2023INSC843

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO(S). 520 OF 2022

JOSEPH **…APPELLANT(S)**

VERSUS

THE STATE OF KERALA & ORS. **…RESPONDENT(S)**

J U D G M E N T

S. RAVINDRA BHAT, J.

1. The petitioner, currently serving a life imprisonment sentence for a crime committed in 1996, punishable under Sections 302 and 392 of the Indian Penal Code (hereafter "IPC") approaches this court seeking to enforce his right under Article 32 of the Constitution of India. He seeks appropriate direction to the state government, to prematurely release him, having been in custody (i.e., actual imprisonment) for over 26 years, and served a sentence of over 35 years (including over 8 years of remission earned).

Facts and background

2. It was alleged that on 16.09.1994, the petitioner had gone to his sister-in-law's (the deceased victim) place of work, and on the false pretext that her mother was seriously ill and had been admitted to the hospital, taken her away with the permission of the in-charge of the convent where she worked. The prosecution case was that he had her walk along the railway line and at a desolate place, allegedly raped and robbed her of the ornaments she was wearing, before laying her on the tracks to be runover by a passing train.

3. The petitioner was arrested on 09.10.1994 in connection with the case and remained in custody till the trial court[1] acquitted him of all charges on 23.03.1996. The High Court[2] reversed the acquittal, and convicted the petitioner by its judgment dated 06.01.1998 for the offences punishable under Section 302, 376 and 392 IPC. The High Court sentenced him to life imprisonment for the offence under Section 302, and rigorous imprisonment of 7 years on each count of Section 376 and 392 IPC, which were to run concurrently. This court[3], however, on 27.04.2000 set aside the conviction under Section 376 IPC and confirmed the conviction and sentence under Sections 302 and 392 IPC only.

4. Pursuant to an order of this court, the respondent-state filed an affidavit indicating the computation of his period of sentence undergone, the status of his plea for remission to be granted, as well as filed the state's various remission policies (as amended from time to time). The petitioner completed 1 year 5 months and 10 days of custody as an undertrial, before his acquittal by the trial court. After his conviction by the High Court, he surrendered to the sentence on 28.01.1998, and remained in custody thereafter. On 13.08.2010, he completed 14 years of actual imprisonment (including the time spent as an undertrial). And on 13.08.2016, he completed 20 years of actual imprisonment. The custody certificate produced in his writ petition, confirms that he completed actual imprisonment of 25 years 9 months and 26 days on 07.06.2022, (i.e., he completed 25 years actual imprisonment on 13.08.2021). However, in terms of the state's counter affidavit, as on 31.01.2023, he completed 25 years 10 months 3 days of actual imprisonment and has earned 8 years 4 months and 16 days in remission. Regardless of the arithmetical inconsistencies, it is not contested that he has completed over 26 years of *actual* imprisonment.

5. In the course of hearing, it was pointed out that the petitioner's case had been considered by the Advisory Committee/Jail Advisory Board under

1 By judgment dated 23.03.1996 passed by the Sessions Court, Thrissur in S.C. No. 73/1995.
2 By judgment dated 06.01.1998 passed by the Kerala High Court in Crl. A. No. 511/1996.
3 By judgment dated 27.04.2000 passed by this Court in Crl. A. No. 656/1998.

prevailing Rules[4] on nine occasions of which three times, the Board had recommended his premature release. However, the state government had rejected his request on all three occasions. Pursuant to a direction by this court, the State has placed on record each of the Minutes of the Meeting/Reports of the Advisory Boards, containing recommendations (positive and negative) relating to the petitioner, and the rejection orders passed by the State on the three occasions wherein the Board recommended release. These are summarized below:

ADVISORY COMMITTEE/JAIL ADVISORY BOARD	
Date & Statutory provisions/Rules applied	**Consideration of petitioner's case and reasoning**
10.08.2011 [1958 Rules]	Petitioner's case unanimously rejected as it was a case of premediated murder.
27.08.2013 [1958 Rules]	Based on the police report and manner of commission of offence, the three official members opposed recommendation, while the three non-official members recommended release. Committee rejected proposal.
30.06.2014 [Both 1958 and 2014 Rules]	Listed under separate heading 'cases of prisoners who have been convicted for offences against women but are not premediated and thus coming under purview of government directions'. The District Probation officer recommended release, while the police opposed. Recorded that he is hard working, disciplined, and reformed and hence, Petitioner's case was deferred to the next meeting given that he had completed over 17 years of imprisonment.
29.09.2015 [2014 Rules]	Same observations/conclusions as last date of consideration; petitioner's case was unanimously directed to be considered afresh after receiving detailed reports from the probation officer and police and the case was deferred for consideration till November 2015.
08.01.2016 [2014 Rules]	Petitioner's case rejected on the ground that the police report did not recommend release.
10.01.2017 [2014 Rules]	Police report did not recommend release, while the reports of the probation officer and jail superintendent respectively, supported release. After a detailed discussion of the police report, charges levelled, and his life inside and outside prison – probation officer and non-official members supported release. Thereafter, the Board

4 Kerala Prison Rules, 1958 (hereafter '**1958 Rules**') and Kerala Prisons and Correctional Services (Management) Rules, 2014 (hereafter '**2014 Rules**').

	unanimously recommended the petitioner's case for premature release.
13.08.2019 [2014 Rules]	District Probation officer recommended premature release, while the police report again recommended against release. Considering his life on parole, character in prison, and period undergone, case was deferred for consideration in next meeting.
26.02.2020 [2014 Rules]	Considering the long term imprisonment undergone, age of convict, character in prison, family background and situation, Petitioner's case unanimously recommended for release.
07.03.2022 [2014 Rules]	Petitioner's case was discussed in detail. District Judge on the Board, pointed out that the Supreme Court had directed that persons who had committed murder of women and children and those convicted under NDPS need not be considered for release. The Chairman also opined that those convicted for murder of women and children, and murder with rape, ought not to be recommended. However, a non-official member pointed out that he had undergone over 24 years of actual imprisonment, had been considered by the Board 5 times and 2 times been recommended for release, and may be given special consideration for release on humanitarian grounds. Given his age and long incarceration, the Petitioner's case was thereafter recommended unanimously for premature release.
STATE GOVERNMENT DECISION	
Date of decision	**Government's decision relating to the petitioner**
06.07.2019	Pursuant to Advisory Board's recommendation dated 10.01.2017, Petitioner's case (along with the other three convicts) was rejected without assigning any reasons.
22.04.2021	Pursuant to Advisory Board's recommendation dated 26.02.2020, file relating to all 20 persons recommended for release, returned for further action.
01.09.2022	Pursuant to Advisory Board's recommendation dated 07.03.2022, petitioner's case (along with 7 others) was rejected without assigning any reasons.

6. The State in its counter affidavit explained its position - that while the petitioner has been considered for premature release 9 times, his case has been rejected repeatedly because:

> *"while considering proposal for premature release of prisoners, the consistent stand now being adopted by the Government is that persons involved in the murder of women and children and persons convicted in*

> *offences relating to POCSO cases shall not be granted premature release. Since the petitioner involved in the murder of a woman his premature release was rejected by Government in accordance with the above stand."*
> *(emphasis supplied)*

Further, that in 2020, general guidelines were to be framed by a specially constituted committee[5] for determining the eligibility of prisoners with regards to grant of premature release. This committee finally proposed premature release of 67 convicts (from those who had earlier been rejected for whatever reason) after assessing their individual cases. The state government by its proceeding dated 20.04.2022, approved the proposal excluding certain convicts who had been involved in: most cruel murder, committed murder of woman and children, or murder with rape, and those undergoing treatment for mental illness, whose relatives were reluctant to receive them. These restrictions, along with other more detailed guidelines, have been incorporated in a government order[6] dated 04.06.2022 issued by the Home Department of the State of Kerala.

7. On 01.09.2022, the state government rejected for the third time, the Advisory Board's recommendation to release the petitioner. Aggrieved, the petitioner has preferred the present writ petition.

Contentions of parties

8. Mr. Adolf Mathew, learned counsel appearing on behalf of the petitioner, challenged the state government's repeated rejection of his plea for premature release. It was pointed out that the remission policy prevailing on the date of the conviction would have to apply. Attention was drawn to Rule 545A of the 1958 Rules which stipulates release can be considered after 14 years; Rule 216(1), 244(2) and 299(c) of the 1958 Rules which state that the inmate shall be released after completion of 20 years of sentence; and the recommendations of

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5 This committee consisted of Additional Chief Secretary Home & Vigilance Department as Chairman, Law Secretary, and Director General of Prions and Correctional Services as Members.
6 G.O.(Ms.) NO. 116/2022/HOME dated 14.06.2022.

the National Human Rights Commission (NHRC) which prescribes mandatory release after 25 years of sentence. Furthermore, even in terms of Rule 377 of the new Prison Rules, 2014, the petitioner is entitled to release after 20 years. It was argued that since the petitioner has not only completed 14 years or 20 years, but even 25 years of actual imprisonment, at this juncture - regardless of which rules are applied, it was manifestly illegal to keep him incarcerated in perpetuity.

9. Mr. Mathew strongly opposed the state's policy dated 14.06.2022 (and executive instruction dated 20.04.2022 cited in the state's counter affidavit) which listed certain crimes, the commission of which put the convict beyond the scope for grant of remission. The executive instruction (which explicitly prohibits the release of a prisoner involved in the "murder of a woman"), it was argued – not only came after his completion of 25 years of incarceration, but in any case could not override the statutory provisions. Counsel submitted that the petitioner had a legal right to be considered for remission given the safeguards of a convict under Articles 20 and 21 of the Constitution of India; this legal right was guaranteed by the Prison Act, and the Rules framed under it.

10. Relying on replies received (under the Right to Information Act, 2005) from the respective jails in which the petitioner has been lodged – counsel demonstrated that from 2000-2016, a total of 28 convicts sentenced to life imprisonment, who were involved in the murder of a woman, had been granted premature release. However, despite being recommended three times by the Advisory Board with detailed remarks on his reformation, the State government had rejected his case for premature release without assigning any reasoning, in its orders. This, it was argued, was grounds for setting aside these orders.

11. Lastly, counsel pointed to material produced by the respondent state itself, to demonstrate that the Jail Advisory Board had found the petitioner, who

is aged 67 years old, to be hardworking, disciplined, and reformed, and prayed for his premature release.

12. To supplement his submissions, counsel placed reliance on various judgments of this court, including – *State of Haryana v. Jagdish*[7], *Maru Ram, v. Union of India*[8], *General Officer Commanding-in-Chief v. Subhash Chandra Yadav*[9], *State of Haryana v. Mahender Singh*[10], and *State v. H. Nilofer Nisha*[11].

13. Mr. Jaideep Gupta, learned senior counsel, appearing on behalf of the state, submitted that the petitioner cannot claim a fundamental right to be released on remission, and that the prayer sought in the writ petition – for this court's direction to the government to release him – was simply not maintainable.

14. Counsel argued that grant of remission, is solely at the executive's discretion, and an act of mercy, granted on account of good conduct and term of imprisonment. It is not an indefeasible right; rather the convict only has a right to be *considered* for remission, which he had been, in the present case. The decision, however, of whether to be granted remission, was an act of exercising discretion which solely fell within the domain of the executive.

15. Mr. Gupta drew attention to the nature of the crime – that it was premediated and cold-blooded murder, with robbery. The assault of an innocent young woman by someone she reposed trust in, her brother-in-law no less, who proceeded to rob her belongings and lay her to her death in such a horrific manner, it was argued was one which shocked the collective conscience of society. Mr. Gupta submitted that these factors, which no doubt weighed on the sentencing court (which did not grant the death penalty), must also weigh on the state authority granting remission, to guide its exercise of discretion.

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7 [2010] 3 SCR 716
8 [1981] 1 SCR 1196
9 [1988] 3 SCR 62
10 [2007] 11 SCR 932
11 (2020) 14 SCC 161

16. Counsel for the State, relied on the following judgments to persuade this court – *Ramdas Athawale v. Union of India*[12], *Union of India v. V. Sriharan*[13], *State of Haryana v. Mahender Singh* (supra), *Swamy Shraddananda (2) @ Mural Manohar Mishra v. State of Karnataka*[14], *State of Madhya Pradesh v. Ratan Singh*[15] and *Rajan v. The Home Secretary, Home Department of Tamil Nadu*[16].

Analysis and conclusion

A. Applicable statutory provisions, rules, etc.

17. The Travancore-Cochin Prison Act came into force on 06.06.1950. By virtue of Sections 3(5) and 59(4), the state government enacted the 1958 Rules on 26.07.1958. The Kerala Prisons and Correctional Services (Management) Act, 2010 [hereafter '2010 Act'] came into force on 12/14.05.2010. By virtue of Section 102(2) of this Act (the savings clause) the 1958 Rules were to continue till the commencement of the new rules (i.e., the 2014 Rules), on 06/23.05.2014. On 14.06.2022, a government order was issued containing general guidelines on premature release, classifying prisoners such that those who had committed certain offences could not be released prematurely, while others, could only be considered after 25 years. This government order also, incorporated an executive instruction dated 20.04.2022 which excluded those involved in "murder of a woman" among other crimes, from the grant of premature release. Section 433-A of the CrPC, is also applicable to the extent that it forecloses the option of statutory remission until the convict who has been convicted for an offence punishable by life imprisonment (or commuted death sentence) has served 14 years of actual imprisonment.

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12 [2010] 3 SCR 1059
13 [2015] 14 SCR 613
14 [2008] 11 SCR 93
15 [1976] Supp. 1 SCR 552
16 [2019] 6 SCR 1035

18. Section 77[17] of the 2010 Act empowers the state government to, either *suo moto* or on recommendation of an Advisory Committee, prematurely release well-behaved, long term convicted prisoners with the objective of their better reformation and rehabilitation, as per prescribed rules. Rule 462 to 468 of the 2014 Rules, detail the procedure to be followed by the Advisory Committee while considering convicts for premature release. Whenever a prisoner completes 14 years actual imprisonment, they become eligible for consideration for premature release [ref: Rule 464(iv)[18]]. The Advisory Committee/Board considers their case in detail, and make recommendations to the state government, which is empowered under Rule 468 of the 2014 Rules, to admit or reject the said recommendations.

19. A reading of the observations of this court in *State of Haryana v. Jagdish*[19], which was followed in *State of Haryana v. Raj Kumar*[20], makes the position of law clear: the remission policy prevailing on the date of conviction, is to be applied in a given case, and if a more liberal policy exists on the day of consideration, then the latter would apply. This approach was recently followed by this court in *Rajo v. State of Bihar*[21] as well.

20. A five-judge bench of this court, in *Maru Ram, v. Union of India*[22], when considering application of Section 433-A CrPC, when the trial court had acquitted an accused prior to its insertion, but convicted by the appellate court subsequent to Section 433-A coming into force, held:

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17 *"**77. Premature release.** – (1) Well behaved, long term convicted prisoners may be prematurely released with the objective of their reformation and rehabilitation, by the Government, either suo moto or on the recommendations of an Advisory Committee as may be prescribed.*

(2) The Advisory Committee constituted as per sub-section (1) shall have the powers and duties, as may be prescribed".

18 As per sub-clause (iv) to Rule 464 of the 2014 Rules, the Advisory Board is to consider life convicts on completion of 10 years imprisonment (with remission), unless excluded by Section 433-A CrPC, in which case they are to be considered after completion of 14 years actual imprisonment.

19 [2010] 3 SCR 716 [paras 35, 43].

20 (2021) 9 SCC 292 [para 16].

21 Judgment dated 25.08.2023 in Writ Petition (Crl.) No. 252/2023 [para 23].

22 [1981] 1 SCR 1196 [para 20].

> *"[…] When a person is convicted in appeal, it follows that the appellate Court has exercised its power in the place of the original court and the guilt, conviction and sentence must be substituted for and shall have retroactive effect from the date of judgment of the trial Court. The appellate conviction must relate back to the date of the trial Court's verdict and substitute it. In this view, even if the appellate Court reverses an earlier acquittal rendered before Section 433-A came into force but allows the appeal and convicts the accused, after Section 433-A came into force, such persons will also be entitled to the benefit of the remission system prevailing prior to Section 433-A on the basis we have explained. An appeal is a continuation of an appellate judgment as a replacement of the original judgment."*

21. Therefore, applying the principles laid down in the decisions discussed above, the date of conviction, though actually on 06.01.1998 – i.e., the day of the High Court judgment, is *deemed* to relate back to the date of the trial court judgment, which was delivered on 23.03.1996. On this date (as was the case even in 1998 when the High Court passed its judgment), the 1958 Rules were in force.

22. Much like the 2014 Rules [see Rule 464(iv)], the 1958 Rules similarly entitle convicts who have completed 14 years, to be considered for premature release. Rule 545A is extracted below:

> *"**545A. '14-Year Rule'**.– The cases of ** prisoners whose aggregate sentence is more than 20 years shall be committed together with the records specified under Rule 545 for special orders of Government as to their premature release or completion of 14 years of sentence including remission in each case.*
> *** "Provided that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been committed under section 433 of the Code of Criminal Procedure, 1973 such persons shall not be considered for release from prison unless he has served at least 14 years of imprisonment."*

23. When it comes to date of release, the 1958 Rules also in various provisions, fix 20 years, to be the *deemed* sentence for a convict sentenced to life imprisonment:

> *"**216. Date of release when two or more sentences run consecutively.–** (1) The sentence of all prisoners sentenced to imprisonment for life or to*

> *more than 20 years imprisonment in the aggregate, or to imprisonment, for terms exceeding in the aggregate or to imprisonment, for terms exceeding in the aggregate 20 years shall, for the administrative purpose of calculation of the normal date of release be deemed to be sentence of imprisonment of 20 years….*
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> ***244. Tickets to be worn by convicts.** – […]*
> *(2)(b) No other particulars, such as stars denoting health or the life shall be entered thereon, and nothing shall be entered on the back of the ticket. For convictions under sentence for life date of release shall be taken as 20 years from the date of sentence. In the case of a convict having a term of alternative imprisonment, the alternative date of release should also be shown.*
>
> ***299. Definitions in these rules.** – […]*
> *(c) The sentence of all prisoners sentenced to imprisonment for life or to more than twenty years imprisonment in the aggregate or to imprisonment for terms exceeding in the aggregate twenty years shall for the purpose of these rules, be deemed to be sentence of imprisonment for twenty years."*

The analogous provision, in relation to 'deemed' life imprisonment sentence, can be found in Rule 377[23] of the 2014 Rules.

B. Analysing the law in the present factual matrix

24. Section 99 of the 2010 Act, empowers the state government to make rules consistent with the Act, and sub-clause (xxxii) pertains specifically to the authority which may recommend premature release of prisoners under Section 77. The State government has painstakingly framed these rules. As per Rule 462 of the 2014 Rules, Jail Advisory Boards were constituted in each prison, to make recommendations for the premature release of prisoners. The composition of these Boards includes – Director General of Prisons and Correctional Services as Chairman, Superintendent of Prisons as Member Secretary, and the District Collector, District & Sessions Judge, Commissioner of Police or

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23 "***377. Fixation of Conviction Period** – (1) The sentence of all prisoners sentenced to imprisonment for life or to more than twenty years imprisonment in the aggregate or to imprisonment for terms exceeding in the aggregate twenty years shall for the purpose of remission rules, be deemed to be sentence of imprisonment for 20 years.*

(2) A committee shall constituted under Section 72 and sub-section (1) of the Act for the computation of remission."

District Police Chief, District Probation Officer, and three non-official members appointed by the government – as members.

25. This diverse Board consisting of relevant stakeholders, after having taken a holistic view of the petitioner's case, recommended his premature release on three different occasions – 10.01.2017, 26.02.2020, and 07.03.2022. Yet, the state government, has without assigning any reasons – which could have perhaps demonstrated individual consideration of each case recommended - simply rejected the same all three times (06.07.2019, 22.04.2021, and 01.09.2022). This is patently unsustainable and warrants intervention of this court.

26. That the *execution* of a sentence, is the sole prerogative of the State/Executive, which may exercise its discretion as granted constitutionally (Art. 161 and 72 of the Indian Constitution) and statutorily (Section 432 CrPC, and state enactments), is one that is not in question. However, like all power – it must be exercised fairly, reasonably and not arbitrarily.[24]

27. While the government order dated 04.06.2022 issued by the State of Kerala is not directly challenged, it is this court's considered opinion, that it merits comment, and a note of caution. The relevant part of the government order, is extracted below:

> *"I. Category of prisoners who are not be eligible for premature release.*
> 1. *Persons who are sentenced for life imprisonment for offences against the security of the State.*
> 2. *Person who are sentenced for life for murder along with rape of a child below 16 years of age charged with or without POCSO Act 2012.*
> 3. *Persons convicted under Narcotic Drugs and Psychotropic Substances Act.*
> 4. *Persons involved in cases in which the Court expressly declares that the prisoner shall not be granted special remission or amnesty.*
> 5. *Persons convicted and sentenced by the courts of other States or UTs.*

24 In the context of remission and sentencing, see: *State of Haryana v. Mohinder Singh* [2000] 1 SCR 698; *Sangeet v. State of Haryana* [2012] 13 SCR 85; *Union of India v. V. Sriharan* [2015] 14 SCR 613; *Rajan v. The Home Secretary, Home Department of Tamil Nadu* [2019] 6 SCR 1035; *Ram Chander v. State of Chhattisgarh* [2022] 4 SCR 1103.

> *II. Category of prisoners eligible only after completing 25 years of sentence including all kinds of remission.*
>
> 1. *Convicts who have been imprisoned for life for murder with rape, murder with dacoity, murder involving any 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 jail, murder during parole, murder in terrorist incident, murder in smuggling operation. Murder of a public servant on duty, murder with robbery and rape of child below 14 years of age.*
> 2. *Gangsters, contract killers, smugglers, drug traffickers awarded life imprisonment for murders.*
> 3. *Convicts whose death sentence has been commuted to life imprisonment by Hon'ble President of India or Hon'ble Governor.*
>
> *The prisoners with the following age group and completed sentence and favourable reports from the Probation Officers are eligible under this category:-*
>
> *(a) Prisoners who have attained the age of 55 and completed sentence of 25 years including remission; OR*
> *(b) Prisoners who have completed 23 years of actual sentence.*
>
> *III. Category of prisoners eligible after 20 years of sentence including remission*
>
> *All prisoners who do not come under category I and II shall be eligible for premature release after 20 years of sentence including remission irrespective of their age, but on the following conditions.*
>
> *[…]"*

Further, while considering the premature release of certain other convicts recommended by the Committee, the state government

> "*decided to approve the proposal, excluding the following category of prisoners:*
>
> 1. *Persons involved in most cruel murder.*
> 2. *Persons who committed murder of women and children, persons who committed murder with rape.*
> 3. *Among the prisoners who are undergoing treatment for mental illness, the prisoners whose relatives are reluctant to receive them".*

Thus, incorporating in the general guidelines, the three excluded categories as they appeared in the earlier executive instruction dated 20.04.2022.

28. To issue a policy directive, or guidelines, over and above the Act and Rules framed (where the latter forms part and parcel of the former), and

undermine what they encapsulate, cannot be countenanced. Blanket exclusion of certain offences, from the scope of grant of remission, especially by way of an executive policy, is not only arbitrary, but turns the ideals of reformation that run through our criminal justice system, on its head. Numerous judgments of this court, have elaborated on the penological goal of reformation and rehabilitation, being the cornerstone of our criminal justice system, rather than retribution. The impact of applying such an executive instruction/guideline to guide the executive's discretion would be that routinely, any progress made by a long-term convict would be rendered naught, leaving them feeling hopeless, and condemned to an indefinite period of incarceration. While the sentencing courts may, in light of this court's majority judgment in *Sriharan* (supra), now impose term sentences (in excess of 14 or 20 years) for crimes that are specially heinous, but not reaching the level of 'rarest of rare' (warranting the death penalty), the state government cannot – *especially* by way of executive instruction, take on such a role, for crimes as it deems fit.

29. It is a well-recognized proposition of administrative law that discretion, conferred widely by plenary statute or statutory rules, cannot be lightly fettered. This principle has been articulated by this court many a time. In *U.P. State Road Transport Corporation & Anr v. Mohd. Ismail & Ors*.[25], this court observed:

> *"It may be stated that the statutory discretion cannot be fettered by self-created rules or policy. Although it is open to an authority to which discretion has been entrusted to lay down the norms or rules to regulate exercise of discretion it cannot, however, deny itself the discretion which the statute requires it to exercise in individual cases."*

30. Likewise, in *Chairman, All India Railway Rec. Board & Ors. v. K. Shyam Kumar & Ors.*[26] this court explained the issue, in the following manner:

> *"Illegality as a ground of judicial review means that the decision maker must understand correctly the law that regulates his decision making*

25 [1991] 2 SCR 274
26 [2010] 6 SCR 291

> *powers and must give effect to it. Grounds such as acting ultra vires, errors of law and/or fact, onerous conditions, improper purpose, relevant and irrelevant factors, acting in bad faith, fettering discretion, unauthorized delegation, failure to act etc., fall under the heading "illegality". Procedural impropriety may be due to the failure to comply with the mandatory procedures such as breach of natural justice, such as audi alteram partem, absence of bias, the duty to act fairly, legitimate expectations, failure to give reasons etc."*

31. The latitude the Constitution gives to the executive, under Articles 72 and 162, in regard to matters such as remission, commutation, etc, therefore, cannot be caged or boxed in the form of guidelines, which are inflexible.

32. This court's observations in *State of Haryana v. Mahender Singh*[27] are also relevant here:

> *"38. A right to be considered for remission keeping in view the constitutional safeguards 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.*
> *39. It is now well-settled that any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative act and the statutory rules."*
>
> *(emphasis supplied)*

33. 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. Thus, for instance, a 19 or 20 year old individual convicted for a crime, which finds

27 (2007) 13 SCC 606

place in the list which bars premature release, altogether, would mean that such person would never see freedom, and would die within the prison walls. There is a peculiarity of continuing to imprison one who committed a crime years earlier who might well have changed totally since that time. This is the condition of many people serving very long sentences. They may have killed someone (or done something much less serious, such as commit a narcotic drug related offences or be serving a life sentence for other non-violent crimes) as young individuals and remain incarcerated 20 or more years later. Regardless of the morality of continued punishment, one may question its rationality. 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.

34. In the petitioner's case, the 1958 Rules are clear – a life sentence, is *deemed* to be 20 years of incarceration. After this, the prisoner is entitled to premature release.[28] The guidelines issued by the NHRC pointed out to us by the counsel for the petitioner, are also relevant to consider – that of mandating release, after serving 25 years as sentence (even in heinous crimes). At this juncture, redirecting the petitioner who has already undergone over 26 years of

28 See also this court's order dated 11.10.2018 in Criminal Appeal No. 276-278/2010.

incarceration (and over 35 years of punishment with remission), before us to undergo, yet again, consideration before the Advisory Board, and thereafter, the state government for premature release – would be a cruel outcome, like being granted only a salve to fight a raging fire, in the name of procedure. The grand vision of the rule of law and the idea of fairness is then swept away, at the altar of procedure - which this court has repeatedly held to be a *"handmaiden of justice"*.

35. Rule 376 of the 2014 Rules prescribes that prisoners shall be granted remission for keeping peace and good behaviour in jail. As per the records produced by the State, the petitioner has earned over 8 years of remission, thus demonstrating his good conduct in jail. The discussions in the minutes of the meetings of the Jail Advisory Board are also positive and find that he is hardworking, disciplined, and a reformed inmate. Therefore, in the interest of justice, this court is of the opinion, that it would be appropriate to direct the release of the petitioner, with immediate effect. It is ordered accordingly.

36. The writ petition, thus, stands allowed in the above terms. Pending applications, if any, are disposed of.

……..……..…..J.
[S. RAVINDRA BHAT]

....……..J.
[DIPANKAR DATTA]

NEW DELHI
SEPTEMBER 21, 2023