IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No. 81 of 2022

Umesh Singh **... Petitioner**

-Versus-

1. The State of Jharkhand
2. Joint Secretary to the Government, Home Prisons and Disaster Management Department, Government of Jharkhand, Ranchi
3. Inspector General of Prisons, T.A. Division Office, Ranchi
4. The Superintendent, Lok Nayak Jai Prakash Narayan Central Jail, Hazaribag **... Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Rajendra Prasad Gupta, Advocate
For the State : Mr. Faisal Allam, A.C. to S.C. (Mines)-III
Mr. Ashish Kumar, A.C. to S.C. (Mines)-III

08/10.10.2023 Heard Mr. Rajendra Prasad Gupta, learned counsel for the petitioner and Mr. Faisal Allam, learned counsel for the State.

2. This petition has been filed for quashing of the decision of the State Sentence Review Board dated 08.09.2021 issued under the signature of Joint Secretary to the Government, Home Prisons and Disaster Management Department, Government of Jharkhand, Ranchi, whereby, the claim for premature release of the petitioner was rejected. The further prayer is made for direction to release the petitioner.

3. Mr. Gupta, learned counsel for the petitioner submits that the petitioner has been convicted for the offence under Section 302 of the Indian Penal Code and he has been sentenced to under rigorous imprisonment for life by the Court of the learned Additional Sessions Judge-XIII, Dhanbad vide judgment dated 18.11.2003 along with other accused persons. He further submits that the petitioner preferred Criminal Appeal No.43 of 2004 and the informant preferred Criminal Revision No.135 of 2004 for enhancement of sentence. The said criminal revision was allowed

and the sentence against the petitioner was enhanced to death sentence. He also submits that thereafter the petitioner preferred S.L.P. (Criminal) No.3032-3033 of 2005 which was subsequently numbered as Criminal Appeal No.791-792 of 2005 and the death sentence was commuted to life imprisonment. He also submits that the petitioner is in custody for more than 26 years 02 months and 19 days as per calculation dated 03.11.2021 issued by the Superintendent, Lok Nayak Jai Prakash Narayan Central Jail, Hazaribag. He submits that the petitioner was convicted in the year 2003 and the alleged crime was dated 14.04.2000. He submits that the State of Jharkhand has come forward with the new policy of remission on 18.04.2007 and earlier, the policy of 1984 was operative. He further submits that in the 1984 policy, the provisions were made that the convict will be entitled for his premature release after he completes 14 years from the date of conviction and he has completed 20 years including remission, which was also fortified by the Hon'ble Supreme Court in the case of ***Bhagirath v. Delhi Administration***, reported in ***[(1985) 2 SCC 580]***. He submits that the case of the petitioner is required to be considered in view of 1984 policy and in the impugned order, nothing has been disclosed under what policy, the case of the petitioner was considered and the said remission was rejected. He further submits that the Probation Officer, Home (Prisons), Dhanbad, Jharkhand gave report recommending that the petitioner may be given chance to lead a smooth life by considering his case for premature release, contained in Annexure-5 of the petition. He also submits that the Superintendent of Police, Dhanbad vide letter dated 21.04.2020 requested the Superintendent, Lok Nayak Jai Prakash Narayan Central Jail, Hazaribag to give report with regard to the petitioner. He further submits that vide

letter dated 29.02.2020, the said Superintendent of Police opined for premature release of the petitioner and stated that by releasing the petitioner, there will be no disturbing law and order. He submits that the said letter is contained in Annexure-6/1 of the petition. He submits that the case of the petitioner was turned down only on the ground that the learned District and Additional Sessions Judge has expressed that the petitioner has been sentenced and if he will be released, wrong message in the society will go, which is not in accordance with law. He further submits that one co-convict, namely, Shiv Shankar Singh has been granted benefit of remission by the State Government and the case of the petitioner is on the similar footing as he was also convict for life. On these grounds, he submits that the rejection order may kindly be quashed and the petitioner may be directed to be released.

4. Per contra, Mr. Allam, learned counsel for the respondent-State submits that now the points regarding premature release have been extended considering safety and security of the society at large. He further submits that the son of the deceased has expressed apprehension about his and his family's security in case of release of the petitioner, which was communicated vide letter dated 25.11.2016. He also submits that the Presiding Judge of the learned Trial Court vide letter dated 03.04.2018 opined that the petitioner had shot dead in broad daylight the then Nirsa MLA Gurudas Chatterjee, whose premature release will send a wrong message to the society and the importance of judicial decision and orders will decrease and the common citizen will lose faith in the process of justice. He submits that the State Sentence Review Board has meticulously examined the document and, thereafter, passed the order. He submits that

the power is reserved with the State Government i.e. the policy decision of the State and the High Court is not required to exercise its jurisdiction under Article 226 of the Constitution of India. He relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***State of Haryana and others v. Raj Kumar @ Bittu***, reported in ***[(2021) 9 SCC 292]***. On these grounds, he submits that the case of the petitioner is fit to be rejected.

5. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record and finds that it is an admitted fact that the petitioner has been convicted under Section 302 of the Indian Penal Code and he has been sentenced to undergo rigorous imprisonment for life by the Court of the learned Additional Sessions Judge-XIII, Dhanbad vide judgment dated 18.11.2003 along with other accused persons. The petitioner preferred Criminal Appeal No.43 of 2004 and the informant preferred Criminal Revision No.135 of 2004 for enhancement of sentence. The said criminal revision was allowed and the sentence against the petitioner was enhanced to death sentence. Thereafter, the petitioner preferred S.L.P. (Criminal) No.3032-3033 of 2005 which was subsequently numbered as Criminal Appeal No.791-792 of 2005 and the death sentence was commuted to life imprisonment. It is further admitted fact that the co-convict, namely, Shiv Shankar Singh was also convicted for life by the same judgment of conviction and he has been released and the petitioner's case has been rejected on the ground that the opinion of the learned District and Additional Sessions Judge was otherwise.

6. The petitioner is in custody for more than 26 years 02 months and 19 days as per calculation dated 03.11.2021 issued by the Superintendent, Lok

Nayak Jai Prakash Narayan Central Jail, Hazaribag, as submitted by the learned counsel for the petitioner. It appears from the 1984 policy that the case can be considered for premature release after completion of 14 years from the date of conviction and after completion of 20 years the convict is entitled to get the benefit of remission. Admittedly, the occurrence took place in the year 2000 and the petitioner was convicted in the year 2003 and in view of that, the case of the petitioner is covered in light of 1984 policy. The Government of Jharkhand has come forward with the new policy in the year 2007 and this aspect of the matter has already been set at rest in batch of criminal writ petitions which was decided by this Court in W.P. (Cr.) No.262 of 2014 along with other cases and the said order was passed considering the judgment of the Hon'ble Supreme Court in the case of ***State of Haryana and others v. Jagdish***, reported in ***[(2010) 4 SCC 216]*** and in that case, the Hon'ble Supreme Court held that the policy which was prevailing on the date of consideration for premature release of a life convict, the benefit of the same should be given to the convict. Based on that, in the said writ petitions this Court held that the policy which is operative at the time of occurrence will apply in the case of premature release. Thus, the case of the petitioner is required to be considered in view of 1984 policy. In the impugned order, it is not disclosed based on which policy the said decision has been taken by the State Sentence Review Board.

7. Sub-section (2) of Section 432 Cr.P.c. provides that the appropriate Government may take opinion of the Presiding Judge of the Court before or by which the person making an application for remission has been convicted. Thus, the power is there with the State Government to suspend

of remit the sentence. For ready reference, Section 432 (2) Cr.P.C. stipulates as under:

> *"**432(2).** Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists."*

8. Section 433A Cr.P.C. restricts power of remission, which stipulates as under:

> *"**433A**. Restriction on powers of remission or commutation in certain cases.—Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."*

9. By two letters, which have been discussed in the argument of Mr. Gupta, learned counsel for the petitioner, one of the Probation Officer, Home (Prisons), Dhanbad, Jharkhand and another is of the Superintendent, Lok Nayak Jai Prakash Narayan Central Jail, Hazaribag, they expressed their opinion that there will be no difficulty if the petitioner will be enlarged on remission.

10. The learned District and Additional Sessions Judge-XIII, Dhanbad gave his opinion that the petitioner is a convict of life and good message will not go in the society and the people will lose faith in the administration of justice. The said letter of the learned District and Additional Sessions Judge is contained in Annexure-B of the counter affidavit, filed by the respondent-State, which is quoted hereinbelow:

" पत्रांक सं0 07 दिनांक 3/4/18

प्रेषक,

जनार्दन सिंह
प्रभारी जिला एवं अपर सत्र न्यायाधीश–XIII
धनबाद।

सेवा में,

कारा अधीक्षक
लोकनायक जयप्रकाश नारायण केन्द्रीय कारागार
हजारीबाग

विषयः–सत्रवाद सं0–126/2001 गोबिंदपुर थाना कांड सं0–90/2000, th0vkj0&1051@2000 में आजीवन कारावास की सजा प्राप्त बंदी उमेश सिंह के असमय कारा मुक्ति हेतु **सुस्पष्ट 'सकारण मंतव्य'** के संबंध में।

धनबाद, दिनांक 03.04.18

महाशय,

पत्रांक सं0–2018/मुक्ति 1817 दिनांक 24.03.18 के आलोक में मेरा मंतव्य है कि

(1) बंदी उमेश सिंह दिनांक 27.04.2000 से लगातार कारा अभिरक्षा में है।

(2) माननीय उच्चतम न्यायालय द्वारा संगीत वगैरह बनाम हरियाणा राज्य 2013 (2) SCC 452 के वाद में यह अवधारित किया गया है कि आजीवन कारावास का तात्पर्य यह है कि जीवन पर्यन्त तक कारा अभिरक्षा में निरूद्ध रहे।

(3) बंदी उमेश सिंह द्वारा तत्काजीन निरसा के विधायक गुरदास चटर्जी की दिन–दहाड़े गोली मारकर हत्या की गयी थी, जिसकी असमय कारा–मुक्ति होने से समाज में गलत संदेश जाएगा तथा न्यायिक निर्णयों एवं आदेश की महत्ता में कमी आएगी तथा आम नागरिक का न्याय प्रकिया में विश्वास कम हो जाएगा तथा इस तरह से असमय कारा–मुक्ति से न्याय प्रशासन भी प्रभावित होगा।

इसलिए मैं उक्त बंदी उमेश सिंह के असमय कारा–मुक्ति से सहमत नहीं हूँ। इसलिए उक्त बंदी की असमय कारा–मुक्ति न्यायोचित नहीं है।

भवदीय
हस्ताक्षर
3.4.18
प्रभारी जिला एवं अपर सत्र न्यायाधीश–XIII
धनबाद "

11. Based on the opinion of the learned District and Additional Sessions Judge, the Review Board has rejected to release the petitioner.

12. There is no doubt that it is an absolute discretion of the State Government to decide whether the application for remission should be allowed or not, as has been held by the Hon'ble Supreme Court in the case of ***State of M.P. v. Ratan Singh***, reported in ***[(1976) 3 SCC 470]***. Section 401 Cr.P.C. empowers the appropriate Government to remit the whole or a part of the sentence. Paragraph 9 of the said judgment is quoted

hereinbelow:

> ***"9.*** *From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following propositions emerge:*
>
> *"(1) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Penal Code, 1860. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure;*
>
> *(2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner;*
>
> *(3) that the appropriate Government which is empowered to grant remission under Section 401 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor State and not the transferee State where the prisoner may have been transferred at his instance under the Transfer of Prisoners Act; and*
>
> *(4) that where the transferee State feels that the accused has completed a period of 20 years it has merely to forward the request of the prisoner to the concerned State Government, that is to say, the Government of the State where the prisoner was convicted and sentenced and even if this request is rejected by the State Government the order of the Government cannot be interfered with by a High Court in its writ jurisdiction.*
>
> *(emphasis supplied)"*

13. It is crystal clear that the discretion vests with the Government to suspend or remit the sentence, but that order must be in accordance with law and not arbitrarily. It is well known that the prerogative of the executive is subject to the rule of law and fairness in State action embodied in Article 14 of the Constitution of India. In the case of ***State of Haryana v. Mohinder Singh***, reported in ***[(2000) 3 SCC 394]***, the Hon'ble Supreme Court held that the power of remission cannot be exercised arbitrarily and it must be fair and reasonable. Paragraph 9 of the said judgment is quoted hereinbelow:

> ***"9.*** *The circular granting remission is authorized under the law. It prescribes limitations both as regards the prisoners who are eligible and those who have been excluded. Conditions for remission of sentence to the prisoners who are eligible are also prescribed by the circular. Prisoners have no absolute right for remission of their sentence unless except what is prescribed by law and the circular issued thereunder. That special remission shall not apply to a prisoner convicted of a particular offence can certainly be a relevant consideration for the State Government not to exercise power of remission in that case. Power of remission, however, cannot be exercised arbitrarily. Decision to grant remission has to be well informed, reasonable and fair to all concerned."*

14. The Court can review the decision of the Government to determine whether it was arbitrary or not and the said power cannot be usurp the power of the Government and grant remission itself and if the case is made out, the Court can direct for reconsidering the matter.

15. The Hon'ble Supreme Court has examined the arbitrary action of remission in the case of ***Laxman Naskar v. State of West Bengal***, reported in ***[(2000) 7 SCC 626]***, wherein, in paragraphs 8 and 9, it has been held as under:

> ***"8.*** *If we look at the reasons given by the Government, we are afraid that the same are palpably irrelevant or devoid of substance. Firstly, the views of the witnesses who had been examined in the case or the persons in the locality cannot determine whether the petitioner would be a danger if prematurely released because the persons in the locality and the witnesses may still live in the past and their memories are being relied upon without reference to the present and the report of the jail authorities to the effect that the petitioner has reformed himself to a large extent. Secondly, by reason of one's age one cannot say whether the convict has still potentiality of committing the crime or not, but it depends on his attitude to matters, which is not being taken note of by the Government. Lastly, the suggestion that the incident is not an individual act of crime but a sequel of the political feud affecting society at large, whether his political views have been changed or still carries the same so as to commit crime has not been examined by the Government.*
>
> ***9.*** *On the basis of the grounds stated above the Government could not have rejected the claim made by the petitioner. In the circumstances, we quash the order made by the Government and remit the matter to it again to examine the case of the petitioner in the light of what has been stated by*

> *this Court earlier and our comments made in this order as to the grounds upon which the Government refused to act on the report of the jail authorities and also to take note of the change in the law by enacting the West Bengal Correctional Services Act 32 of 1992 and to decide the matter afresh within a period of three months from today. The writ petition is allowed accordingly. After issuing rule the same is made absolute."*

16. The Hon'ble Supreme Court in the case of ***Rajan v. State of Tamilnadu***, reported in ***[(2019) 14 SCC 114]*** held that the Court cannot supplant its view in a decision taken by the State, however, in an appropriate case, direction can be issued to the authorities to reconsider the representation of the convict. Thus, it is crystal clear that the Court is having power to review the decision of the Government regarding acceptance or rejection of an order of remission under Section 432 Cr.P.C. only it is to seen whether the decision is arbitrary or not.

17. The Hon'ble Supreme Court in the case of ***Sangeet v. State of Haryana***, reported in ***[(2013) 2 SCC 452]*** observed that if an application is being made by the convict, the appropriate Government is required to approach the Presiding Judge of the Court.

18. It is further well settled that the appropriate Government should not mechanically follow the opinion of the Presiding Judge if the opinion of the learned Judge is not fulfilling the requirement of Section 432 (2) Cr.P.C. and that is not in accordance with the guideline issued by the Hon'ble Supreme Court in the case of *Laxman Naskar (supra).* The Government can make further request to the Presiding Judge for fresh opinion.

19. In the case in hand, the case of the petitioner has been rejected only on the ground that the learned Presiding Judge has not given opinion in favour of the petitioner and the said opinion has already been quoted

hereinabove. Looking into the opinion given by the Presiding Judge, it appears that he has not fulfilled the guidelines which had been laid down by the Hon'ble Supreme Court in the case of *Laxman Naskar (supra)*. These guidelines include:

(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.

20. In that case, it was reiterated that while deciding the application of the convict for premature release, these facts are required to be considered. The opinion must be in teeth of statute under Section 432(2) Cr.P.C.

21. The Hon'ble Supreme Court has recently considered *Halsbury's Laws of India (Administration Law)* with regard to reasons in the case of ***Ram Chander v. State of Chhattisgarh and another***, reported in ***[(2022) 12 SCC 52]*** wherein at paragraph 28, it has been observed as under:

> ***"28.*** *In his opinion dated 21.07.2021 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) of the Cr.P.C. 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 concerned authority has provided relevant reasons. Mechanical reasons are not considered adequate. The following extract is useful for our consideration:*
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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 judgement 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."*

22. In view of the above, the mechanical and stereotype reasons cannot be said to be a good ground.

23. Thus, it appears that the opinion of the learned Presiding Judge is not in view of the guidelines issued by the Hon'ble Supreme Court in the case of *Laxman Naskar (supra)*.

24. Accordingly, the petitioner's application for remission should be reconsidered by the Government. The competent authority shall send a letter for taking fresh opinion of the learned Presiding Judge within 15 days from the date of receipt/production of a copy of this order.

25. On the fresh opinion to be sought by the Government, the learned Presiding Judge will give a fresh opinion along with adequate reasoning, fulfilling the guidelines issued by the Hon'ble Supreme Court in the case of *Laxman Naskar (supra)* within one month thereafter.

26. On receiving the said opinion, the Government of Jharkhand will take a final decision on the petitioner's application for remission afresh within one month further thereafter.

27. Accordingly, this petition is allowed in above terms and disposed of.

(Sanjay Kumar Dwivedi, J.)

Ajay/ A.F.R.