2025 INSC 239

REPORTABLE

IN THE SUPREME COURT OF INDIA
ORIGINAL/APPELLATE JURISDICTION

SUO MOTU WRIT PETITION (CRL.) NO. 4 OF 2021

IN RE: POLICY STRATEGY FOR GRANT OF BAIL

with

SPECIAL LEAVE PETITION (CRL.) NO. 529 OF 2021

J U D G M E N T

ABHAY S. OKA, J.

1) We are dealing with the power of the appropriate Government to remit the whole or a part of the sentence of the convicts. A detailed note on the subject has been submitted by Ms. Liz Mathew, learned senior counsel appointed as amicus curiae, duly assisted by learned counsel Shri Navneet R. We have heard the submissions of the learned amicus. As far as the remission of the sentence of the convicts is concerned, there are provisions under Section 432 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') and Section 473 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS'). Section 432 of the CrPC reads thus:

> "432. Power to suspend or remit sentences.—(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the

person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

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

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and—

(*a*) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(*b*) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in Section 433, the expression "appropriate Government" means,—

(*a*) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(*b*) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.**"**

The corresponding provision under the BNSS is Section 473. It is substantially similar to Section 432 of the CrPC. Therefore, we are not reproducing it.

2) Thus, the power conferred on the appropriate Government is of remitting the whole or part of the punishment to which an accused has been sentenced with or without conditions. There is also a power vested in the appropriate Government to suspend the execution of the sentence. However, we are dealing only with the power to remit the whole or part of the sentence.

3) The power under Section 432 of the CrPC is circumscribed by Section 433-A. It provides 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 or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, the appropriate Government cannot grant remission unless the convict has served at least fourteen years of actual imprisonment. There is an identical provision in Section 475 of the BNSS. This is an embargo on the power of the appropriate Government under Section 432 of the CrPC. We may note that the power of the President of India under Article 72 of the Constitution of India (for short, 'the Constitution') and the power of the Governor under Article 161 of the Constitution to grant pardon, commute the sentence, or remit the sentence remains unaffected by Section 433-A of the CrPC or Section 475 of the BNSS.

4) In addition to the power under Section 432 of the CrPC, there is a power vesting in the appropriate Government under Section 433 of the CrPC to commute the sentence. There is a

similar power under Section 474 of the BNSS. Commuting a sentence is independent of the power to remit a sentence. We are not dealing with the power to commute sentences.

5) The first issue is whether the power to grant remission can be exercised without the convict or anyone on behalf of the convict applying to the appropriate Government for a grant of remission. The second issue is about the nature of conditions imposed while granting remission. The third issue is whether there can be automatic revocation of remission granted to the convict if he commits a breach of the terms and conditions on which remission is granted. Lastly, another question is whether there is a requirement to record reasons while rejecting applications of the convicts for grant of permanent remission.

WHETHER APPROPRIATE GOVERNMENT CAN CONSIDER THE CASE OF A CONVICT FOR GRANT OF REMISSION WITHOUT AN APPLICATION MADE ON BEHALF OF THE CONVICT

6) Sub-Section (2) of Section 432 of the CrPC and Sub-Section (2) of Section 473 of the BNSS contemplate an application being made for grant of remission. There are two decisions of this Court dealing with the requirement of making an application. The first decision is in the case of ***Sangeet and Anr. v. State of Haryana***[1]. Paragraphs 59 to 61 of the said decision read thus:

> ***"Procedural check on arbitrary remissions***

[1] (2013) 2 SCC 452

59. There does not seem to be any decision of this Court detailing the procedure to be followed for the exercise of power under Section 432 CrPC. But it does appear to us that sub-section (2) to sub-section (5) of Section 432 CrPC lay down the basic procedure, which is making an application to the appropriate Government for the suspension or remission of a sentence, either by the convict or someone on his behalf. In fact, this is what was suggested in *Samjuben Gordhanbhai Koli* v. *State of Gujarat* [(2010) 13 SCC 466 : (2011) 1 SCC (Cri) 1180] when it was observed that since remission can only be granted by the executive authorities, the appellant therein would be free to seek redress from the appropriate Government by making a representation in terms of Section 432 CrPC.

60. Section 432 CrPC reads as follows:
"**432.*Power to suspend or remit sentences*.—
……"

61. It appears to us that an exercise of power by the appropriate Government under sub-section (1) of Section 432 CrPC cannot be suo motu for the simple reason that this sub-section is only an enabling provision. The appropriate Government is enabled to "override" a judicially pronounced sentence, subject to the fulfilment of certain conditions. Those conditions are found either in the Jail Manual or in statutory rules. Sub-section (1) of Section 432 CrPC cannot be read

> to enable the appropriate Government to "further override" the judicial pronouncement over and above what is permitted by the Jail Manual or the statutory rules. The process of granting "additional" remission under this section is set into motion in a case only through an application for remission by the convict or on his behalf. On such an application being made, the appropriate Government is required to approach the Presiding Judge of the court before or by which the conviction was made or confirmed to opine (with reasons) whether the application should be granted or refused. Thereafter, the appropriate Government may take a decision on the remission application and pass orders granting remission subject to some conditions, or refusing remission. Apart from anything else, this statutory procedure seems quite reasonable inasmuch as there is an application of mind to the issue of grant of remission. It also eliminates "discretionary" or en masse release of convicts on "festive" occasions since each release requires a case-by-case basis scrutiny.**"**
>
> (emphasis added)

Even the decision in the case of ***Mohinder Singh v. State of Punjab***[2], contemplates an application to be made for grant of permanent remission. The majority view in the said decision holds that *suo motu* power to grant remission cannot be exercised. As specified in Sub-Section (2) of both Sections 432 and 473, there is a requirement to make an application. Since

[2] (2013) 3 SCC 294

the convict will be in jail, any of his relatives can make an application in terms thereof.

7) The provisions for premature release have been incorporated in prison manuals of various States. In fact, in the Model Prison Manual, it is provided that the superintendent-in-charge of a prison has to initiate a case of a prisoner for grant of premature release. Similarly, in the prison manuals of the States of Goa, Nagaland, Mizoram, Tripura, Himachal Pradesh, Haryana, Jharkhand, NCT of Delhi, Odisha, and Uttarakhand, there is a provision that requires superintendents of prisons to initiate proceedings for grant of permanent remission.

8) In the cases of ***Sangeet***[1] and ***Mohinder Singh***[2]**,** this Court did not consider a scenario where a policy was framed by the appropriate Government for grant of premature release or grant of remission. This Court considered this factual contingency in the case of ***Rashidul Jafar v. State of Uttar Pradesh***[3]**.** In Paragraphs 17 and 18, this Court held thus:

> **"17.** The implementation of the policy for premature release has to be carried out in an objective and transparent manner as otherwise it would impinge on the constitutional guarantees under Articles 14 and 21. Many of these life convicts who have suffered long years of incarceration have few or no resources. Lack of literacy, education and social support structures impede their

[3] (2024) 6 SCC 561

right to access legal remedies. Once the State has formulated its policy defining the terms for premature release, due consideration in terms of the policy must be given to all eligible convicts. The constitutional guarantees against arbitrary treatment and of the right to secure life and personal liberty must not be foreclosed by an unfair process of considering applications for premature release in terms of the policy.

18. Significantly, the policy has been amended to remove the requirement of convicts submitting an application for premature release and instead places the responsibility on the officers of the State to consider eligible prisoners. The prison administration, legal services authorities at the district and State level and officers of the police department and the State must diligently ensure that cases of eligible prisoners are considered on the basis of policy parameters. We have gained a distinct impression, based on the cases which have come before the Court here and even earlier that there is a general apathy towards ensuring that the rights which have been made available to convicts who have served out their sentences in terms of the policy are realised. This results in the deprivation of liberty of those who are entitled to be released. They languish in overcrowded jails. Their poverty, illiteracy and disabilities occasioned by long years of incarceration are compounded by the absence of supportive social and legal structures. The promise of equality in our Constitution would not be

> fulfilled if liberty were to be conditional on an individual's resources, which unfortunately many of these cases provide hard evidence of. This situation must change and hence this Court has had to step in. We now proceed to formulate peremptory directions."
>
> (emphasis added)

When a State Government or a Union Territory has adopted a policy for the grant of permanent remission which incorporates conditions for eligibility, it becomes an obligation of the State Government or the Union Territory to consider cases of all eligible convicts for the grant of permanent remission as per the policy adopted. If such a policy exists, and if the State Government or the Government of Union Territory raises a contention that relief will be granted only to those who apply as per policy, it will amount to saying that even if convicts are eligible for consideration in terms of the policies, their cases will not be considered in terms of the policy. Such conduct on the part of the States will be discriminatory and arbitrary and amount to a violation of Article 14 of the Constitution. The power under Section 432(1) must be exercised in a fair and reasonable manner. Therefore, whenever there is a policy for consideration of cases for permanent remission, it becomes an obligation of the State to consider cases of every eligible convict under the policy.

9) At this stage, we may note here that the National Legal Services Authority (NALSA) has formulated a Standard Operating Procedure on legal assistance, operationalisation, and co-ordination in improving the process of premature

release, parole, furlough of prisoners, 2022 (for short, 'the SOP'). The SOP has been formulated as per the directions issued by this Court in Special Leave Petition (Crl.) No. 4358-59 of 2021 in the case of ***Kadir v State of Uttar Pradesh***. The SOP contemplates prison superintendents of all the prisons preparing a list of all life convicts and other convicts who will be entitled to be considered for premature release in immediate four months as per the eligibility provided under the state policy. It is thus apparent that after the preparation of a list of all life convicts and other convicts who will be entitled to be considered for premature release, the said list must be regularly forwarded by the prison superintendents to the appropriate Government so that the case of premature release of such convicts is considered by the appropriate Government. Since we are on the SOP made by the NALSA, we may note here that the SOP provides for appointing an advocate for the purposes of challenging the order refusing to grant permanent remission. We request NALSA to consider incorporating in the SOP the requirement of bringing to the notice of the convict the fact that the convicts have the liberty to challenge the order of rejection of grant of premature release.

THE NECESSITY OF HAVING A POLICY

10) The power under Section 432 of the CrPC is to be exercised in a fair and reasonable manner. If there is neither a policy nor any Regulations for exercising the power under Section 432 of the CrPC, there is a possibility that the authorities will not exercise their power in a fair and rational

manner. To ensure that the power is not exercised in an arbitrary manner, all the states that do not have an exhaustive policy on this aspect must come up with an exhaustive policy within two months from today. It can be either a separate policy or it can be incorporated into the prison manuals.

POWER TO GRANT CONDITIONAL REMISSION

11) On a plain reading of sub-Section (1) of Section 432 of the CrPC and the corresponding provision under the BNSS, the appropriate Government has the power to grant remission without imposing any condition or subject to certain conditions. Therefore, there cannot be any doubt that a conditional order can be passed by the appropriate Government granting permanent remission. Different States have different provisions in this regard. Rule 40 of Karnataka Prison Rules, 1974 provides for an appropriate government granting remission under Section 432 unconditionally, and once it is granted, it cannot be forfeited under any circumstances. Under Rule 547 of the Kerala Prison Rules, 1958, conditions have been incorporated for the grant of remission, such as executing a bond and regular reporting to the Probation Officer, etc. There are provisions made in the policies of some other States incorporating the requirement of passing conditional orders of permanent remission.

12) In the case of ***Mafabhai Motibhai Sagar v. State of Gujarat[4],*** this Court dealt with the nature of conditions which

[4] 2024 SCC OnLine SC 2982

could be imposed. In clause (iv) of paragraph 17 of the said decision, this Court held thus:

> **"**(iv) Conditions imposed while exercising the power under sub-section (1) of Section 432 or sub-section (1) of Section 473 of the BNSS must be reasonable. If the conditions imposed are arbitrary, the conditions will stand vitiated due to violation of Article 14. Such arbitrary conditions may violate the convict's rights under Article 21 of the Constitution;**"**

13) While granting remission, reasonable conditions can be imposed. The conditions must be such that they are capable of being complied with. The conditions cannot be vague. The conditions cannot be oppressive. When a convict is released by granting relief of permanent remission, it is necessary to ensure that he is rehabilitated in society. It is necessary to consider the nature of the crime he committed. To fix terms and conditions, it is necessary to ascertain the motive for committing the crime for which he was punished. Even criminal background needs to be taken into consideration. Another concern that must be taken care of is public safety. Even the impact on society and the victims of the offence needs to be considered while determining the terms and conditions. In short, the conditions must be such that the same ensures that the criminal tendency of the convicts remains in check, they do not indulge in the commission of crimes, and they are rehabilitated in society. Their proper rehabilitation is most vital as it prevents them from going back to their criminal activities. Therefore, to summarise:

a) Consideration of various factors which are mentioned by way of illustration is necessary before finalizing the terms and conditions;
b) The conditions must aim at ensuring that the criminal tendencies, if any, of the convict remain in check and the convict rehabilitates himself in society;
c) The conditions should not be so oppressive or stringent that the convict is not able to take advantage of the order granting permanent remission; and
d) The conditions cannot be vague and should be capable of being performed.

REVOCATION OF GRANT OF REMISSION

14) Now, we deal with the issue of breach of conditions on which remission is granted. The question is, what is the legal effect of a breach of terms and conditions on which remission has been granted. The issue has been dealt with in the case of ***Mafabhai Motibhai Sagar***[4]. In clauses (v) and (vi) of paragraph 17 of the said decision, it was held thus:

> **"**(v) The effect of remitting the sentence, in part or full, results in the restoration of liberty of a convict. If the order granting remission is to be cancelled or revoked, it will naturally affect the liberty of the convict. The reason is that when action is taken under sub-section (3) of Section 432 of the CrPC or sub-section (3) of Section 473 of the BNSS, it results in the convict being taken to prison for undergoing the remaining part of the sentence. Therefore, this drastic power

cannot be exercised without following the principles of natural justice. A show cause notice must be served on the convict before taking action to withdraw/cancel remission. The show cause notice must contain the grounds on which action under subsection (3) of Section 432 of the CrPC or sub-section (3) of Section 473 of BNNS is sought to be taken. The concerned authority must give the convict an opportunity to file a reply and of being heard. After that, the authority must pass an order stating the reasons in brief. The convict can always challenge the order of cancellation of remission by adopting a remedy under Article 226 of the Constitution of India.; and

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

of the BNSS of cancellation of the order remitting sentence.”

(emphasis added)

15) In the light of the provisions of the CrPC and the BNSS, there is a power vesting in the appropriate Government to cancel the remission. The cancellation can be only on the grounds of the breach of the terms and conditions on which the remission is granted. In case of cancellation, the convict is required to undergo the remaining sentence. The test to be applied and the procedure to be followed are set out in clauses (v) and (vi) of paragraph 17 of the decision of this Court in the case of ***Mafabhai Motibhai Sagar[4].***

16) Even while passing an order of cancellation of the order of remission, the appropriate Government must record brief reasons. The reason is it takes away the liberty granted to the convicts. When an order of remission is cancelled, it affects the right of the convict to liberty under the Constitution. Therefore, the requirement of recording reasons must be read into the provisions of Sub-Sections (2) of Section 432 of the CrPC and Section 473 of the BNSS. The convict must be given a show cause notice stating the grounds for cancellation and he must be provided an opportunity to file a reply. If this is not read into the statute, the convict will not be in a position to defend the proceedings.

REQUIREMENT OF RECORDING REASONS

17) The power to grant premature release must be exercised in a fair and reasonable manner. It affects the convict’s liberty

guaranteed under Article 21 of the Constitution. Therefore, the requirement of recording reasons either for granting or rejecting the prayer for permanent remission will have to be read into the provisions of Section 432 of the CrPC and Section 473 of the BNSS. Principles of natural justice must be read into the provisions of Section 432 of the CrPC. In any case, in the case of ***Bilkis Yakub Rasool v. Union of India***[5] in paragraph 222.8, this Court held that the reasons for grant or refusal of remission should be clearly delineated in the order. Therefore, the requirement to record reasons exists. Brief reasons must be recorded, which are sufficient to enable the convict to understand why his prayer for remission has been rejected. This enables him to challenge the order of rejection.

18) Furthermore, it follows that the order passed by the appropriate Government of either granting or rejecting the prayer for remission must be communicated to the convict. If the prayer is refused, while providing a copy of the order to the convict, he must be informed that he has a right to challenge the order. A copy of the order rejecting the prayer must be immediately provided to the Secretary of the District Legal Services Authority so that legal aid can be offered to the prisoner to challenge the order.

THE SOP OF NALSA

19) The SOP issued by NALSA on the subject of premature release is very exhaustive and needs to be implemented in its

[5] (2024) 5 SCC 481

true letter and spirit. More often than not, we have noticed that the convicts whose prayer for premature release is rejected are not well informed. Writ petitions are being filed in this court wherein either the facts are not fully stated, or there is suppression of facts. The reason is that most of the convicts are placed in such a position that they find it difficult to give correct information to their advocates. Clause 4.3 of the NALSA SOP is of utmost importance and needs strict implementation.

PRESIDING OFFICER'S DUTY

20) When the Presiding officer's opinion is sought as per Sub-Sections (2) of Section 432 of the CrPC and Section 473 of the BNNS, the Presiding Officer must submit his opinion at the earliest considering the fact that the issue of liberty of the convict is involved.

21) We, therefore, record the following conclusions:

a) Where there is a policy of the appropriate Government laying down guidelines for consideration of the grant of premature release under Section 432 of the CrPC or Section 473 of the BNSS, it is the obligation of the appropriate Government to consider cases of all convicts for grant of premature release as and when they become eligible for consideration in terms of the policy. In such a case, it is not necessary for the convict or his relatives to make a specific application for grant of permanent remission. When the jail manual or any other departmental instruction issued by the appropriate

Government contains such policy guidelines, the aforesaid direction will apply;

b) We direct those States and Union Territories that do not have a policy dealing with the grant of remission in terms of Section 432 of the CrPC or Section 473 of the BNSS to formulate a policy within two months from today;

c) Appropriate Government has the power to incorporate suitable conditions in an order granting permanent remission. Consideration of various factors, which are mentioned in the paragraph 13 above by way of illustration, is necessary before finalizing the conditions. The conditions must aim at ensuring that the criminal tendencies, if any, of the convict remain in check and that the convict rehabilitates himself in the society. The conditions should not be so oppressive or stringent that the convict is not able to take advantage of the order granting permanent remission. The conditions cannot be vague and should be capable of being performed;

d) Order granting or refusing the relief of permanent remission must contain brief reasons. The order containing reasons should be immediately communicated to the convict through the office of the concerned prison. The copies thereof should be forwarded to the Secretaries of the concerned District Legal Services Authorities. It is the duty of the prison authorities to

inform the convict that he has the right to challenge the order of rejection of the prayer for the grant of remission.

e) As held in the case of ***Mafabhai Motibhai Sagar***[4], an order granting permanent remission cannot be withdrawn or cancelled without giving an opportunity of being heard to the convict. An order of cancellation of permanent remission must contain brief reasons;

f) The District Legal Services Authorities shall endeavour to implement NALSA SOP in its true letter and spirit.

g) Further, the District Legal Services Authorities shall also monitor implementation of conclusion (a) as recorded above. For this purpose, the District Legal Services Authorities shall maintain the relevant date of the convicts and as and when they become eligible to a consideration for grant of premature release, they shall do the needful in terms of conclusion (a). The State Legal Services Authorities shall endeavour to create a portal on which the data as aforesaid can be uploaded on real time basis.

22) In terms of what we have held earlier, various issues raised regarding the grant of permanent remission stand answered on the above terms. Other issues will be considered on the dates already fixed.

23) A copy of this judgment shall be forwarded to NALSA which in turn will forward the same to the Legal Service

Authorities of the States and Union Territories to enable them to monitor implementation of the directions issued under this Judgment.

24) We must record our appreciation for the assistance rendered by Ms. Liz Mathew, learned senior counsel and Shri Navneet R.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
February 18, 2025.