since murdered) was the District Collector, Gopalganj in the State of Bihar. Mr. K.J. Alphons, a former IAS officer of the Bihar cadre, has been impleaded and figures as the second petitioner (additional petitioner).

4. The facts are straight forward and are noticed only to the extent necessary to appreciate the legal issues emerging therefrom.

5. On 5th December, 1994, while the victim was returning to Gopalganj after attending an official meeting scheduled in a neighbouring district, he was caught in a mob fury. The official car[5] of the victim was overturned and after being dragged out, he was severely assaulted by a section of the mob. While lying on the ground injured and writhing in pain, the victim was shot (thrice) from close range by an individual[6] who was exhorted to shoot, *inter alia*, by the fourth respondent (a

[3] IAS
[4] victim
[5] white Ambassador
[6] shooter

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Member of the Bihar Legislative Assembly) simply because the victim happened to be part of the administration. We need not, for the purpose of a decision on this writ petition under Article 32, note the events antecedent to the murder of the victim in any detail. Suffice to record, the victim was not even remotely connected with the incident that fuelled the rage of the mob.

6. A full-fledged trial followed. While the trial was in progress, on 16th February, 1997, the shooter himself was murdered. On 1st October, 2007, the fourth respondent was convicted of offences punishable under sections 302 and 109, Indian Penal Code, 1860 and awarded death sentence by the 1st Additional Sessions Judge, Patna[7] on 3rd October, 2007. In terms of section 366, Code of Criminal Procedure, 1973[8], the death sentence was placed before the High Court of Judicature at Patna[9] for confirmation[10] by the Sessions Judge. At the same time, the fourth respondent appealed[11] against his conviction and sentence. A Division Bench of the High Court *vide* a judgment and order dated 10th December, 2008 upheld the conviction of the fourth respondent but declined confirmation of the death sentence observing that it was not "the rarest of rare cases". The sentence of death was, accordingly, altered to rigorous imprisonment for life.

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[7] Sessions Judge
[8] Cr. PC
[9] High Court
[10] Death Reference No.12 of 2007
[11] Crl. Appeal (DB) No. 1345 of 2007

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7. The State of Bihar as well as the fourth respondent challenged the judgment and order dated 10th December, 2008 before this Court. On 10th July, 2012, this Court dismissed the appeals *vide* its decision in ***Anand Mohan v. State of Bihar***[12].

8. As an under-trial prisoner, the fourth respondent was in custody for 4 months 17 days. Upon his conviction being confirmed by the High Court as well as this Court, he remained incarcerated till 24th April, 2023, when he was granted the benefit of premature release.

9. Under assail in this writ petition under Article 32 of the Constitution by the victim's widow is a notification dated 10th April, 2023 issued by the Home Department (Prison), Government of Bihar[13] deleting the words "or for murder of a public servant on duty" from Rule 481(i)(a) of the Bihar Prison Manual, 2012[14] and the consequent order dated 24th April, 2023 of premature release of the fourth respondent.

10. At the threshold, the prayer clauses of this writ petition are noted hereinbelow:

> (a) Allow the present Writ Petition to protect the fundamental rights of the Petitioner herein; and/or
> (b) Issue a Writ in the nature of Certiorari or any other appropriate Writ quashing the Notification dated April 10, 2023 passed by the Respondent No. 1; and/or

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[12] (2012) 7 SCC 225

[13] "No.-Prison/05-07(A. Mo.)-14/2022…./In exercise of powers conferred under Section 59 of Prison Act 1894 (Act 9, 1894) and Section 432 of the Code of Criminal Procedure, 1973 (1974 of 2), the Governor of Bihar, amends the Bihar Prison Manual 2012 from the date of its notification in the following manner:-
Amendment of Rule-481(i)(a) of the Bihar Prison Manual, 2012-
The Phrase described in Rule-481(i)(a) "or for murder of a public servant on duty" is being deleted."

[14] Bihar Prison Manual

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(c) Issue a Writ in the nature of Certiorari or any other appropriate Writ quashing the Order dated April 24, 2023 passed by the Respondent No. 1 qua the Respondent No. 4; and/or
(d) Issue a Writ of Mandamus directing the Respondent No. 1 and 2 to consider shifting the Respondent No. 4 outside the prisons in Bihar; and/or
(e) Issue a Writ of Mandamus directing the Respondent No. 1 to produce the prison records of the Convict/Respondent No.4 pertaining to his criminal antecedents; and/or
(f) Issue a Writ of Mandamus directing the Respondent No. 1 to produce the prison records of the Convict/Respondent No.4 pertaining to periodic grant of remission/parole given to him while in custody; and/or
(g) Issue a Writ of Mandamus directing the Respondent No.1 to produce the records of the Convict/Respondent No.4 pertaining to grant of remission vide Order dated April 24, 2023; and/or
(h) Issue a Writ of Mandamus directing the Respondent No. 1 to produce the records pertaining the recommendation of the Bihar State Remission Board on April 20, 2023; and/or
(i) Issue a Writ of Mandamus directing the Respondent No.2 to consider framing a uniform guideline applicable for pre-mature release of prisoners; and/or
(j) Pass such other/further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

11. Mr. Luthra, learned senior counsel for the petitioner, Mr. Kumar, learned senior counsel for the State of Bihar, Mr. Baghel, learned senior counsel for the Remission Board, Mr. Dwivedi, learned senior counsel for the fourth respondent and Mr. Alphons, arguing as party-in-person through the virtual mode to assist the Court, have been patiently heard. We have also meticulously perused the official files, which Mr. Kumar placed before us.

12. Questions of seminal importance, impacting the contours of the executive power of remission with the constitutional guarantees of fairness and non-arbitrariness, fall for consideration in this writ petition. While the power to remit or commute sentence is undoubtedly an attribute of sovereign authority recognised by the Constitution and

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the Cr. PC, a convict does not possess a vested right to be released prematurely. At the same time, exercise of such power is not immune from judicial scrutiny. The power of the State to grant remission has to be exercised reasonably and without discrimination, but not capriciously and in a manner that defeats the ends of justice.

13. Let us now turn to the issues that arise for determination.

14. The controversy *writ large* before us lies in the legality of the remission granted to the fourth respondent. The challenge mounted herein is, however, not purely factual. A conspectus of the same branches into issues concerning the identification of the remission policy applicable to a life convict and, *inter alia*, the extent to which a subsequently introduced policy can be pressed into service to claim a more beneficial treatment.

15. Broadly, five issues arise for determination on the pleadings of the parties:

a. Whether the remission policy applicable to a life convict is the policy prevailing on the date of conviction or the policy prevailing on the date of consideration of an application for premature release, if the subsequent policy is more beneficial?

b. Whether, and to what extent, the victim or the victim's family is entitled to a right of hearing or participation in the process of consideration and grant of premature release to a life convict?

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c. Whether, in the facts of the present case, the fourth respondent could legitimately claim the benefit of the notification dated 10th April, 2023?

d. Whether the safeguards that the extant laws envisage prior to granting remission were duly followed while granting the prayer of the fourth respondent?

e. Whether the notification dated 10th April, 2023, issued by the State of Bihar, amending Rule 481(i)(a) of the Bihar Prison Manual by deleting the words "or for murder of a public servant on duty", is constitutionally valid, or is liable to be struck down, in whole or in part, as violative of Article 14 of the Constitution of India?

16. The issues framed hereinabove fall into two distinct categories. The first two raise questions of general application pertaining to the scope and exercise of the power of remission, whereas the remaining three emanate from the factual and circumstantial peculiarities of the present case and require a case-specific examination. The distinction is significant, for the general principles governing remission must be stated in their proper paradigm before their application to the individual case can be undertaken. We shall, however, first notice the relevant factual developments and the foundational principles governing remission, and thereafter proceed to determine the issues in the order in which they arise.

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17. Before proceeding to answer the issues framed hereinabove, it would be apposite to briefly notice the factual developments which have a material bearing on the controversy.

18. As has been noted above, consequent upon the Division Bench of the High Court by its judgment and order dated 10th December, 2008 affirming the conviction of the fourth respondent, he remained incarcerated since the order of conviction of the trial court.

19. Having undergone incarceration for a period in excess of a dozen of years, the fourth respondent submitted an application seeking premature release in the year 2021. At the relevant point of time, Rule 481(i)(a) of the Bihar Prison Manual was in force and it expressly disqualified a convict sentenced for the murder of a public servant on duty from being considered for premature release. Notwithstanding such statutory disqualification and, a *fortiori*, disentitlement, we find quite surprisingly that not only did the fourth respondent apply for premature release, but the opinion of the Presiding Judge too was obtained on 5th October, 2021 by the Superintendent, Sub Jail, Saharsa in connection with the said application. However, the application did not culminate in an order of remission since the statutory disqualification continued to subsist.

20. The position underwent a sea change on 10th April, 2023, when the State of Bihar amended Rule 481(i)(a) by deleting the expression "or for murder of a public servant on duty". Consequent upon removal of

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the aforesaid disqualification, the fourth respondent sought consideration for premature release under the amended regime. Thereafter, the Probation Officer's Report dated 13th April, 2023, the recommendation of the Superintendent of Police dated 14th April, 2023 and the recommendation of the State Sentence Remission Board[15], apart from the opinion of the Presiding Judge dated 5th October, 2021, ensued in close succession, culminating in the order dated 24th April, 2023 granting the prayer for premature release of the fourth respondent.

21. It is this stringing together of events, particularly the rejection of the fourth respondent's claim under the unamended regime, the subsequent amendment removing the disqualification, and the unusually expeditious grant of premature release immediately thereafter, which constitutes the canvas against which the issues framed above emerge for consideration.

I. FOUNDATIONAL PRINCIPLES GOVERNING REMISSION

22. Before embarking upon the principal controversy engendered in the present petition and answering the issues formulated hereinabove, it would be apposite to notice the legal position regarding the right of a life convict to obtain remission as such, which stands authoritatively settled.

[15] Remission Board

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23. Behoved by the contextual necessity, we find it apposite to adumbrate the preface with a primer about what remission is, at a jurisprudential level. One of the forms of mercy recognised in the Constitution as well as the criminal procedure system is remission, where the length of the sentence is lessened, but the severity of the penalty remains intact. Remission rests upon the recognition that the sentence imposed by law, though exacting in its demand for retribution, is not indifferent to the passage of time, the possibility of human transformation, or the ends which punishment is ordained to serve. It is the law's acknowledgment that the measure of justice lies not merely in how long a person is made to suffer, but also in whether any legitimate purpose is yet served by requiring him to suffer longer.

24. Having set the conceptual premise of remission in place, the parameters required to be borne in mind while considering an application seeking grant of premature release which have been crystallised by judicial precedents may now be noted.

25. In ***Laxman Naskar v. Union of India***[16], this Court required the police to submit a report on the following points:

> (*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 has 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.

[16] (2000) 2 SCC 595

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26. Though not enunciated as binding principles, the five factors adverted to in ***Laxman Naskar*** (supra) have, by efflux of time and reiteration in subsequent decisions, come to acquire a permanency as the relevant considerations for disposal of an application for remission.

27. The decision in ***State of Haryana v. Mahender Singh***[17] recognised unambiguously the legal right of a convict to have his application for premature release considered by opining as follows:

> **38.** A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder. Although no convict can be said to have any constitutional right for obtaining remission in his sentence, he in view of the policy decision itself must be held to have a right to be considered therefor. Whether by reason of a statutory rule or otherwise if a policy decision has been laid down, the persons who come within the purview thereof are entitled to be treated equally. [*State of Mysore* v. *H. Srinivasmurthy* (1976) 1 SCC 817].
>
> (emphasis ours)

28. A Constitution Bench of this Court in ***Union of India v. V. Sriharan***[18] explained the nature of the right possessed by a life convict in matters of remission in the following words:

> **259.** The convict undergoing the life imprisonment can always apply to the authority concerned for obtaining remission either under Articles 72 or 161 of the Constitution or under Section 432 CrPC and the authority would be obliged to consider the same reasonably. This was settled in *Godse* [*Gopal Vinayak Godse* v. *State of Maharashtra*, AIR 1961 SC 600] which view has since then been followed consistently in *State of Haryana* v. *Mahender Singh*, (2007) 13 SCC 606, *State of Haryana* v. *Jagdish*, (2010) 4 SCC 216, *Sangeet* v. *State of Haryana*, (2013) 2 SCC 452 and *Laxman Naskar* v. *Union of India*, (2000) 2 SCC 595. The right to apply and invoke the powers under these provisions does not mean that he can claim such benefit as a matter of right based on any arithmetical

[17] (2007) 13 SCC 606
[18] (2016) 7 SCC 1

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> calculation as ruled in *Godse*. All that he can claim is a right that his case be considered. The decision whether remissions be granted or not is entirely left to the discretion of the authorities concerned, which discretion ought to be exercised in a manner known to law. The convict only has right to apply to competent authority and have his case considered in a fair and reasonable manner.
>
> (emphasis ours)

29. Pursuant to the application made by a convict for remission, the procedural safeguard engrafted in sub-section (2) of Section 432, Cr. PC becomes operative. It is neither ornamental nor directory in nature. It is in this context that the observations of this Court in ***Ram Chander v. State of Chhattisgarh***[19] assume significance. Explaining the rationale underlying Section 432(2), this Court held:

> **25.** In *Sriharan* [*Union of India* v. *V. Sriharan*, (2016) 7 SCC 1], 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) 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.
>
> ***
>
> **28.** In his opinion dated 21-7-2021 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)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 authority concerned has provided relevant reasons. Mechanical reasons are not considered adequate. The following extract is useful for our consideration:

[19] (2022) 12 SCC 52

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> "**[005.066]** ***Adequacy of reasons*** Sufficiency of reasons, in a particular case, depends on the facts of each case. It is not necessary for the authority to write out a judgment 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." [*Halsbury's Laws of India (Administrative Law)* (Lexis Nexis, Online Edition).]

30. The decision in ***Ram Chander*** (supra) further underscores that the opinion of the Presiding Judge is expected to reflect due consideration of the parameters consistently recognised by this Court as relevant to premature release. These include the impact of the offence upon society, the likelihood of recidivism, the future propensity of the convict to commit offences, whether continued incarceration serves any fruitful purpose, and the socio-economic condition of the convict's family. The Court observed:

> **27.** 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* [*Laxman Naskar* v. *Union of India*, (2000) 2 SCC 595]. 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 by keeping the convict in prison; and
> (*v*) the socio-economic condition of the convict's family.
> In *Laxman Naskar* v. *State of W.B.*, (2000) 7 SCC 626, and *State of Haryana* v. *Jagdish*, (2010) 4 SCC 216, this Court has reiterated that

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> these factors will be considered while deciding the application of a convict for premature release.
> ***
> **29.** Thus, an opinion accompanied by inadequate reasoning would not satisfy the requirements of Section 432(2) 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.
> (emphasis ours)

31. The inevitable corollary is that an opinion bereft of reasons, or one which fails to bear out consideration of the relevant factors, cannot fulfil the statutory purpose underlying Section 432(2), Cr. PC. The object of seeking the opinion is not merely to obtain concurrence or dissent; it is to secure a reasoned judicial assessment that meaningfully informs the executive's decision-making process. Those considerations, as elucidated in ***Laxman Naskar*** (supra), ***Sriharan*** (supra) and ***Ram Chander*** (supra) necessarily encompass not only the conduct and future propensity of the convict to commit the crime, but also hinge upon the seriousness of the crime and its ramifications on the society. If these are considerations with which the Presiding Judge is expected to evaluate while assisting the executive in making an informed decision, these factors cannot, by any stretch of reasoning, cease to be relevant when the executive itself proceeds to decide on the plea for remission. To hold otherwise would denude Section 432(2) of its substantive rigour, for the very purpose of the judicial opinion is to ensure that the executive decision is tempered by all the relevant considerations, including the societal consequences of the crime. An unreasoned endorsement truncates the said statutory

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guardrail to a hollow exercise and deprives the appropriate Government of the very assistance which Parliament, by the legislative design, intended it to receive.

II. Relevant Policy as on the Date of Conviction and Sentence vis-à-vis Victim's Right of Participation (Issues I and II)

32. Having drawn guidance in respect of the legal position thus, the first issue *prima facie* would appear to be no longer *res integra.* The question is whether the claim of the fourth respondent for premature release was required to be considered exclusively within the confines of the remission policy prevailing on the date of his conviction or whether the subsequently formulated policy, if demonstrably more beneficial to him, could legitimately be invoked? We propose to record our answer in the concluding part of this segment.

33. Any discussion whilst answering the aforesaid question, in our view, must start with the decision of a three-Judge Bench of this Court in ***State of Haryana v. Jagdish***[20], since it has been heavily relied on by the respondents.

34. Respondent-Jagdish stood convicted on 20th May, 1999 under Sections 302, 148 and 149 of the IPC and was sentenced to imprisonment for life. On the date of his conviction, the remission policy holding the field was the policy dated 04th February 1993. Having undergone more than ten years of incarceration, the respondent-Jagdish sought

[20] (2010) 4 SCC 216

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consideration of his case for premature release under the said policy. The State, however, resisted such claim by placing reliance on a subsequent and more restrictive policy dated 13th August, 2008, issued under Section 432 read with Sections 433 and 433-A of the Cr. PC, which expressly superseded the earlier policies. The High Court of Punjab and Haryana, following the decisions in ***Mahender Singh*** (supra) and ***State of Haryana v. Bhup Singh***[21], directed the State to consider the respondent's case in terms of the 1993 policy. The principle emerging from the aforesaid decisions [i.e., ***Mahender Singh*** (supra) and ***Bhup Singh*** (supra)] was that the remission policy prevailing on the date of conviction would govern the consideration of a convict's claim for premature release. Aggrieved thereby, the State approached this Court. During the course of consideration, a Division Bench of this Court noticed divergence between the views expressed in ***Mahender Singh*** (supra) and ***Bhup Singh*** (supra), on the one hand, and the view taken in ***State of Haryana v. Balwan***[22], on the other, wherein it had been held that the policy in force on the date when the case of the convict is considered for premature release is the relevant policy. Consequently, the matter was referred to a larger bench. This Court, accordingly, in ***Jagdish*** (supra) framed a question as to whether a convict's entitlement to remission and premature

[21] (2009) 2 SCC 268
[22] (1999) 7 SCC 355

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release is to be determined with reference to the policy prevailing on the date of his conviction, or by reference to the policy in force on the date when his case is taken up for consideration by the competent authority.

35. In answering the aforesaid reference, the Court in ***Jagdish*** (supra) held that where more than one remission policy is capable of application, the policy most beneficial to the convict ought to govern the consideration of his claim for premature release. The Court observed that a convict, on the date of conviction, acquires a legitimate expectation that after serving the sentence his case would be considered in accordance with the short-sentencing policy then in force. At the same time, if a more liberal policy comes into operation before his case is taken up for consideration, the benefit thereof cannot be denied to him. The Court further noted that the policy dated 04th February, 1993 had been formulated with reference to the constitutional power of the Governor under Article 161 of the Constitution, whereas the subsequent policy dated 13th August 2008 owed its source to the provisions of the Cr. PC. Proceeding on this distinction, the Court held that a policy framed under a statutory regime could not curtail or whittle down the benefit flowing from a policy traceable to a constitutional power. Consequently, the Notification dated 10th April, 2023 could not be invoked to deprive the convict of the advantage available under the earlier policy. The Court

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further elucidated the considerations that ought to guide the competent authority while examining a claim for premature release of a life convict. These include, *inter alia*, whether the offence was an isolated act not having a deleterious impact on the society at large; whether there exists any real likelihood of the convict reverting to criminal conduct; whether he has been sufficiently reformed and has lost the propensity to commit similar offences; whether any useful purpose would be served by his continued incarceration; and the socio-economic circumstances of his family. The Court emphasized that these, along with other relevant factors, must inform the exercise of discretion in matters concerning premature release.

36. Relevant paragraphs from the said decision read as follows:

> **46.** At the time of considering the case of premature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances.
> ***
> **52.** We have already noticed that the earlier policies including the policy dated 4-2-1993 refer to the exercise of powers under Article 161 of the Constitution whereas the policy dated 13-8-2008 is in exercise of the powers under Section 432 read with Sections 433 and 433-A CrPC. The restriction under Section 433-A is only to the extent of the powers to be exercised in respect of offences as referred to under Section 432 CrPC. The Notification dated 13-8-2008 is, therefore, under a rule of procedure, which is subordinate to the Constitution. The power exercised under Article 161 of the Constitution is obviously a mandate of the Constitution and, therefore, the policy dated 13-8-2008 cannot override the policy dated 4-2-1993.
> **53.** The right of the respondent prisoner, therefore, to get his case considered on a par with such of his inmates, who were entitled to

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> the benefit of the said policy, cannot be taken away by the policy dated 13-8-2008. This is evident from a bare perusal of the recitals contained in the policies prior to the year 2008, which are referable to Article 161 of the Constitution. The High Court, therefore, in our opinion, was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction.
> **54.** The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given benefit thereof.

37. The principles governing remission were recently considered in *extenso* by a coordinate Bench in ***Bilkis Yakub Rasool v. Union of India***[23]. After surveying the precedents in the field, the decision crystallised the legal position thus:

> **181.** With regard to the remission policy applicable in a given case, the following judgments are of relevance.
> **182.** …The question considered by the three-Judge Bench was, whether, the policy which provides for remission and sentence should be that which was existing on the date of the conviction of the accused or should it be the policy that existed on date of consideration of his case for premature release by the appropriate authority. Noting that remission policy would be changed from time to time and after referring to the various decisions of this Court, including Gopal Vinayak Godse [Gopal Vinayak Godse v. State of Maharashtra, 1961 SCC OnLine SC 70] and Ashok Kumar [Ashok Kumar Pandey v. State of W.B., (2004) 3 SCC 349], this Court observed that, liberty is one of the most precious and cherished possessions of a human being and he would resist forcefully any attempt to diminish it. Similarly, rehabilitation and social reconstruction of a life convict, as an objective of punishment become a paramount importance in a welfare State. The State has to achieve the goal of protecting the society from the convict and also rehabilitate the offender. The remission policy manifests a process of

[23] (2024) 5 SCC 481

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> reshaping a person who, under certain circumstances, has indulged in criminal activities and is required to be rehabilitated. Thus, punishment should not be regarded as the end but only a means to an end. Relevancy of circumstances to an offence such as the state of mind of the convict when the offence was committed, are factors to be taken note of.
> **183.** It was further observed as under: (Jagdish case)
> ***
> **222.4.** The policy of remission applicable would therefore be the Policy of the State which is the appropriate Government and which has the jurisdiction to consider that application. The policy of remission applicable at the time of the conviction could apply and only if for any reason, the said policy cannot be made applicable a more benevolent policy, if in vogue, could apply.'
>
> (emphasis ours)

38. The aforesaid exposition bears little room for doubt that the remission policy prevailing on the date of conviction generally governs the premature release; nonetheless, the said rule is not set in stone.

39. The discussion in the decisions aforementioned hover on the policies in force on the date of conviction and on the date of consideration of the application for premature release. We are inclined to the view that the question of applicability of either of the two policies must bear consideration of what the policy was when the crime was committed, when the conviction was returned, when the appellate court affirmed the conviction and when, in a further appeal under Article 136 of the Constitution, the conviction is finally confirmed by this Court.

40. As the record bears out: the fourth respondent was sentenced to death by the Sessions Judge and *vide* its judgment and order dated 10th December, 2008, the High Court altered that sentence to imprisonment for life. Murder of a public servant on duty is not a usual incident. In course of hearing, we were informed by Mr. Alphons that

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it was the first such instance in independent India of a member of the IAS, of Collector rank and on duty, being done to death. According to Mr. Alphons, murder of a public servant on duty is not a usual incident and the murder of the victim should have certainly counted as the rarest (first of its kind) of the rare cases (murder of an IAS officer); and, indeed, fortune smiled on the fourth respondent having escaped the noose. The question as to whether alteration of the death sentence to life imprisonment was justified need not detain us. All that we can say is that, the High Court while sentencing the fourth respondent must be presumed to have been aware that in terms of pre-amended Rule 481, the fourth respondent was disqualified from grant of any remission and, therefore, would have to spend the remainder of his life in prison; hence, life imprisonment instead of death, in what was considered not to amount to be 'the rarest of rare cases', was imposed as sentence by the High Court, since confirmed by this Court, which would sufficiently serve the cause of justice.

41. Now, except for a solitary observation in ***Bilkis Yakub Rasool*** (supra) that the state of mind of the convict when the offence was committed is one of the factors to be taken note of, we have not come across any decision of this Court where the facts were such as in the present case. We defer our reasoning on this aspect of the matter in this segment, for, we propose to include it in the segment dealing with issues (ii) and (iii).

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42. There is another aspect which, in our considered view, has not garnered express consideration in the decisions of this Court governing premature release, namely, whether the victim of the crime, or the victim's family where the victim is no longer alive, ought to have any say before a convict is granted premature release. This question assumes pronounced significance in light of the increasing recognition accorded by the criminal procedure to the rights and participation of the victims in various stages of the criminal proceeding, thereby making it a collaborative process in the trifecta of the convict, accused and the court. Through amendments of the Cr. PC introducing, *inter alia*, the definition of "victim" in Section 2(wa), and inserting provisos to Section 24(8) and Section 372, the Parliament has recognised the victim as an important participant in the criminal justice process. These provisions have been carried forward, in substance, in the Bharatiya Nagarik Suraksha Sanhita, 2023[24]. It is true, neither Section 432 of the Cr. PC nor its corresponding provision, Section 473 of the BNSS, expressly provides for notice to, or a hearing of, the victim, or in their absence, the complainant, before a decision on remission is taken. Equally, the statutory recognition of a victim's participatory rights in the course of prosecution cannot, without more, be treated as having created an automatic right of audience at the stage of premature release. The remit of our consideration, henceforth, is whether having

[24] BNSS

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regard to the nature of power exercised; the consequence it engenders by setting the convict at liberty; and the legitimate interest of the victim and the victim's family in the administration of justice, the competent authority is required, at least in cases involving grave offences and where the victim or the victim's family can reasonably be traced and approached, to take their views into account after affording them a meaningful opportunity to place relevant material on record. The absence of notice-cum-hearing requirement under Section 473, BNSS is deliberate, which seems to reinforce the convict-centric modality of the remission process; rendering remission as a subject between the State and the convict alone. However, does this assumption continue to hold good in the specific context of remission, particularly when criminal procedure has increasingly recognised and accommodated victim participation in other domains, including appellate and bail proceedings?

43. Our concern, expressed above, finds echo in ***Jagjeet Singh v. Ashish Mishra***[25] where a 3-Judge Bench held as follows:

> **23.** A "victim" within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a "victim" has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that "victim" and "complainant/informant" are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a "victim", for even a stranger to the act of crime can be an "informant", and similarly, a "victim" need not be the complainant or informant of a felony.

[25] (2022) 9 SCC 321

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(emphasis ours)

44. The question, therefore, is whether the victim's participatory role, recognised at these stages, ought to find some expression even at the stage when the State considers restoring the convict's liberty through premature release. In our considered view, the answer must be in the affirmative. The victim's participation in the criminal justice process cannot be regarded as having exhausted itself merely upon the conclusion of the trial and the imposition of sentence. The decision to prematurely release a convict is a distinct and significant exercise of executive discretion, which has the effect of restoring the convict's liberty before the full term of the sentence has run its course. Such a decision may have a direct bearing on the victim, particularly in cases involving serious offences, where the consequences of the crime continue to affect the victim and the victim's family long after the conclusion of the trial.

45. The victim may possess relevant information or have legitimate concerns which may assist the competent authority in making an informed assessment while considering premature release. These may relate, *inter alia*, to the continuing impact of the offence, the circumstances surrounding the crime, the conduct of the convict, any subsequent developments having a bearing on the victim's safety, and the possibility of intimidation, harassment or renewed vulnerability upon the convict's release. While the competent authority must

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independently assess the relevant considerations in accordance with the applicable policy and the governing law, excluding the victim altogether from the process would render the participatory role recognised at the earlier stages of the criminal justice system incomplete.

46. At the same time, recognising such participation does not mean that the victim acquires a vested right to determine the outcome of the premature release proceedings, nor does it confer a veto over the State's decision. The ultimate decision must remain with the competent authority, which is required to exercise its discretion objectively, fairly and in accordance with the applicable legal framework. The limited right that we propose to recognise is one of procedural participation: an opportunity to place relevant facts, objections and concerns before the authority, for their consideration along with the other relevant materials.

47. We are, therefore, of the view that an opportunity to the victim who is traceable and identifiable, to at least submit a representation ought to be read into the Prison Manual. The competent authority considering premature release must, wherever practicable, provide notice to the victim or the victim's recognised legal representative and afford a reasonable opportunity to submit such representation before the decision is taken. The representation must receive due consideration as one of the relevant inputs in the decision-making process. This

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would ensure that the exercise of executive discretion is informed by the perspective of the victim, without compromising the statutory and constitutional responsibility of the State to independently decide whether premature release is warranted.

48. To answer the first issue, suffice it is to record that for the purpose of the extant inquiry, neither the policy on the date of conviction nor the policy on the date of consideration can guide our decision-making process since the present case is one which is singularly singular and, perhaps, without a parallel. Having regard to the somewhat discordant note struck by the coordinate Bench in paragraph 222.4 of ***Bilkis Yakoob Rasool*** (supra) after considering ***Jagdish*** (supra), we leave the question of applicability of the relevant policy open.

III. Invocation of the Benefit of Notification dated 10th April, 2023 by the Fourth Respondent in the Present Case and Procedural Compliance (Issues III and IV)

49. The inquiry now shifts from principle to application. For sequential convenience, issues (iii) and (iv) shall be dealt with together in this section. The real issues are – whether, notwithstanding precedents, the fourth respondent could in the peculiar factual complexion of the present case legitimately invoke the benefit of the subsequently introduced policy and whether the safeguards in the relevant policy for remission were followed by the competent authority.

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50. First, *apropos* compliance with the statutory safeguards prevalent in the relevant policy for remission, what transpires from the facts of the present case is that the fourth respondent had submitted an application seeking remission in the year 2021, and the opinion of the Presiding Judge of the relevant Sessions Court was, accordingly, obtained on 5th October, 2021. Apart from there being no dearth of clarity that the said opinion was rendered in a wholly mechanical manner, without recording any reasons or reflecting consideration of the parameters mandated under Section 432(2), Cr. PC, as elucidated by this Court in several decisions including ***Ram Chander*** (supra), such opinion was wholly unworthy of being acted upon for the reasons which we shall presently assign.

51. Rule 481(i)(a), in its pre-amended form was in force when the fourth respondent first applied for premature release on 21st July, 2021. The said rule, as it then existed, placed an embargo on remission being granted to a convict who involved himself in murder of a public servant on duty and was serving a life sentence. The fourth respondent's application dated 21st July, 2021 was, thus, *ab initio* not maintainable and liable to be thrown out at the threshold; yet, the opinion of the Sessions Judge was obtained on 5th October, 2021. However, what is of significance is that Rule 481(i)(a) having been amended with effect from 10th April, 2023, the said opinion of the Sessions Judge (rendered on 5th October, 2021 pursuant to the application of the fourth

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respondent made on 21st July, 2021) could not have formed part of the consideration by the Remission Board. This is for the simple reason that as on 21st July, 2021, when the fourth respondent applied for premature release, the disqualification for remission existed *qua* him and such an application, in the first place, was incompetent as still born. If the application for premature release itself was not maintainable, any opinion rendered by the Sessions Judge on such application recommending release carried no weight and was of no legal value. There can be no gainsaying that a recommendation made on an application which is not maintainable cannot clothe an otherwise incompetent prayer with validity.

52. On 10th April, 2023, the State of Bihar amended Rule 481(i)(a) of the Bihar Prison Manual by deleting the expression "or for murder of a public servant on duty". The disqualification *qua* him having stood removed, significantly, on the very same day, the fourth respondent while incarcerated submitted his application seeking premature release. Coincidence? Far from it! We are left to wonder whether each and every convict serving life sentence is called upon to apply for release the same day the hitherto existing disqualification is removed. Be that as it may, once the fourth respondent applied (pursuant to the changed policy) seeking premature release, the executive was not to be left far behind. It moved at an unusually rapid pace. It would not be a misnomer to call it 'jet speed'. The Probation Officer's report was

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obtained on 13th April, 2023, which was immediately followed by the recommendation of the Superintendent of Police on 14th April, 2023. The Remission Board assembled on 20th April, 2023 and resting on these two documents, the recommendation was acted upon with great alacrity and the order of release published on 23rd April, 2023.

53. Thus, as the facts reveal, the decision of the Remission Board granting the fourth respondent the benefit of premature release was not preceded by, nor accompanied with, any contemporaneous opinion of the Presiding Judge in relation to the actual order of premature release as presupposed under Rule 476 of the Bihar Prison Manual. Also, since Section 432(2), Cr. PC contemplates that the appropriate Government shall obtain and consider the opinion of the Presiding Judge before deciding upon remission, the failure to obtain such opinion at the stage when the 2023 release order was passed vitiates the entire decision-making process, including the recommendation of the Remission Board and the consequential order of premature release. The executive could not have relied upon a stale and mechanically rendered opinion obtained in connection with an earlier premature and non-maintainable application for remission to sustain a subsequent order of premature release passed after a considerable lapse of time and in materially altered circumstances.

54. Next, whether the notification dated 10th April, 2023 deserves application depends upon a cumulative evaluation of several relevant

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considerations, including the nature of the crime, the manner in which it was committed, the observations of the sentencing court while imposing maximum punishment of death, consideration of the sentence by the appellate court(s) and alteration to the minimum punishment either referring to the remission policy then existing or absent such reference, the statutory and executive regime governing premature release and remission at the relevant point of time, the conduct of the convict during incarceration and the larger public interest sought to be protected by the remission framework. It is, therefore, entirely conceivable that despite the existence of a more liberal subsequent policy, the competent authority or even the Court may find no justification to extend its benefit in a given case. The true import of this well-touted exception, and the circumstances in which it may legitimately be invoked, would squarely engage our consideration in the present case.

55. Germanely, the fact-situations to be factored in during the grant of premature release, enunciated in paragraph 46 of ***Jagdish*** (supra) itself, have been noted by us.

56. The necessity of such a holistic evaluation, and grant of remission not being a mechanical exercise upon the expiry of the prescribed period of incarceration, is not without judicial recognition. A constellation of relevant factors to be borne into consideration before arriving at the

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decision *qua* remission were mapped in the decision in ***Mahender Singh*** (supra) as follows:

> **45.** There may not be any dispute with regard to the said proposition of law. But herein we are concerned with the right of the respondents to be considered for remission and not what should be the criteria when the matter is taken up for grant thereof.
> ***
> **88**. It is thus to be seen that both in Karnataka and Bihar remission is granted to life convicts by deemed conversion of life imprisonment into a fixed term of 20 years. The deemed conversion of life imprisonment into one for fixed term by executive orders issued by the State Governments apparently flies in the face of a long line of decisions by this Court and we are afraid no provision of law was brought to our notice to sanction such a course. It is thus to be seen that life convicts are granted remission and released from prison on completing the fourteen-year term without any sound legal basis. One can safely assume that the position would be no better in the other States. This Court can also take judicial notice of the fact that remission is allowed to life convicts in the most mechanical manner without any sociological or psychiatric appraisal of the convict and without any proper assessment as to the effect of the early release of a particular convict on the society. The grant of remission is the rule and remission is denied, one may say, in the rarest of rare cases.
>
> (emphasis ours)

57. The afore-canvassed principles find further resonance in the decision rendered by a coordinate Bench of this Court in ***Joseph v. State of Kerala***[26], of which one of us was a member. The Court reiterated that the consideration of plea for premature release cannot be confined exclusively to the nature and gravity of the offence perpetrated in the distant past. An inflexible executive guideline, which proceeds solely on the basis of the offence in disregard of the reformative potential of an individual convict, may result in overlooking the transformation that could have possibly happened over the prolonged period of

[26] 2023 SCC OnLine SC 1211

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incarceration. The said decision laid emphasis on the conduct of the prisoner in custody; remorse for past conduct and the likelihood of posing a threat to society if and when released, *inter alia*, being germane considerations in the canvas of an objective assessment of the claim for premature release. The relevant passage from the said decision is extracted hereinbelow:

> **37.** Classifying - to use a better word, *typecasting* convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real *danger* of overlooking the reformative potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed, *as a starting point*, may be justified. However, the prison laws in India - read with Articles 72 and 161 - encapsulate a strong underlying reformative purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, *based entirely on the nature of crime committed in the distant past*, would be to crush the life force out of such individual, altogether.
> ***
> The question is, what is achieved by continuing to punish a person who recognises the wrongness of what they have done, who no longer identifies with it, and who bears little resemblance to the person they were years earlier? It is tempting to say that they are no longer the same person. Yet, the insistence of guidelines, obdurately, to not look beyond the red lines drawn by it and continue in denial to consider the real impact of prison good behavior, and other relevant factors (to ensure that such individual has been rid of the likelihood of causing harm to society) results in violation of Article 14 of the Constitution. Excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies society's resolve to be harsh and unforgiving. The idea of rewarding, a prisoner for good conduct is entirely negated.
>
> (emphasis ours)

58. Judged on the principles discussed above, the facts of the present case unfold a factual complexion so singular as to warrant a departure from the general principle that the remission policy existing on the date of conviction should yield to a more liberal subsequent remission policy,

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thereby inuring to the benefit of the convict. Here, it is a unique case where a sentence of death is altered to life imprisonment, given the ineligibility for remission, arising from the brutal murder of an incumbent Collector while returning after an official meeting which, nonetheless, satisfies the criterion of a public servant on duty.

59. However, the State as well as the fourth respondent, both in their counter-affidavits and in the course of oral submissions, vehemently contended that the fourth respondent had comported himself with dignity and propriety, and that his commendable conduct, by itself, furnished sufficient justification for the grant of premature release. We are, however, unable to countenance such a submission. The mere invocation of the fourth respondent's good behaviour cannot, in and of itself, furnish a lawful basis for his premature release, which must necessarily be considered and determined in strict conformity with the applicable statutory rules, governing policies and prescribed parameters. Good conduct, however laudable, cannot supplant the requirements of law.

60. In any event, the chronology of events in the present case delineated in paragraph 52 is, to say the least, striking and assumes great significance.

61. The State has failed to place any material evincing that the amendment dated 10th April, 2023 formed part of a broader policy of prison reform or a general reconsideration of remission jurisprudence.

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At the same time, we take note of the stand of the State in its counter affidavit that the remission policies prevailing in several other States do not impose any embargo on the premature release of specified categories of prisoners, including those convicted for the murder of a public servant, unlike the restriction engrafted in the Bihar Prison Manual. The sequence of events, particularly the meeting of the Sentence Remission Board and the ultimate order of premature release, lends considerable credence to the apprehension that the amendment may have been intended to facilitate the premature release of the fourth respondent. The proximity and cumulative effect of these events legitimately give rise to questions concerning the circumstances in which the amendment was brought about and the manner in which the power was exercised. If statutory power were to be employed to secure a predetermined result in favour of an identified individual, such an exercise would undoubtedly amount to a colourable exercise of power and would fall foul of the constitutional bulwark against arbitrariness. However, whether that was, in fact, the object behind the amendment is a matter in respect whereof we refrain from recording a positive finding, for the reasons stated hereafter.

62. We may observe here that the justification sought to be advanced by the official respondents does not inspire much confidence. They contended, the deletion of the expression "or murder of a public servant on duty" from Rule 481(i)(a) of the Bihar Prison Manual was

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undertaken to align the Bihar Prison Manual with the exemplary objectives underlying the Model Prison Manual, 2016[27].

63. Let us now record why the contention, on a closer scrutiny, falters. The Model Prison Manual merely classifies certain categories of offenders, such as those convicted of rape, dacoity, terrorist crimes, kidnapping, offences against women and children, offences against the State and other grave crimes, as warranting a higher threshold of actual incarceration before their cases are considered for premature release. For the convenience of juxtaposition, the relevant clause of the Prison Manual reads as follows:

> **Eligibility for Premature Release**
> 20.08 The following categories of life convict prisoners shall be eligible to be considered for premature release by the SLC:
> (i) Women offenders sentenced to life imprisonment: on completion of eight years of imprisonment, including remission, except those covered under Section 433-A of the Code of Criminal Procedure, 1973, whose cases will be considered only after completing 14 years of actual imprisonment.
> (ii) Life convicts (men and young offenders) on completion of 10 years of imprisonment, including remission, except those covered under Section 433-A of the Code of Criminal Procedure, 1973, whose cases will be considered after completing 14 years of actual imprisonment.
> (iii) Prisoners convicted of offences such as rape, dacoity, terrorist crimes, kidnapping, kidnapping for ransom, crime against women & children, smuggling (including those convicted under NDPS Act), Prevention of Corruption Act, Immoral Traffic Prevention Act, offences against State, and undergoing life imprisonment, after completion of 14 years of sentence inclusive of remission.
>
> (emphasis ours)

64. If the professed object was indeed to harmonise the Bihar Prison Manual with the Model Prison Manual, one would have expected a

[27] Model Prison Manual

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comprehensive exercise of policy revision. What, however, transpired was quite the contrary. The State did not undertake any omnibus amendment of Rule 481(i)(a). Instead, it retained every other aggravated category of murder: rape with murder, dacoity with murder, murder for dowry, murder of a child below fourteen years of age, multiple murder, murder committed during parole, murder in a terrorist incident, murder in a smuggling operation, amongst others and excised only one category, namely, *"murder of a public servant on duty"*. The amended Rule 481(i)(a) reads thus:

> 481. The following categories of prisoners shall be eligible to be considered for a review of sentences and premature release by the Board:
> (i) Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A CrPC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment i.e. without the remissions. The following categories of convicted prisoner covered under Section 433-A Cr.P.C. undergoing life sentence would not be entitled to be considered for premature release even after undergoing imprisonment for 20 years including remission:
> (a) Such convicts who have been imprisoned for life for rape, rape with murder, dacoity with murder, murder involving offence under the Protection of Civil Rights Act, 1955, murder for dowry, murder of a child below 14 years of age, multiple murder, murder committed after conviction while inside the prison, murder during parole, murder in terrorist incident, murder in smuggling operation *[or murder of a public servant on duty.]
>
> ***
>
> *Omitted vide notification dated 10.04.2023
>
> (emphasis ours)

65. Upon a juxtaposition of the Model Prison Manual and the amended Rule 481(i)(a), the former does not appear to have warranted the deletion of "murder of a public servant on duty"; the latter nevertheless zeroed in on that category alone for exclusion while keeping the remaining

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disqualifications intact. Furthermore, the State has not adduced any material to indicate that the amendment formed part of a larger penological reform or was founded on any empirical study or policy underpinnings. The omission, therefore, stands isolated and unexplained. The same will be dealt with in detail, while addressing issue (v).

66. What was the remission policy prevailing on the date of conviction of the fourth respondent? It was the 2002 Policy that was in place. Significantly, the said policy expressly excluded from the ambit of premature release convicts found guilty of the murder of public servants while on duty. The policy is extracted hereunder for convenience:

> **529. (iv) Ineligibility for premature release**
> The following category of convicted prisoners undergoing life sentence may not be considered eligible for premature release.–
> (a) Prisoners convicted of the heinous offences such as rape, dacoity, terrorist crimes etc.
> (b) Prisoners who have been convicted for organised murder in a premeditated manner and in an organized manner.
> (c) Professional murderers who have been found guilty of murder by hiring.
> (d) Convicted prisoners, who commit murder while involving in smuggling operations or who are guilty of murderer (*sic,* murder) of public servants on duty.
>
> (emphasis ours)

67. This exclusion was not an isolated legislative choice; it was consciously retained in the 2012 as well as the 2016 remission policies, thereby evincing a consistent executive stance that such offences constituted a distinct class necessitating differential treatment. It was only with the 2023 amendment that this position underwent a material change,

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the embargo *qua* convicts guilty of the murder of public servants on duty being omitted. The 2023 amendment, therefore, marks not a continuation of the existing remission framework but a conscious departure from the policy consistently pursued by the State for over two decades.

68. The departure having been impugned in the present writ petition, along with the consequent grant of premature release to the fourth respondent, the question, however, is not whether the executive possesses the authority to alter its remission policy. That proposition admits of no cavil. The real inquiry is as to whether, in departing from a consistently followed policy, the executive has demonstrated that the change is actuated by a discernible public purpose and represents a *bona fide* evolution of correctional policy. Constitutional courts do not sit in appeal over governmental wisdom; yet, where a policy shift materially enlarges the class of convicts eligible for premature release, judicial review is not excluded from examining whether such departure bears a rational nexus with the object sought to be achieved.

69. In the present case, the record before us does not disclose any material indicating what necessitated the deletion of the disqualification relating to the murder of public servants while on duty. No committee report, expert recommendation, empirical study, correctional assessment or change in penal philosophy has been brought to our notice to explain why a category consistently regarded

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by the State as undeserving of premature release ceased, almost overnight, to warrant such treatment. Equally absent is any explanation as to the immediacy with which the amended policy came to be invoked in favour of the fourth respondent.

70. During the course of hearing, the State had sought to justify the amendment dated 10th April, 2023 by placing reliance on certain orders passed by this Court in proceedings before a Bench presided over by Hon'ble Sanjay Kishan Kaul, J. (as His Lordship then was), particularly the orders dated 7th July, 2021 in ***Sonadhar v. State of Chhattisgarh***[28], and 14th / 15th September 2022 in Suo Motu Writ Petition (Crl.) No. 4 of 2021. Such reliance, however, does not appear to be well-founded. The order dated 7th July, 2021 was essentially concerned with streamlining the procedure for identification of eligible life convicts, preparation and processing of applications for premature release, and prescribing timelines for consideration thereof in accordance with the remission policies of the respective States. Likewise, the observations in the subsequent proceedings concerning the Model Prison Manual, merely permitted the State Governments to consider its provisions, particularly Chapter XX, while examining measures for remission of sentences undergone by convicts serving fixed-term sentences up to ten years. Neither of these orders issued any direction mandating the deletion of existing exclusions in the

[28] SLP (Crl.) No. 529 of 2021

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remission policies of the States, much less the exclusion specifically relating to convicts guilty of murdering public servants while on duty. The liberty granted to the State Governments to consider the Model Prison Manual cannot be construed as a judicial mandate to dilute a long-standing disqualification governing an entirely distinct category of life convicts. Indeed, the order dated 15th September, 2022 itself contemplated that the State Governments could consider appropriate exceptions for heinous offences. Thus, while the aforesaid orders may explain the occasion for the State Government to revisit aspects of its remission framework, they do not, by themselves, furnish a justification for the particular deletion effected by the notification dated 10th April, 2023. The State was still required to demonstrate, independently, the public purpose and rational basis underlying the removal of this specific disqualification. That obligation cannot be dispensed with merely by invoking the observations or directions of this Court in proceedings which neither contemplated nor required such an amendment.

71. It cannot be reasonably surmised that the sentencing courts had envisaged a sentence whose practical implications could thereafter be fundamentally tinkered with by a concomitant executive decision geared at a narrowly identifiable class of offenders. The impugned notification dated 10th April, 2023 has precisely that effect. Although, remission remains exclusively within the realm of the executive, its

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exercise cannot be divorced from the judicial adjudication on sentencing. By retrospectively taking away the exclusion applicable to convicts guilty of murdering public servants on duty, the executive has materially altered the practical operation of a sentence that had already been imposed by the High Court and affirmed by this Court. Such an exercise travels beyond the legitimate sphere of regulating the execution of sentences and instead substantially dilutes the legal consequences of a judicial determination that had attained finality.

72. However, we refrain from recording any positive finding that the amendment was manoeuvred to secure the release of the fourth respondent as such. Such a conclusion would presuppose evidence of a higher order than what the present record evinces. Nevertheless, the unexplained concatenation of three circumstances: the consistent retention of the disqualification for over two decades, its sudden deletion *vide* the amendment of 2023, and the grant of remission to the fourth respondent within a short-span thereafter, evokes a legitimate constitutional concern which the State has failed to satisfactorily dislodge.

73. Viewed in this prism, the petitioners' challenge cannot be dismissed as inviting the Court to sit in appeal over the policy of the executive. The issue lies in a narrow compass. It is whether the State has discharged its constitutional obligation of demonstrating that the departure from its long-standing remission policy was informed by legitimate public

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interest. On the material placed before us, that obligation remains unfulfilled *simpliciter*.

74. While examining the facts and circumstances of the present case, we also deem it appropriate to note that certain material facts were not disclosed either by the State or the fourth respondent. One such fact pertains to the grant of parole to the fourth respondent on three separate occasions for a period of 15 days each. This fact finds no mention in any of the affidavits filed before this Court by the State or by the fourth respondent. Equally, the records relating to the proceedings of the Remission Board are conspicuously silent on this aspect. What is more, even the tabulation prepared by the concerned jail authorities indicating the sentence undergone by the fourth respondent does not advert to the periods spent on parole.

75. The fact that the fourth respondent had been released on parole came to the notice of this Court only upon the petitioners placing on record certain news reports depicting the fourth respondent outside prison during the relevant period. It was only thereafter that the State of Bihar, in its written submissions, acknowledged that the fourth respondent had indeed been released on parole on three occasions. Simultaneously, however, it sought to explain such omission by asserting that all three instances of parole occurred in the year 2023, by which time the fourth respondent had already completed fourteen years of actual sentence undergone.

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76. Another circumstance which cannot escape notice relates to the age of the fourth respondent. In the remission application, his age is recorded as 74 years as on 13th December, 2021. However, in the election affidavit sworn by him on 6th April, 2004, his age is disclosed as 44 years, while in the counter affidavit filed before this Court, his age as on 21st July, 2023 is stated to be 67 years. These figures do not appear to be reconcilable with one another. The discrepancy assumes significance having regard to the fact that age is a relevant consideration both in the matter of remission and in the assessment of a claim for premature release.

77. In our considered opinion, the aforesaid omissions, inconsistencies and suppressions, occurring across different proceedings and before different authorities, do not advance the case of the fourth respondent. Equally, they cast a shadow on the fairness and *bona fides* of the decision-making process undertaken by the State. Although not constituting the sole basis of our conclusion, these circumstances furnish an additional reason which fortifies the view that we propose to ultimately take in the matter.

78. For the aforesaid reasons, issues (iii) and (iv) are answered against the official respondents and the fourth respondent. The decision granting premature release stands vitiated by material procedural irregularities, unexplained inconsistencies and failure to demonstrate

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due consideration of the relevant factors under the governing statutory framework.

79. In the peculiar facts of the present case, the departure from the policy prevailing on the date of conviction and the circumstances surrounding the 2023 amendment, which was immediately invoked in favour of the fourth respondent, have not been justified by any discernible public purpose or *bona fide* exercise of executive discretion. The grant of premature release is, therefore, unsustainable both on procedural and substantive grounds.

80. Accordingly, we find the grant of premature release to be arbitrary and unsustainable having regard to the nature of the offence, the statutory disqualification originally applicable to the fourth respondent and the circumstances in which it was removed. The impugned order dated 24th April, 2023, therefore, warrants to be set aside.

IV. CONSTITUTIONAL VALIDITY OF THE NOTIFICATION, DATED 10TH APRIL, 2023 AND THE PRAYER TO SET IT ASIDE (ISSUE V)

81. Having examined *in extenso* the circumstances surrounding the release of the fourth respondent and in continuation of what has been expressed in the previous segment of our discussion, we would fall short of our constitutional duty to avert a possible miscarriage of justice if we were to leave unaddressed a question that lies at the very root of the extant controversy — though last in the sequence of issues, but by no means least in significance. In fact, the consequence would

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be the most far-reaching, should the challenge laid by the petitioners to the notification dated 10th April, 2023 succeed.

82. Petitioners in this case have not restricted their challenge to the order granting premature release to the fourth respondent alone; rather they have also sought the setting aside of the notification dated 10th April, 2023, *vide* which the expression "or for murder of a public servant on duty" was deleted from Rule 481(i)(a) of the Bihar Prison Manual. If the consequential order of premature release is quashed but the source of amendment which effectuated such a release is allowed to stand despite the conclusions drawn by us in regard to the invalidity thereof in the foregoing analysis, the defect would continue to survive in another form and it would *simpliciter* perpetuate the malady this Court is expected to remedy. A Constitutional Court must, therefore, examine the validity of the instrument which has been directly assailed before it, and not premise the content with correcting one administrative consequence of a potentially unconstitutional exercise of power.

83. A distinction, a *priori*, must be drawn between the power of the executive to formulate or modify a policy of remission and the constitutional precincts within which the said power ought to be exercised. The notification in question was issued in exercise of the powers referred to therein under Section 59 of the Prisons Act, 1894 read with Section 432 of the Cr. PC. Trite it is to observe that the power

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to amend the governing framework cannot be assailed merely because its exercise has inured to the benefit of a particular prisoner. Nor can the Court invalidate a policy solely because its consequences are favourable to a person whose conduct has garnered public traction. Such an approach would substitute suspicion for adjudication. Hence, the true inquiry herein would be whether the amendment, posited in light of its substance, object and the historical tapestry leading to the same, bears a rational nexus to a legitimate public purpose.

84. The explanation, furnished by the State in its counter-affidavit, is that the amendment was geared towards bringing the Bihar Prison Manual into harmony with the Model Prison Manual, and with the remission frameworks prevailing in the other states. Harmonisation of prison administration may undoubtedly constitute a legitimate policy objective. Yet, the invocation of a legitimate objective cannot, by itself, shield the policy from the inquiry as to whether the measure advanced bears a rational nexus with the object sought to be achieved. The relevant provisions of the Model Prison Manual, as placed before us, prescribing the relevant periods of incarceration for consideration of the specified categories of life convicts, are extracted hereunder for convenience:

> **20.08** The following categories of life convict prisoners shall be eligible to be considered for premature release by the SLC:
> (i) Women offenders sentenced to life imprisonment: on completion of eight years of imprisonment, including remission, except those covered under Section 433-A of the Code of Criminal Procedure, 1973, whose cases will be considered only after completing 14 years of actual imprisonment.

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> (ii) Life convicts (men and young offenders) on completion of 10 years of imprisonment, including remission, except those covered under Section 433-A of the Code of Criminal Procedure, 1973, whose cases will be considered after completing 14 years of actual imprisonment.
> (iii) Prisoners convicted of offences such as rape, dacoity, terrorist crimes, kidnapping, kidnapping for ransom, crime against women & children, smuggling (including those convicted under NDPS Act), Prevention of Corruption Act, Immoral Traffic Prevention Act, offences against State, and undergoing life imprisonment, after completion of 14 years of sentence inclusive of remission.
> (iv) Old and infirm offenders of 65 years of age on the day of the commission of offence, sentenced to life imprisonment on completion of 10 years of sentence or 75 years of age including remission, whichever is earlier subject to the condition that they shall not be actually released unless they have undergone at least five years of imprisonment including remission.

85. As is evident from the provision extracted hereinabove, there is not even a whisper of any category of prisoner convicted of the murder of a public servant being rendered eligible for premature release; much less is there any indication that such an exclusion ought to be removed. On the contrary, the provision, very far from advancing the State's case, appears to lend it no support. The Model Prison Manual's silence on the specific exclusion cannot be transmuted into an affirmative mandate for its abolition. Nor can the existence of divergent approaches adopted by other States, by itself, establish that the Government of Bihar was constitutionally obliged to follow suit. The State undoubtedly retained the authority to revisit and reform its remission policy; but the exercise of that authority was not immune from constitutional scrutiny. It was incumbent upon the State to demonstrate that the particular alteration it chose to make bore a rational nexus to the object sought to be achieved and was premised

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upon relevant considerations, in good faith, and consistently with the constitutional discipline governing State action.

86. Our present concern is not with the wisdom of one remission policy over another, but with the requirement that State power, when exercised to alter a settled framework governing the execution of sentences, must be capable of being defended by reasons referable to public interest. In the present case, the chronology cannot be divorced from the character of the amendment the validity of which we are seized with. Temporal proximity, considered in isolation, would neither justify a finding of unconstitutional action nor do we wish to rest our conclusion upon an unproven allegation that the notification was designed exclusively to favour the fourth respondent. But the chronology, read together with the selective character of the amendment, the retention of every other specified exclusion, and the absence of material substantiating the asserted need for this particular deletion, assumes a constitutional significance which cannot be brushed aside. The State was required to explain the public purpose underlying the departure. The material placed before us does not satisfactorily discharge that obligation.

87. Article 14 does not permit public power to be exercised by an unexplained choice which lacks a rational relationship with the object professed by the State. Where a delegated instrument alters the governing framework in a manner that materially changes the position

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of a defined class of prisoners, the authority responsible for that alteration must be able to identify the principle which informs the change. This does not mean that every policy notification must be accompanied by a judicial-style judgment, nor that the executive must produce an empirical study in every case. It means that, when the validity of the measure is directly challenged and its stated rationale is contradicted by the structure and operation of the amendment itself, the State must place before the Court material sufficient to demonstrate a rational basis for its action. On the present record, the asserted objective of harmonisation does not explain the selective deletion, and no other sufficiently substantiated public purpose has been shown to justify it.

88. We are equally conscious that the constitutional concern traverses beyond the immediate interests of the petitioners. A sentence imposed by a competent criminal court must be administered in accordance with the law, and the executive power of remission, though distinct from the judicial power to convict and sentence, must operate within the constitutional order that sustains both. We, accordingly, hold that, on the facts and material of the present case, the impugned notification, dated 10th April, 2023, insofar as it deletes the expression "or for murder of a public servant on duty" from Rule 481(i)(a) of the Bihar Prison Manual is beset with manifest arbitrariness and cannot be sustained on the anvil of Article 14 of the Constitution. It stems from

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the failure of the impugned measure, in its particular form and on the justification advanced for it, to satisfy the constitutional requirement of a rational and *bona fide* exercise of delegated power. The notification, is, therefore, liable to be set aside.

89. We leave it open for the authority of the competent Government to undertake a fresh, lawful and *bona fide* reconsideration of its remission policy, provided that any future measure is supported by a constitutionally permissible basis, conforms to the governing statutory framework, and is not tailored to secure an impermissible individual outcome.

V. SUMMARY OF THE DISCUSSION

90. We may summarise the foregoing discussion hereunder:

a. For the purposes of a decision on this writ petition, we need not decide as to whether a convict serving life imprisonment can avail the benefit of the later policy.

b. The identifiable and traceable victim or the victim's legal representative has to be afforded a reasonable opportunity to submit a representation before a decision on premature release is taken, although it is clarified that such participation would not confer any veto over the decision of the competent authority.

c. The opinion of the Presiding Judge was obtained in 2021, at a point of time when the fourth respondent was not entitled to have his application for premature release considered. However, such

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opinion was relied upon while granting the relief of premature release in April 2023, in the absence of a fresh and reasoned opinion as mandated under Section 432(2) of the Cr. PC., constituting a serious flaw in the decision-making process.

d. The amendment dated 10th April, 2023, deleting the disqualification relating to murder of a public servant on duty, represents a sudden and selective departure from the consistent remission policy followed by the State since 2002, without any discernible public purpose, empirical basis or material demonstrating a *bona fide* change in correctional policy. The State has failed to establish a rational and legitimate public purpose justifying the selective deletion.

e. The amended policy dated 10th April, 2023, deleting the expression "or for murder of a public servant on duty" from Rule 481(i)(a) of the Bihar Prison Manual is manifestly arbitrary and violative of Article 14 of the Constitution.

f. Grant of the benefit of premature release to the fourth respondent, in such facts and circumstances, is indefensible and unsustainable in law.

g. The State will be free to revise its policy, in accordance with law.

VI. RELIEF/OPERATIVE DIRECTIONS

91. For the reasons recorded above, the writ petition deserves to be and is hereby allowed on the following terms:

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a. The Notification dated 10th April, 2023, issued by the first respondent–State of Bihar, deleting the words "or for murder of a public servant on duty" from Rule 481(i)(a) of the Bihar Prison Manual, is declared unconstitutional, invalid and inoperative and is hereby set aside;

b. The order dated 24th April, 2023 granting premature release to the fourth respondent is hereby quashed, having regard to the findings recorded in this judgment on the applicable provisions of Rule 481 of the Bihar Prison Manual;

c. The fourth respondent shall surrender before the competent prison authority within a period of 1 (one) month from date without fail, in default whereof the competent authorities shall proceed in accordance with law and ensure that he is taken into custody; and

d. The State would, in no way, be precluded from reinitiating such procedure for premature release, bearing in mind the observations made hereinabove in paragraphs 83 to 87.

92. It is clarified that any future process to revise/amend Rule 481 shall not be initiated prior to the fourth respondent surrendering within a month or being taken into custody, as the case may be.

93. The competent authority, while considering the case of the fourth respondent for premature release afresh, as and when it happens, shall afford the first petitioner a reasonable opportunity to submit a

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representation. Such representation shall be duly considered, along with the other relevant materials, before a decision is taken.

94. Connected applications, if any, stand closed.

95. There shall be no order as to costs.

EPILOGUE

96. In matters relating to the grant of remission, Article 21 of the Constitution cannot be read as a guarantee tilted in favour of one side. It is not a protection intended only for the convict who, while being incarcerated for long, has shown signs of reformation and the capacity to integrate into society as a law-abiding citizen. Article 21, without a shadow of doubt, speaks to life and liberty in its widest amplitude. It must, therefore, extend to equally protecting the right of the victim, if alive, or his family, if he is no more, to live a life that is fulfilling – a life full of dignity, meaning and freedom from fear. Significantly, the release of a convict does not occur in a vacuum and has consequences beyond such convict. It has a direct and, often, profound impact on those who suffered the crime. For the victim and/or his family, such release could revive trauma, breed insecurity and unsettle their fragile attempt to rebuild their lives and move on. Their right to live a life, without being haunted by the consequences of that release, is as much a part of Article 21 as the convict's right to secure his liberty. The two rights, therefore, do not stand in isolation; both have to be counter-weighed, without one right eclipsing the other. The executive as well

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as the judiciary, as and when the occasion arises, must strike an appropriate balance that serves the cause of justice in its truest sense – justice to the convict, justice to the victim and justice to society at large. Ultimately, the constitutional promise of remission lies not in the triumph of one right over the other but in a just and humane balance that preserves the dignity of the convict, accounts for the suffering of the victim and safeguards the conscience of society. To remain neutral here would have been to abdicate justice itself, for, as President Roosevelt reminds us, justice consists not in being neutral between right and wrong but in upholding the right against the wrong.

.....J.
(DIPANKAR DATTA)

.....J.
(SHEEL NAGU)

NEW DELHI;
NOVEMBER 26, 2026.