

GAHC030002012024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : W.P.(Crl.)/1/2024

Sh. C. Lalthianghlina
Chanmari West, Aizawl, Mizoram

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : none

Advocate for the Respondent :

B E F O R E

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MARLI VANKUNG

ORDER

10.04.2024

Ms. Caroline K. Lungawipui is appointed as Amicus Curiae to assist the Court in this case.

Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor, appears for the State.

2. This Writ Petition (Criminal) has been forwarded to this Court by the Special Superintendent, Central Jail, Aizawl vide letter No. C. 12015/1/22-CJ(A) dated 07.03.2024 in relation to one Sh. C. Lalthianghlma, who has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life with a fine of Rs. 5000/-, vide Judgment and Order dated 19.12.2012 passed by the Addl. District & Sessions Judge-V, Aizawl District in Crl. Trial No. 199/2007, arising out of Bawngkawn PS Case No. 71/2007 under Section 302 IPC.

3. The grievance of the petitioner is that the petitioner's representation for premature release from prison, prior to completion of 14 years in Jail, which had been forwarded by the Special Superintendent, Central Jail vide letter No. C.15018/1/16-CJ(A) dated 12.04.2023 to the Inspector General of Prisons, Prisons Department, Govt. of Mizoram (Annexure VIII) and the subsequent representation of the petitioner dated Nil (Annexure-VIII-B), for considering his case for suspension, remission or commutation of sentence, has not been considered by the State Level Committee of the Home Department, Govt. of Mizoram, till date.

4. The learned Amicus Curiae appearing on behalf of the petitioner submits that a direction should be issued to the State of Mizoram represented by the Secretary to the Government of Mizoram, Home Department, to place the petitioner's representation before the State Level Committee under the Home Department, for consideration of the petitioner's prayer for suspension, remission or commutation of the sentence imposed upon the petitioner in terms of Chapter 20.02 of the Mizoram Prisons Manual, 2017.

5. Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor, Mizoram submits that the petitioner's representation for suspension, remission or commutation of sentence can be examined by the State Level Committee under the Home Department.

Thereafter, a decision can be taken by the State Level Committee and the Government of Mizoram.

6. We have heard the counsels for the parties.

7. The petitioner in the instant case has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- by the Court of Addl. District & Sessions Judge-V, Aizawl Judicial District, Aizawl in CrI. TrI. No. 199/2007 vide Judgment & Order dated 19.12.2012.

8. Aggrieved with the same, the petitioner preferred Cri. A. No. 13/2013 before this Court and the same was considered and dismissed vide Judgment & Order dated 20.05.2016 by the Division Bench of this Court.

9. Notwithstanding the dismissal of the appeal, the petitioner again preferred an appeal from Jail which was registered as CrI. A(J) No. 6/2022. This Court upon finding that the earlier appeal preferred by the petitioner had already been considered and dismissed vide Judgment & Order dated 20.05.2016, disposed of the Jail appeal vide Order dated 31.05.2022 with an observation that an appeal filed against the same judgment & order by the same appellant will not be maintainable and that the appellant, petitioner herein, may approach the appropriate authority under Chapter-XXXII of the Cr.P.C for remission or commutation of the sentence as may be permissible in law, if so advised.

10. Despite the observation and the order passed by this Court on 31.05.2022 in CrI. A(J) No. 6/2022, the Special Superintendent, Central Jail, Aizawl has yet again forwarded a petition from the petitioner and the same has been registered as WP(CrI.) (J) No. 1/2024 by the Registry. Alongwith the petition, we also find that the Special

Superintendent, Central Jail had written to the Inspector General, Prisons, Mizoram, Aizawl seeking for pre-mature release of the petitioner vide his Communication dated 12.04.2023. The petitioner has also submitted a similar prayer to the Inspector General, Prisons dated NIL. Both the communications are enclosed as Annexure-VIII & VIII (B) respectively in the instant petition.

11. From a perusal of Section 432, 433 & 433-A of the Cr.P.C, it can be seen that it is the State Government who is empowered to grant remission or commutation of the sentence passed by a criminal Court.

12. On perusing the contents of Annexure VIII, Annexure VIII (B) and VIII (F) of the writ petition, we find that the Home Department, Government of Mizoram has not placed the petitioner's representation for suspension, remission or commutation of the sentence imposed upon the petitioner before the concerned Committee, who is to take a decision on the same and which would thereafter require the approval of the Government.

13. We are accordingly of the view that the Home Department should examine the case of the petitioner and place the same before the competent authority, for taking a decision on the petitioner's representation, as provided in the writ petition. Accordingly, the Secretary to the Government of Mizoram, Home Department is directed to examine the case of the petitioner for suspension, remission or commutation of sentence, by placing the same before the competent authority/ Committee, who should take a decision on the same, as per their discretion.

14. The entire exercise should be carried out within a reasonable period of time and preferably within a period of 6 months, from the date of receipt of a copy of this order alongwith a copy of the writ petition.

15. The above direction is subject to the condition that the petitioner's prayer for suspension, remission or commutation of sentence has not been decided earlier by the concerned authorities.

16. If a decision has already been taken by the State Government on the said issue, the decision should be communicated to the petitioner.

17. The Registry is directed to give a copy of this order alongwith a copy of the writ petition to Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor, who shall forward the same to the Secretary to the Government of Mizoram, Home Department for taking necessary steps.

18. The Addl. Public Prosecutor thereafter shall give a report to the Registry, with regard to furnishing a copy of this order and the writ petition to the concerned Secretary, Home Department, Government of Mizoram.

19. The writ petition is accordingly disposed of.

20. In appreciation of the assistance rendered by Ms. Caroline K. Lungawipuii, learned Amicus Curiae, her fee is fixed at Rs. 5000/-(Rupees five thousand) only, to be paid by the Mizoram State Legal Services Authority.

JUDGE

JUDGE

Comparing Assistant