



2025:KER:27890

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947WP (CRL.) NO. 1215 OF 2024PETITIONER:

BALU

AGED 42 YEARS

S/O. MANIKYAN, THONDAYAR STREET., PANAYAKOTTAI,
MOORTHYAMBALAPURAM, P.O., TANJORE, LCT NO.17604,
CENTRAL PRISON, TRICHY TAMIL NADU, PIN - 620020

BY ADVS. SMRUTHI SASIDHARAN

V.P.BRIJESH

ASWATHY AMBY

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY, HOME
(PRISONS) DEPARTMENT, ROOM NO.62G' A, 1ST FLOOR,
SOUTH BLOCK, 8503.THIRUVANANTHAPURAM,
KERALA,, PIN - 695001
- 2 THE STATE LEVEL ADVISORY BOARD (JAIL)
SICA CAMPUS, THE KERALA PRISONS HEADQUARTERS,
POOJAPPURA, THIRUVANANTHAPURAM,
KERALA,, PIN - 695012
- 3 THE CHAIRMAN/CHAIRPERSON
(NOT APPOINTED BY THE GOVT) THE STATE LEVEL
ADVISORY BOARD (JAIL), SICA CALNPUS, THE KERALA
PRISONS HEADQUARTERS, POOJAPPURA,
THIRUVANANTHAPURAM, KERALA,, PIN - 695001

BY ADVS. P.NARAYANAN, SENIOR PUBLIC PROSECUTOR
SHRI.SAJJU.S., SENIOR G.P.THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 21.03.2025, THE COURT ON 3.04.2025 DELIVERED
THE FOLLOWING:



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"C.R."

JUDGMENT

The petitioner, a life convict, who has been serving more than 22 years at Central Prison, Trichy, challenges Ext.P4 order passed by respondent No.1, rejecting his claim for premature release.

2. The petitioner was convicted and sentenced to life for the offence under Section 302 of IPC by the IIIrd Additional Sessions Court (Adhoc), Fast Track Court-I, Thrissur in SC No.441/2002 for having murdered a lady named Suvarna by drowning her in a pond and robbed her gold chain. The conviction and sentence were confirmed by this Court in Crl. Appeal No.418/2021 on 26/8/2021. He has completed 22 years and 5 months of actual term of imprisonment as of 13/12/2023.

3. The police authorities and the probation officer have recommended the premature release of the petitioner. The Jail Advisory Committee of the Viyyur Central Prison and Correctional Home had on 10/7/2023 also recommended the premature release of the petitioner. The Director General of Prisons and Correctional Services forwarded the said recommendation to the 1st respondent for further action. However, the State Level Advisory Committee held on 14/8/2024 rejected the



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recommendation. Thereafter the Government had also considered the request of the petitioner for premature release. The Government, after examining the matter in detail, found that this was not a fit case which required any intervention on the decision taken by the State Level Advisory Committee and rejected the claim of the petitioner for premature release as per Ext.P4 order. The said order is under challenge in this writ petition.

4. I have heard Smt. Smruthi Sasidharan, the learned counsel for the petitioner and Sri. P. Narayanan, the learned Senior Public Prosecutor.

5. The learned counsel for the petitioner submitted that the rejection of the claim of the petitioner for premature release is against statutory provisions which govern the premature release of a convict and the guidelines given by the Supreme Court. The learned counsel further submitted that the State Level Advisory Committee, as well as the Government, did not consider the recommendations of the probation officer, police authorities and Jail Advisory Committee for the release of the petitioner. Reliance was placed on *Joseph v. State of Kerala and others* [2023 (4) KLJ 903]. On the other hand, the learned Public Prosecutor submitted that the State Level Advisory Committee considered the matter in detail and did not recommend the premature release of the petitioner, considering the heinous nature of the crime. The



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learned Senior Public Prosecutor submitted that even though the State Level Advisory Committee did not recommend the premature release of the petitioner, the Government also considered the request of the petitioner for premature release and after examining the matter in detail, it was found that no intervention was required on the decision taken by the State Level Advisory Committee. It was also submitted that a convict does not have an indefeasible right to get a remission of sentence, and the grant of remission is solely at the executive's discretion. Reliance was placed on *Rajan v. Home Secretary, Home Department of Tamil Nadu and Others* [(2019) 14 SCC 114] and *Bilkis Yakub Rasool v. Union of India and Others* [(2024) 5 SCC 481].

6. Ext.P1, the copy of the conviction certificate dated 13/12/2023, issued by the Superintendent of Prison, Central Prison, Trichy would show that the petitioner had undergone 22 years and 5 months of actual imprisonment. The Probation Officer, in his report dated 31/3/2023 [Ext.R1(a)] submitted before the Jail Advisory Committee, had recommended the premature release of the petitioner. The Superintendent of Police, Thanjavur, in his report dated 17/7/2018 [Ext.R1(c)], had expressed no objection to release the petitioner. The conduct and recommendation certificate issued by the Superintendent of



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Prisons, Central Prison, Trichy [Ext.R1(d)] would show that the petitioner's conduct inside the prison was satisfactory. In the said letter, recommendation was made for the premature release of the petitioner. The first half-yearly Jail Advisory Committee Meeting of the year 2023 held at Viyyur Central Prison and Correctional Home on 10/7/2023 recommended the premature release of 16 life convicts, including the petitioner. However, the State Level Advisory Committee held on 14/8/2024 decided to reject the premature release of the petitioner on the sole ground that he was involved in the brutal murder of a poor lady.

7. Premature release of a convicted prisoner is based on the concept of reformation, rehabilitation and reintegration of prisoners back into society. There are three kinds of premature release: constitutional, statutory and remissions in accordance with jail manuals - Constitutional power under Articles 72 and 161 of the Constitution; statutory power of remission available to the appropriate Government under Section 432 of Cr.P.C or under laws framed by the State; power of commutation under Section 433 of Cr.P.C; remission earned under a statutory rule framed by the appropriate Government or under the Jail Manual.

8. Article 72 of the Constitution of India empowers the President of India to grant pardons, reprieves, respites, or remissions of punishment or to suspend, remit or commute the



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sentence of any person convicted of any offence in all cases, *inter alia*, where the punishment is for an offence against any law relating to a matter to which the executive power of the Union extends. The President acts on the advice of the Home Minister. His power is absolute and cannot be limited in scope by statutory provisions. It may be limited, though by judicial review in case of arbitrary decision making. The Governor of a State has similar power under Article 161 of the Constitution relating to a matter to which the executive power of the State extends. Section 432 of Cr.P.C empowers the appropriate Government to suspend or remit the sentence of a prisoner. Broadly, this Section statutorily empowers the appropriate Government to suspend the execution of a sentence or to remit the whole or any part of the punishment of a convict [sub-section (1)]. Sub-section (2) of Section 432 provides that the Government may seek the opinion of the Judge who convicted the prisoner on whether the application for remission must be accepted or rejected. Section 433 provides that life imprisonment may be commuted to imprisonment for a term not exceeding 14 years. But Section 433 A provides that a prisoner shall not be released before 14 years of undergoing sentence in the case of two kinds of life convicts- those life convicts who have been guilty of an offence punishable with death and those convicts whose death sentences were commuted to life



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imprisonment under Section 433. A convict serving a definite term of imprisonment is entitled to earn a period of remission or even be awarded a period of remission under a statutory rule framed by the appropriate Government or under the Jail Manual based on his/her good behaviour or such other stipulations prescribed therein. This period is then offset against the term of punishment given to him.

9. Since 'Prisons' is a state subject under Entry 4 of List II of the Seventh Schedule to the Constitution, the laws governing the process of premature release are framed by the States as well. In Kerala, the Kerala Prisons and Correctional Services (Management) Act, 2010 (for short, Kerala Prisons Act) was enacted. Section 99 of the Kerala Prisons Act empowers the State Government to make rules consistent with the Act. Accordingly, the Kerala Prisons & Correctional Services (Management) Rules, 2014 (for short, Kerala Prisons Rules) was framed. Section 77 of the Kerala Prisons Act deals with premature release. Section 77 provides that well-behaved, long-term convicted prisoners may be prematurely released with the objective of their reformation and rehabilitation, by the Government, either *suo motu* or on the recommendations of the Jail Advisory Committee. Chapter 36 of the Kerala Prisons Rules also deals with premature release. Rule 462 creates an Advisory Committee. Rules 462 to 469 detail the



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procedure to be followed by the Advisory Committee while considering premature release of convicts. The said body, referred to as 'The Jail Advisory Committee' is to recommend to the State Government the release of prisoners prematurely. The State Government is empowered under Rule 468 to admit or reject the said recommendation. As per G.O.(P).No.17/2021 Home dated 12/2/2021 issued as per S.R.O.No.171/2021, the Government of Kerala has amended Kerala Prisons and Correctional Services (Management) Rules, 2014 by constituting a State Level Advisory Committee to consider and review the complaints/applications made against the recommendations of the Jail Advisory Committee, constituted under Section 77(1) of the Kerala Prisons Act and to submit recommendation to Government to confirm or quash or reverse or modify the same.

10. The factors that guide premature release are manifold. The age of the accused at the time of the commission of the offence, the period of imprisonment already undergone, and the nature of reformation that has come upon the convict are all significant supervening factors that should be taken into reckoning while considering cases for premature release. The circumstances in which the crime was committed, the convict's attitude in prison, and even his penchant for personality development as reflected by his character, conduct and



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acquisition of educational qualifications can all be mitigating factors enabling the consideration of premature release favourably (*Thressiamma Jose v. State of Kerala*, 2023 (5) KHC 460). The Supreme Court in *Laxman Naskar v. State of W.B and Another* [(2000) 7 SCC 626] laid down five important factors for considering the case of premature release, which are as follows:

- (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 the future.
- (iv) If any fruitful purpose is being served by keeping the convict in prison and;
- (v) The socio-economic conditions of the convict's family.

In *State of Haryana and Others v. Jagdish* [(2010) 4 SCC 216], the Supreme Court outlined several aspects to be taken into account for premature release. It was held as follows:

"At the time of considering the case of pre-mature 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".

11. Rule 465(2) of the Kerala Prisons Rules deals with the



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factors to be taken into account for the premature release of the convicts. The Rule says that while considering premature release, the response and opinion of the victim have to be taken into consideration. The Rule mandates that enquiry has to be conducted with the relatives of the victim's family, neighbours and the people's representative of the Local Self Government. It further says that the reports of the police officer and probation officer have to be obtained.

12. On 14/6/2022, the State Government issued an order containing general guidelines on premature release, classifying prisoners such as those who had committed certain offences who could not be released prematurely, while others could only be considered after 25 years. This Government Order also incorporated an executive instruction, which excluded those involved in the murder of a woman, among other crimes, from the grant of premature release.

13. As stated already, the State Level Advisory Committee, as well as the Government, rejected the petitioner's request for premature release, for the reason that the petitioner was convicted for the murder of a poor woman. It was specifically stated so in Ext.P4 order. It appears that the State Level Advisory Committee and the Government rejected the request of the petitioner for premature release based on the provision in the



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Government Order dated 14/6/2022 that persons convicted for the murder of a woman are not eligible for premature release. The said Government Order came up for consideration before the Supreme Court in *Joseph* (supra). It was held that blanket exclusion of certain offences from the scope of the 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. It was further held that statutory discretion cannot be fettered by self-created rules or policy.

14. Even though the decision of premature release of a convict is the prerogative of the State Government, the exercise of such a plenary power cannot be left to the whims and fancies of the Government, but must be entwined with reason, after considering the relevant parameters. A blanket stance that all persons who have murdered a woman or a child shall not be prematurely released *de hors* any other circumstances is not conducive to a welfare State [*Thressiamma Jose* (supra)]. The State Level Advisory Committee and the Government, while rejecting the petitioner's request for premature release and passing Ext.P4 order, did not take into account Rule 465 (2) of the Kerala Prisons Rules, the recommendation of the prison officials, police authorities, probation officers, and the guidelines of the



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Supreme Court mentioned above. In *State of Haryana and Others v. Mohinder Singh* [(2000) 3 SCC 394], it was held that the power of remission cannot be exercised arbitrarily. The decision to grant remission has to be well-informed, reasonable, and fair to all concerned. Therefore, the rejection of the petitioner's request for premature release only on the ground that the petitioner was convicted for the murder of a woman cannot be justified.

15. Premature release has been recognized as one of the facets of the human rights of prisoners. The remission policy manifests a process of reshaping a person who, under certain circumstances, has indulged in criminal activity and is required to be rehabilitated. It is based on the principles of reformation and intended to bring the convict back to society as a useful member. It was specifically mentioned in the probation report that the convict could lead a normal life after release by doing agricultural labour work in his own village. The murder was committed when the petitioner was only 18 years of age, and he is now around 42 years. The police authorities, the probation officer and the Superintendent of Prisons have recommended the premature release of the petitioner. The Jail Advisory Committee has also recommended the premature release of the petitioner. These factors that have a bearing on the concept of reformation cannot be ignored on the bare premise that persons who have committed



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the murder of women will not be given remission of sentence. The grant of premature release is the power coupled with duty conferred on the appropriate Government in terms of Section 432 of Cr.P.C, and under the provisions of State Laws which is to be exercised by it after taking into account all the relevant factors. Considering the entire facts and circumstances of the case, I am of the view that it is a fit case where the Government ought to have considered the plea of the petitioner for premature release favourably. However, it is well settled that this Court cannot direct the respondents to release the prisoner forthwith or to remit the remaining sentence [See *Rajan* (supra) and *Bilkis Yakub Rasool* (supra)].

16. For the reasons stated above, Ext.P4 order is not sustainable, and accordingly, it is set aside. In the counter affidavit filed by the 1st respondent, it is stated that in the course of routine consideration for recommending premature release during the first half of the year 2024, the Director General of Prisons and Correctional Services, has forwarded the recommendation of the Jail Advisory Committee, which was convened on 15/07/2024, by which four prisoners, including the petitioner, were recommended for the grant of premature release and the file pertaining to it is under process. Hence, the 1st respondent is directed to consider the recommendation of the Jail



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Advisory Committee relating to the premature release of the petitioner in the light of the observations made in this judgment, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment,

The writ petition is disposed of as above.

sd/-

DR. KAUSER EDAPPAGATH

JUDGE

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APPENDIX OF WP(CRL.) 1215/2024

PETITIONER EXHIBITS

Exhibit -P1 TRUE COPY OF THE CUSTODY CERTIFICATE
DATED 13/12/2023

Exhibit -P2 TRUE COPY OF THE WP(CRL) 412/2024 DATED
8/4/2024 OF THE HON'BLE COURT WITH EXTS

Exhibit- P3 TRUE COPY OF THE JUDGMENT IN WP(CRL) 412
/2024 DATED 11/6/2024 OF THE HON'BLE
COURT

Exhibit -P4 TRUE COPY OF THE ORDER G.O.(RT)
NO.2900/2024/HOME DATED 8/10/2024

Exhibit -P5 TRUE COPY OF THE REPORT OF PROBATION
OFFICER DATED 11.10.2017

Exhibit P6 THE LETTER GIVEN BY THE KERALA PRISONS
AND CORRECTIONAL SERVICES DATED
16/05/2024

Exhibit P7 THE DEPARTMENT OF PRISONS AND
CORRECTIONAL SERVICES TRICHY RANGE,ALONG
WITH HIS ENGLISH TRANSLATION IS PRODUCED
AND MARKED AS EXHIBIT P7 SERIES DATED
21/5/2024

Exhibit P8 A COPY OF THE APPLICATION SUBMITTED BY
THE PETITIONER'S MOTHER IS PRODUCED AND
MARKED AS THAT EXHIBIT P8 DATED 16/10/
2024.

RESPONDENT EXHIBITS

EXHIBIT R1(a) A COPY OF THE REPORT OF THE PROBATION
OFFICER, DEPARTMENT OF PRISONS AND
CORRECTIONAL SERVICES THANJAVOOR DATED
31-03-2023

EXHIBIT R1(b) TRUE COPY OF THE PROFORMA DATED 08-08-
2024 FORWARDED BY THE SUPERINTENDENT,
CENTRAL PRISON, VIYYUR



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- EXHIBIT R1 (c) TRUE COPY OF THE POLICE REPORT DATED 17-07-2018 ISSUED BY THE SUPERINTENDENT OF POLICE, THANJAVUR
- EXHIBIT R1 (d) TRUE COPY OF THE CONDUCT AND RECOMMENDATION CERTIFICATE DATED 18-07-2024 ISSUED BY THE SUPERINTENDENT OF PRISONS, CENTRAL PRISON TRICHY
- EXHIBIT R1 (e) A COPY OF THE INTERIM ORDER DATED 17-12-2024 IN W.A 1245-2024
- EXHIBIT R1 (f) A COPY OF THE COMMUNICATION DATED 26-09-2024 FORWARDED BY THE DIRECTOR GENERAL OF PRISON AND CORRECTIONAL SERVICES TO ADDITIONAL CHIEF SECRETARY, HOME