

GAHC020001832024



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

Case No. : W.P.(Cri.)/4/2024

SHRI SANJAY KUMAR YADAV
S/O SHRI RAM YADAV
PERMANENT R/O DUBKIYA VILLAGE
VARANASI, UTTAR PRADESH

THROUGH THE JAILOR, CENTRAL JAIL
DIMAPUR NAGALAND- 797112

VERSUS

THE STATE OF NAGALAND AND 2 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND,
KOHIMA

2:THE HOME COMMISSIONER
NAGALAND KOHIMA

3:THE DIRECTOR GENERAL OF PRISONS
NAGALAND KOHIM

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA
HON'BLE MR. JUSTICE BUDI HABUNG
ORDER**

Date : 15-05-2024

(K. Sema, J)

Heard Mr. Sentianger, learned counsel for the petitioner and Ms. S. Mere, learned Sr. Government Advocate appearing for the State respondents.

The present writ petition has been filed under Article 226 of the Constitution of India with the following prayer;

“In the premises, it is most respectfully prayed that Your Lordship may graciously be pleased to admit this petition, call for the records, issue a Rule calling upon the respondents to show cause as to why:

Petitioner representation, dated 08-03-2024 should not be considered by the respondent authorities within a period of 2(two) months;

And on cause(s) being shown and after hearing the parties be pleased to make the Rule absolute and/or pass any such other or further order(s) as to Your Lordship may deem fit and proper on the facts and circumstances of the case.”

The case of the petitioner in brief is that, by the judgment & order dated 13/08/2012 passed by the General Army Court Martial in G.R Case No. 631/2009, the petitioner was convicted under section 302 IPC. Against the judgment & order dated 13/08/2012, the petitioner filed the appeal OA 08/2014 before the Armed Forces Tribunal, Regional Branch, Guwahati but the same was dismissed vide judgment & order dated 01/10/2015. Against the judgment dated 01/10/2015, the petitioner filed the Criminal Appeal Diary No. 39534/2018 in the Hon'ble Supreme Court of India which was also dismissed on the ground of delay as well as on merit. Consequent to the order dated 03/01/2019 passed by the Hon'ble Supreme Court of India, the petitioner made an

appeal for Mercy petition to His Excellency, the Governor of Nagaland for reducing the sentence of punishment/remission on humanitarian ground. The same however did not evoke any response. That thereafter, the Assistant Inspector General of Prisons, Central Jail, Nagaland, Dimapur wrote the letter dated 29/10/2019 to the Director General of Prisons, Nagaland, Kohima, forwarding the Mercy petition of the petitioner/convict which also did not evoke any response.

That thereafter, the petitioner wrote the representation dated 08/03/2024 to the State respondents praying for pre-mature release in terms of the notification dated 16/05/2001 issued by the Government of Nagaland, Home department : Home Branch. However, as the representation dated 08/03/2024 was not been considered by the State respondents, the present writ petition has been filed.

Mr. Sentiyanger, learned counsel submits that the petitioner has been in prison since his initial arrest on 05/11/2009 and has completed 14 years of actual imprisonment without remission on 05/11/2023 and the same qualifies the petitioner for pre-mature release under the provision of Clause 3.1 of the notification dated 16/05/2001.

In support of his submission, the learned counsel for the petitioner has relied in the case of **Rajan -versus- Home Secretary, Home Department of Tamil Nadu & Others**, reported in **(2019) 14 SCC 114** to substantiate that the consultation with the central government would not be necessary and the State respondents, being the appropriate government, must exercise power conferred upon it in terms of the section-432 and section 433 of the Cr.P.C.

Ms. S. Mere, learned Sr. Government Advocate submits that she has no objection to the prayer made by the petitioner seeking for a direction to the State respondents to dispose the representation dated 08/03/2024 in the light of the notification dated 16/05/2001

issued by the Government of Nagaland.

Heard the learned counsel for the parties and perused the notification dated 16/05/2001 issued by the Government of Nagaland, more particularly, the Clause-3.1 of the said notification. Also perused the laid down by the Hon'ble Supreme Court of India in the case of Rajan (supra) wherein it has been held as follows;

“22. We, therefore, dispose of this petition with a direction to the competent authority to process the representation made by the petitioner dated 5-2-2018 (Annexure P-6) and take it to its logical end expeditiously and preferably within four months, in accordance with law, without being influenced by the rejection of the earlier representation vide order dated 14-6-2010, by the State Government. We also hold that consultation with the Central Government would not be necessary and the State Government, being the appropriate Government, must exercise power conferred upon it in terms of Sections 432 and 433 of Cr.P.C. All questions to be considered by the appropriate Government are left open.”

In view of the findings above, the State respondents are directed to consider and dispose the representation dated 08/03/2004 submitted by the petitioner in terms of the notification dated 16/05/2001 issued by the Government of Nagaland, more particularly, in the light of the Clause 3.1 of the said notification, as expeditiously as possible but keeping the outer time limit of 5(five) months from the date of passing of this order. The representation submitted by the petitioner shall also be considered in the light of the provision of section-432/433 of the Cr. P.C, 1973 and in accordance with law.

The writ petition stands disposed.

**Sd/-
JUDGE**

**Sd/
JUDGE**

Comparing Assistant