

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1042 of 2015

1. Tarachand Kapari @ Taranand Kapari @ Karo Kapri Son of Late Bonia Kapari, resident at & P.O. Tofir Tamganj, P.S. Narpatganj, District- Araria.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Home, Govt. of Bihar, Patna.
3. The Secretary, Department of Law, Govt. of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Inspector General of Police, Bihar, Patna.
6. The Jail Superintendent, Central Jail, Araria.
7. The Jailor Mandal Kara, Araria.
8. The Jailor, Central Jail, Purnia.

.... Respondents

Appearance :

For the Petitioner : Mr. Vikramdeo Singh, Advocate
Mr. Mukesh Kumar Rana, Advocate
For the Respondents : Mr. Vikas Kumar, AC to AG

Mr. Prabhat Ranjan, Advocate, Mr. Ajay Kumar Thakur, Advocate and Ms. Soni Shrivastava, Advocate, appearing as Amicus Curiae

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 19-01-2016

What is the minimum period of imprisonment, which a person has to undergo in order to enable the *appropriate Government* consider his case for *commutation* or *remission* of sentence if he has been convicted of the offence of *murder* punishable under Section 302 of the Indian Penal Code and

sentenced to suffer *imprisonment for life* and fine? This is the fundamental question, which this writ petition has raised.

2. The other question, which is inseparable and equally fundamental, is: What is *commutation of sentence* and how does *commutation* of a sentence differ from *remission* of the sentence? This question gives rise to yet another question and the question is: Can a High Court, in exercise of its power under Article 226 of the Constitution of India, direct a State Government to *commute, remit or release* such a convicted person, as aforesaid, who has undergone the minimum prescribed period for a person sentenced to *imprisonment for life*? Conversely put, the question is: Has a convicted person an *indefeasible right* to demand his release from imprisonment on completing the minimum period of the sentence of imprisonment, which a given Penal Statute may prescribe?

3. The material facts and various stages, which have led to the two questions, posed above, may, in brief, be set out as under:

(i) By judgment, dated 27.04.1992, passed, in Sessions Trial No. 198 of 1990, the 5th Additional Sessions Judge, Purnea, has convicted the writ petitioner under Section 148 of the Indian Penal Code and also under Section 302 of the Indian Penal Code. Following his conviction under Section 148 of the Indian Penal Code, the writ petitioner, vide order, dated



28.04.1992, passed in Sessions Trial No. 198 of 1990, aforementioned, stands sentenced to undergo rigorous imprisonment for a period of one year. For his conviction under Section 302 of the Indian Penal Code, the writ petitioner, by the order aforementioned, has been sentenced to suffer *imprisonment for life*, both the sentences having been directed to run concurrently.

4. There is no dispute in the present case that the petitioner has already undergone imprisonment for a period of 12 years and 11 months following his conviction and the order of punishment passed against him. There is also no dispute that the petitioner has spent one year, eleven months and fourteen days as an *under-trial prisoner* before he was convicted and the sentences, as mentioned hereinbefore, were passed. In total, thus, the petitioner has undergone more than 14 years of imprisonment.

5. While considering the question as to what is the minimum period of imprisonment, which a person has to undergo in order to enable a Government consider his case for *commutation* or granting of *remission*, if he has been convicted of the offence of *murder* punishable, under Section 302 of the Indian Penal Code, with *death* or *imprisonment for life*, an understanding of the scheme of *commutation* of sentence vis-à-vis *remission* thereof, as contained in Sections 432, 433 and

433-A read with Section 428 of the Code of Criminal Procedure, which deals with the provisions of *set off*, needs to be borne in mind.

6. Section 432 of the Code of Criminal Procedure, which deals with *suspension* and *remission* of sentence, read:

"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 properly.*

(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."*

7. Close on the heels of Section 432 of the Code of Criminal Procedure, which deals, *inter alia*, with *remission* of sentence, Section 433 of the Code of Criminal Procedure, which deals with *commutation* of sentence, reads as under:

"433. Power to commute sentence.- *The appropriate Government may, without the consent of the person sentenced, commute-*

(a) *a sentence of death, for any other punishment provided by the Indian*

Penal Code (45 of 1860);

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine."

8. Wholly inseparable and inextricable with the provisions of *commutation* and *remission* (as embodied in Section 433 of the Code of Criminal Procedure) is Section 433-A of the Code of Criminal Procedure.

9. We, therefore, re-produce hereinbelow Section 433-A of the Code of Criminal Procedure:

"433-A. 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."



10. It may be pointed out that Section 54 of the Indian Penal Code, too, provides for *commutation* of sentence of death inasmuch as it states, "In every case in which *sentence of death* shall have been passed, the *appropriate Government* may, without the consent of the offender, *commute* the punishment *for any other punishment provided by this Code*".

11. Similarly, Section 55 of the Indian Penal Code provides for *commutation* of sentence of *imprisonment for life* inasmuch as it states, "In every case in which sentence of *imprisonment for life* shall have been passed, the *appropriate Government* may, without the consent of the offender, *commute* the punishment for imprisonment of either description for a term not exceeding fourteen years".

12. Thus, while Section 54 of the Indian Penal Code provides for *commutation* of *sentence of death* for any other punishment, which the Indian Penal Code may have provided, Section 55 of the Indian Penal Code provides for *commutation* of sentence of *imprisonment for life* to punishment for imprisonment of either description for *a term not exceeding fourteen years*.

13. What is, however, of immense importance to note is that the power to *commute a sentence of death*, embodied in Section 54 of the Indian Penal Code, or a sentence of

imprisonment for life, as contained in Section 55 of the Indian Penal Code, is independent of the power of *commutation*, which *appropriate Government* has been provided under Clause (b) of Section 433 of the Code of Criminal Procedure.

14. What is, however, equally important to note is that to the power of the appropriate Government to *commute* a sentence of *imprisonment for life*, Section 433-A of the Code of Criminal Procedure puts a restriction by laying down that *commutation* of sentence of *imprisonment for life* to a sentence of *imprisonment for a term*, cannot be for a period less than *fourteen years*. This apart, the restriction, which Section 433-A of the Code of Criminal Procedure, imposes on the power of the *commutation* operates only after the power of *commutation* under Section 433 of the Code of Criminal Procedure is exercised meaning thereby that if the sentence of *imprisonment for life* is *commuted* to a sentence of *imprisonment for a term*, or *for fine*, the convict cannot be released until he undergoes the minimum prescribed period of 14 years of imprisonment. However, if the *imprisonment for life* is not commuted, the imprisonment continues until, as we would show, the death of the convict.

15. What also follows from a close reading of Section 433-A of the Code of Criminal Procedure is that by way of even *remission*, a sentence of *imprisonment for life* cannot be

reduced to an *imprisonment for a term less than fourteen years*.

16. The expression "*appropriate Government*", appearing in Sections 432 and 433 of the Code of Criminal Procedure, means the Central Government in the cases, where the sentence or order relates to the matter to which the executive power of the Union extends; but in all other cases, the Government of the State, within which the offender is sentenced, is the *appropriate Government*.

17. Though Section 432 of the Code of Criminal Procedure empowers the Government to *remit* sentence, the fact remains that *remission* of punishment assumes that the conviction is correct and only reduces the punishment in part or in whole. A *remission* of sentence does not mean acquittal and an aggrieved party has every right to vindicate himself or herself that his or her conviction is not sustainable in law. (See ***State (Govt. of NCT of Delhi) v. Prem Raj***, reported in ***(2003) 7 SCC 121***).

18. In other words, *remission* is reduction of the amount of a sentence without changing its character. In the case of a *remission*, the guilt of the offender is not affected nor does *remission* alter the sentence of the court except in the sense that the convicted person does not suffer incarceration for the entire period of the sentence, but is relieved from

serving out a part of the sentence.

19. From a close reading of Section 433 of the Code of Criminal Procedure, it becomes clear that an *appropriate Government* may *commute* the sentence of a person, who has been awarded *death sentence*, to any other punishment, which may be provided by the Indian Penal Code. The *appropriate Government* is also empowered, under Section 433 of the Code of Criminal Procedure, to *commute* a sentence of '*imprisonment for life*' to '*imprisonment for a term*' not exceeding *fourteen years* or for fine.

20. Thus, *commutation* of sentence is not same as *remission* of sentence inasmuch as *commutation* is conversion or alteration of a sentence into another form of sentence, such as, a *sentence of death* into a sentence of *imprisonment for life* as prescribed by the Indian Penal Code or conversion or alteration of a sentence of *imprisonment for life* into a sentence of *imprisonment for any other term*.

21. Clarified the Supreme Court, in ***Prem Raj*** (supra), that *commutation* of a sentence is, in essence, an alteration of a sentence of one kind into a sentence of less severe kind and this power exclusively vests with the *appropriate Government* and in other cases, the State Government within which the offender is sentenced or the said order is passed.



22. In the light of what have been discussed above, it becomes transparent that the release of a prisoner condemned to death, in exercise of powers conferred under Section 432 or Section 433 of the Code of Criminal Procedure, does not amount to interference with the due and proper course of justice inasmuch as the power of the High Court to pronounce upon the validity, propriety and correctness of the conviction and sentence remains unaffected. By reducing the sentence, the Government concerned does not thereby modify the judicial sentence. The fact that a sentence was *remitted* by the *appropriate Government* or that on account of certain *remission* (which a convict earned under the Jail Rules or under some order of general amnesty), does not, in any manner, dilute his conviction, but merely reduces the period of his sentence. Consequently, the disqualifications, if any (which such a convict may have incurred due to his or her conviction) under any other laws, such as, Election Laws, would remain unaltered even if such a convicted person's sentence is *remitted* by the *appropriate Government*. The Code of Criminal Procedure does not empower any Government to revise a judgment of conviction or sentence passed by court. (See, **State (Govt. of NCT of Delhi v. Prem Raj**, reported in **(2003) 7 SCC 121**)

23. The question, now, which arises for consideration,

is: whether the provision of *set off*, as embodied in Section 428 of the Code of Criminal Procedure, is available against the sentence of *imprisonment for life*?

24. For the purpose of clarity, Section 428 of the Code of Criminal Procedure, which deals with the provisions of *set off*, is reproduced below:

"428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.- Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him:

Provided that in cases referred to in Section 433A, such period of detention shall be set off against the period of fourteen years referred to in that section."

25. For a clearer and better understanding of the provisions of *set off*, as contained in Section 428 of the Code of Criminal Procedure, one has to also take into account the



provisions in Section 433-A of the Code of Criminal Procedure, which came to be introduced by the Code of Criminal Procedure (Amendment) Act, 1978, with effect from 18.12.1978, needs to be taken note of. We may point out that we have already reproduced, at paragraph 9 of this judgment, Section 433-A of the Code of Criminal Procedure.

26. From a conjoint reading of Section 433-A read with Section 428 of the Code of Criminal Procedure, what becomes evident is whether 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, such as, the case at hand, or where a *sentence of death*, imposed on a person, has been *commuted*, under Section 433 of the Code of Criminal Procedure, into one of *imprisonment for life*, such person shall not be released from prison unless he has served, at least, fourteen years of imprisonment, meaning thereby that even if a person's *sentence of death* has been *commuted* to *imprisonment for life*, he cannot be released from prison unless he has served, at least, 14 years of imprisonment or where a sentence of *imprisonment for life* (passed on conviction of a person for an offence for which *sentence of death* can be awarded), he cannot be released upon *commutation* of his sentence, unless he serves, at least, 14 years of imprisonment.

27. Before the proviso, which has been added to



Section 428 of the Code of Criminal Procedure, with effect from 23.06.2006, by the Code of Criminal Procedure (Amendment) Act, 2005, the Supreme Court's view, in **Kartar Singh v. State of Haryana (AIR 1982 SC 1433)**, was that if a person, on his conviction, stood sentenced to *imprisonment for a term* and not for *imprisonment for life*, he was not covered by the provisions of *set off* as embodied in Section 428 of the Code of Criminal Procedure and, thus, these provisions of *set off* were not available against *imprisonment for life*.

28. In other words, as held in **Kartar Singh** (supra), the Supreme Court's view (when the proviso to Section 428 of the Code of Criminal Procedure did not exist), was that the benefit of *set off*, as contemplated under Section 428 of the Code of Criminal Procedure, was not available to a life convict.

29. What logically follows is that the position of law, in the light of the decision in **Kartar Singh** (supra), was that if a convict stood sentenced to *imprisonment for life* and not merely imprisonment for a term, then, he was not entitled to the benefit of *set off* as provided by Section 428 of the Code of Criminal Procedure.

30. However, in **Bhagirath v. Delhi Admn.**, reported in **(1985) 2 SCC 580**, the principal question, which arose, was: whether the expression '*imprisonment for life*' means a '*term of imprisonment*' for the purpose of invoking the powers

of *set off* exercisable under Section 428 of the Code of Criminal Procedure?

31. The Supreme Court observed, in **Bhagirath's** case (supra), that there is little warrant for qualifying the word "*term*" by the adjective "*fixed*", which is not to be found in Section 428 of the Code of Criminal Procedure and that the assumption that the word "*term*" implies a concept of ascertainability or conveys a sense of certainty, is contrary to the letter of the law as is found in Section 428 of the Code of Criminal Procedure. It was also observed by the Supreme Court, in **Bhagirath's** case (supra), that even the marginal note to Section 428 of the Code of Criminal Procedure does not bear out such an assumption; rather, Section 428 of the Code of Criminal Procedure belies such an assumption and that the marginal note of Section 428 of the Code of Criminal Procedure shows that the object of the legislature in enacting the particular provision was to provide that "*the period of detention undergone by the accused*" should "*be set off against the sentence of imprisonment*" imposed upon him.

32. It was pointed out by the Supreme Court, in **Bhagirath's** case (supra), that there are no words of limitation either in Section 428 of the Code of Criminal Procedure or in its marginal note, which would justify restricting the plain and natural meaning of the word "*term*" so as to comprehend only

such sentences, which are imposed for a fixed or ascertainable period and not for *imprisonment for life*.

33. In **Bhagirath** (supra), the Supreme Court also points out that to say that a sentence of *life imprisonment*, imposed upon an accused, is a sentence for the 'term' of his life does offence neither to grammar nor to the common understanding of the word "term"; rather, to say otherwise would offend not only the language of the statute, but go against the spirit of the law, that is to say, the object with which the law was made.

34. The Supreme Court further pointed out, in **Bhagirath** (supra), that a large number of cases, wherein accused suffer long under-trial detentions, are cases punishable with *imprisonment for life* inasmuch as those, who are liable to be sentenced to *imprisonment for life*, are not, ordinarily, enlarged on bail and, in such a situation, to deny the benefit of Section 428 of the Code of Criminal Procedure to such convicts is to withdraw the application of a benevolent provision from a large majority of cases, wherein such benefit would be needed and justified.

35. The relevant observations, appearing in **Bhagirath's** case (supra), read as follows:

"7. We see but little warrant for qualifying the word "term" by the adjective "fixed" which is not to be found in Section



428. The assumption that the word "term" implies a concept of ascertainability or conveys a sense of certainty is contrary to the letter of the law, as we find it in that section. Even the marginal note to the section does not bear out that assumption. It rather belies it. And, marginal notes are now legislative and not editorial exercises. The marginal note of Section 428 shows that the object of the Legislature in enacting the particular provision was to provide that "the period of detention undergone by the accused" should "be set off against the sentence of imprisonment" imposed upon him. There are no words of limitation either in the section or in its marginal note which would justify restricting the plain and natural meaning of the word "term" so as to comprehend only sentences which are imposed for a fixed or ascertainable period.

8. To say that a sentence of life imprisonment imposed upon an accused is a sentence for the term of his life does offence neither to grammar nor to the common understanding of the word "term". To say otherwise would offend not only against the language of the statute but against the spirit of the law, that is to say the object with which the law was passed. A large number of cases in which the accused suffer long undertrial detentions are cases punishable with

imprisonment for life. Usually, those who are liable to be sentenced to imprisonment for life are not enlarged on bail. To deny the benefit of Section 428 to them is to withdraw the application of a benevolent provision from a large majority of cases in which such benefit would be needed and justified."

36. It bears repetition at this stage that at the time, when the decision, in **Bhagirath's** case (supra), was delivered, Section 428 of the Code of Criminal Procedure did not have the proviso, which came to be inserted by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 23.06.2006. After the addition of this proviso, the applicability of *set off* to the life convicts stands statutorily recognized, for, the proviso to Section 428 of the Code of Criminal Procedure reads as follows:

"Provided that in cases referred to in section 433A, such period of detention shall be set off against the period of fourteen years referred to in that section."

37. Thus, the net result of the decision, in **Bhagirath's** case (supra), and the proviso to Section 428 of the Code of Criminal Procedure is that *set off* is, now, available (and was always be deemed to have been available) to those convicts, who may have been sentenced to *imprisonment for life* or to those, whose sentences of death, have been

commuted to sentence of imprisonment for life.

38. We have, therefore, no difficulty in holding, and we do hold, that the petitioner herein, though a life convict, is entitled to receive the benefit of *set off* under Section 428 of the Code of Criminal Procedure. Consequently, the period of custody of one year, eleven months and fourteen days, which the petitioner has already undergone as an under-trial prisoner, will be taken into account for the purpose of counting the period of imprisonment of 14 (fourteen) years, which is the bare minimum period for a life convict to undergo if a sentence of *imprisonment for life* is *commuted* by the *appropriate Government* in exercise of its power of *commutation* of sentence contained in Section 433 of the Code of Criminal Procedure.

39. Can the State Government, now, be directed by us, in exercise of our power under Article 226 of the Constitution of India, to release the petitioner herein by *commuting* his sentence of *imprisonment for life* or by granting him *remission*? This is the crucial question.

40. While considering the question posed above, what needs to be borne in mind is that in order that a *life convict* may get the benefit of *set off* in view of the specified period of detention undergone during trial, it is necessary that his sentence be, first, *commuted* in exercise of powers by an

appropriate Government under Section 433 of the Code of Criminal Procedure or the *appropriate Government* decides to *remit* his entire sentence.

41. With regard to the above, Section 433-A of the Code of Criminal Procedure puts, as already indicated above, an embargo by laying down that a *life convict* cannot be released on his *commutation* of sentence of *imprisonment for life* or on grant of *remission* until the time he has undergone the minimum prescribed period of imprisonment for a period not less than 14 years. However, if his sentence of *life imprisonment* is not *commuted*, but the sentence of *life convict* is sought to be reduced or shortened by granting him *remission*, how the appropriate Government could exercise the power of *remission*, is the question which stare us.

42. We may pause here to point out that after his conviction, the petitioner herein has spent, in imprisonment, a period of 12 years and 11 months. To this period, one must add, as already indicated above, the custodial period of one year, 11 months and 14 days, which the petitioner has undergone as an under-trial prisoner.

43. Situated thus, it becomes clear, in the light of what we have discussed above, that the petitioner has already undergone imprisonment for a period of 14 years and 10 months meaning thereby that he has completed the minimum

required period of 14 years for the purpose of enabling the State Government, in the present case, to consider the petitioner's case for his release by *commuting* his sentence in exercise of power under Section 433 of the Code of Criminal Procedure.

44. Let us, now, point out as to what the expression '*imprisonment for life*' means or conveys.

45. For the purpose of appreciation of the meaning of the expression '*imprisonment for life*', or in short, '*life imprisonment*', one has to bear in mind that Section 45 of the Indian Penal Code defines 'life' to mean '*the life of a human being*' meaning thereby that the expression '*imprisonment for life*' would mean that the convict shall remain in imprisonment for whole of his natural life or, in other words, until the death of the convict.

46. We may point out that prior to 01.01.1956, *imprisonment for life* was unknown to the Indian Criminal Jurisprudence and it was only by virtue of substitution by Section 117 of the Criminal Law (Amendment) Act, 1955 (Act 26 of 1955), that the original punishment of *transportation for life* was substituted, with effect from 01.01.1956, by the punishment of *imprisonment for life*, in Section 53 of the Indian Penal Code. In other words, *imprisonment for life* was brought in our Penal Code as one of the modes of punishment by

Criminal Law (Amendment) Act, 1955.

47. Thus, Section 53 of the Indian Penal Code, which makes *imprisonment for life* as one of the modes of imprisonment, reads as follows:

"53. Punishments.- The punishments to which offenders are liable under the provisions of this Code are-

First.--Death;

Secondly.--Imprisonment for life;

Thirdly.- [omitted by Act 17 of 1949, section 2 (w.e.f. 6-4-1949)]

Fourthly.--Imprisonment, which is of two descriptions, namely:--

(1) Rigorous, that is, with hard labour;

(2) Simple; Fifthly.--Forfeiture of property;

Sixthly.--Fine."

48. We may also point out that Section 57 of the Indian Penal Code, which describes the fraction of terms of punishment, states, "**in calculating fractions of terms of punishment, 'imprisonment for life' shall be reckoned as equivalent to imprisonment for twenty years.**"

49. We may point out that in **Gopal Vinayak Godse v. State of Maharashtra, (AIR 1961 SC 600)**, the Supreme Court, while adverting to the question as to whether a sentence of *imprisonment for life* can, without any formal *remission* by *appropriate Government*, be automatically treated as one for a

definite period, observed that there is no such provision found in the Indian Penal Code or the Code of Criminal Procedure or the Prison Act, to take the view that a sentence of *imprisonment for life* would, without formal *remission* of sentence by the *appropriate Government*, automatically be for a definite period of twenty years.

50. As a corollary, a sentence of *imprisonment for life* would, ordinarily, mean, in the light of the decision in **Gopal Vinayak Godse** (supra), imprisonment for whole of the remaining period of the convicted person's natural life. It was also pointed out by the Supreme Court, in **Gopal Vinayak Godse** (supra), that there is no rule, which vests an indefeasible right in a prisoner, sentenced to *imprisonment for life*, to an unconditional release on the expiry of a particular *term* and that the question of *remission* remains exclusively within the province of the *appropriate Government*.

51. What clearly follows from the decision, in **Gopal Vinayak Godse** (supra), is that the contention of the petitioner herein, that he ought to have been released from imprisonment by the *appropriate Government* on completion of a period of 14 years of imprisonment, is not tenable in law inasmuch as the petitioner has no indefeasible right to demand his release automatically on completion of a period of 14 years or for a period of 20 years on the ground of *commutation* or

remission unless the Government chooses to invoke the provisions of *remission* in favour of the petitioner.

52. Clarified and reiterated the Supreme Court, in **State of Madhya Pradesh v. Ratan Singh**, reported in **(1976) 3 SCC 470**, that the *imprisonment for life* means a sentence for entire life and that *remission*, under the Jail Manual or Prison Act, do not give any right to a prisoner for lesser term of sentence or for an unconditional release, as a matter of right, upon completion of certain specific term of imprisonment. The Supreme Court also pointed out, in **Ratan Singh** (supra), that *remission* of the sentence of *imprisonment for life* is a matter entirely within the discretion of the *appropriate Government*.

53. In **Dalvir Singh versus State of Punjab**, reported in **(1979) 3 SCC 745**, wherein a conviction, under Section 302 of the Indian Penal Code, with the sentence of death, was reduced to *imprisonment for life* by the Supreme Court, it was, however, clarified that the imprisonment, which strictly means imprisonment for the whole of the convict's life, amounts to, in practice, incarceration for the period between 10 to 14 years, at the option of the convicting Court, subject to the condition that sentence of imprisonment shall last as long as life lasts, where there are exceptional indications of murderous recidivism and the community cannot run the risk of

the convict being at large. This would take care of the judicial apprehensions that unless physically liquidated, the culprit may, at some remote time, repeat murder.

54. In **Sri Bhagwan V. State of Rajasthan**, reported in **(2001) 6 SCC 296**, the Supreme Court was required to consider that whether a sentence of death can be reduced to imprisonment for life or what shall be the length of the period to which a convict shall be kept imprisoned before he could be released. Having observed, in this regard, thus:

"Section 57 of the Indian Penal Code provides that in calculating fractions of terms of punishment, imprisonment for life is to be reckoned as equivalent to the imprisonment for twenty years."

55. What has been laid down in **Shri Bhagwan's** case (supra), it becomes abundantly clear that notwithstanding the fact that Section 57 of the Indian Penal Code makes *imprisonment for life* equivalent to *imprisonment for a term of 20 years*, the Supreme Court pointed out that in no circumstances, life convict can be released before he completes a period of 20 years of imprisonment.

56. For coming to the above conclusion, which was reached in **Shri Bhagwan's** case (supra), the Supreme Court

taking note of its decision in **Dalbir Singh and others v. State of Punjab**, reported in **(1979) 3 SCC 745**, held thus;

"In our view, considering the heinous barbaric offence committed by the accused, in no set of circumstances accused should be released before completion of 20 years of imprisonment. This Court in Dalbir Singh and others v. State of Punjab [(1979) 3 SCC 745] considered the question that in case where sentence of death is reduced to life imprisonment, for how many years accused should be detained in prison. The Court in paragraph 14 held thus:-

"14. The sentences of death in the present appeal are liable to be reduced to life imprisonment. We may add a footnote to the ruling in Rajendra Prasad case. Taking the cue from the English legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the mans life, but in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large. This takes care of

judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder."

(Emphasis added)

57. The Supreme Court also took note of its decision in the case of **Subash Chander v. Krishan Lal and others**, reported in **2001 (3) SCALE 130**, the above principle, with regard to the period which a *life convict* has to undergo, was followed by the Supreme Court and it was ordered that accused shall be incarcerated for the remainder of his life and that he shall not be let loose upon the society as he is a potential danger.

58. The Supreme Court, then, took note of the question as to whether in view of the provision of Section 433(b) read with Section 433-A of the Code of Criminal Procedure, accused should be released on completion of 14 years of imprisonment? For this purpose, we would make it clear, observed the Supreme Court, that under Section 433 (b) enables the *appropriate Government* to *commute* the sentence of *imprisonment for life*, for *imprisonment of a term* not exceeding 14 years or for fine and that Section 433-A of the Code of Criminal Procedure, there is an embargo on that power by providing 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 under the law, such



person is not to be released from prison unless he had served, at least, fourteen years of imprisonment and that this question has been considered by various decisions rendered by it and by the Privy Council, wherein it has been reiterated that a sentence of *imprisonment for life* imposed *prima facie* be treated as imprisonment for the whole of the remaining period of the convicted person's natural life. In this regard, the Supreme Court points out, in **Shri Bhagwan's** case (supra), that it is also established law that rules framed under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life. With regard to the above, the Supreme Court also pointed out, in **Shri Bhagwan's** case (supra), by taking note of its earlier decision in **Ratan Singh** (supra), in paragraphs 4 and 9, the Supreme Court had held thus:-

"4. As regards the first point, namely, that the prisoner could be released automatically on the expiry of 20 years under the Punjab Jail Manual or the Rules framed under the Prisons Act, the matter is no longer res integra and stands concluded by a decision of this Court in Gopal Vinayak Godse v. State of Maharashtra [(1961) 3 SCR 440], where the Court, following a decision of the Privy Council in Pandit Kishori Lal v. King Emperor [(LR 72 IA 1 : AIR 1945 PC 64)] observed as follows:

Under that section, a person

transported for life or any other term before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term.

If so, the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government can be automatically treated as one for a definite period. No such provision is found in the Indian Penal Code of Criminal Procedure or the Prisons Act.

** * * * * A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted persons natural life.*

The Court further observed thus:

But the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act. . . . Under the said rules the orders of an appropriate Government under Section 401, Criminal Procedure Code, are a pre-requisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a

prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release.

It is, therefore, manifest from the decision of this Court that the Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. This Court further pointed out that the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 401 of the Code of Criminal Procedure and neither Section 57 of the Indian Penal Code nor any Rules or local Acts can stultify the effect of the sentence of life imprisonment given by the court under the Indian Penal Code. In other words, this Court has clearly held that a

sentence for life would ensure till the lifetime of the accused as it is not possible to fix a particular period the prisoners death and remissions given under the Rules could not be regarded as a substitute for a sentence of transportation for life.

59. In Maru Ram v. Union of India, reported in **(1981) 1 SCC 107**, a Constitutional Bench of the Supreme Court has reiterated the above position of law and observed that the inevitable conclusion is that since in Section 433-A of the Code of Criminal Procedure, which deals only with *life sentences*, *remissions* lead nowhere and cannot entitle a prisoner to release. Further, in **Laxman Naskar (LIFE CONVICT) v. State of W.B. and another**, reported in **(2000) 7 SCC 626**, after referring to its decision in the case of **Gopal Vinayak Godse** (supra), the Supreme Court reiterated that sentence for imprisonment for life, ordinarily, means imprisonment for the whole of the remaining period of the convicted person's natural life; that a convict undergoing such sentence may earn remissions of his part of sentence under the Prison Rules, but such *remissions*, in the absence of an order of an *appropriate Government*, *remitting* the entire balance of his sentence under Section 433 of the Code of Criminal Procedure does not entitle the convict to be released automatically before the full life term is served. It was also observed, in the case of **Laxman Naskar**



(LIFE CONVICT) (supra) that though under the relevant Rules, a sentence of *imprisonment for life* is equated with the definite period of 20 years, there is no indefeasible right of such prisoner to be unconditionally released on the expiry of such particular term including remissions and that is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose.

60. What follows from the decisions, in **Prem Raj** (supra), **Shri Bhagwan** (supra) and **Maru Ram** (supra), is that ordinarily, *imprisonment for life* would mean the convict person's natural life unless his sentence of imprisonment for life is either *commuted* or *remitted* by the appropriate Government on completion of a period of 14 years of actual imprisonment.

61. Can a court, while passing the sentence, for an offence which is punishable by *death* or *imprisonment for life*, direct that the convict, who is sentenced to imprisonment for life, shall undergo, at least, 20 years or a longer period of imprisonment meaning thereby whether a court, while passing the sentence against a convict in such a case, direct that the provisions of *commutation* or *remission* shall not apply to a convict until before he undergoes a period of actual imprisonment, which is specified by the court?

62. It is the above aspect of sentencing, which fell for consideration in the case of **Swami Shraddanand v. State**

of Karnataka (AIR 2008 SC 3040), wherein the Supreme observed that the question of *death penalty* is not free from the subjective elements and the confirmation of *death sentence* or its *commutation* by the courts to life imprisonment depends on the personal predilection of the judges constituting the bench.

63. The Supreme Court pointed out, in **Swami Shraddanand** (supra), that the inability of the criminal justice system to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the courts lead to a marked imbalance in the end results. On the one hand, there appears a small band of cases, wherein the murder convict is sent to the gallows on confirmation of his *death penalty* and, on the other hand, there is a much wider area of cases, wherein the offender, committing murder of a similar or a far more revolting kind, is spared his life due to lack of consistency by the courts in giving punishments.'

64. The concern, in the case of **Swami Shraddanand** (supra), was about those category of cases, which are grave and committed with a depraved motive. The Supreme Court, in **Swami Shraddanand** (supra), also pointed out that if the *death penalty* is commuted to life imprisonment and, ultimately, the State releases the convict after a period of 14 years, the entire sentencing process for such a grave offence becomes meaningless and, therefore, the proper solution to

meet cases of these nature lies in breaking the standardization, which, in practice, renders the sentence of *life imprisonment* equal to imprisonment for a period of no more than 14 years.

65. The Supreme Court, in **Swami Shraddhanand** (supra), therefore, held that it is necessary to lay down a good and sound legal basis for putting the punishment of *imprisonment for life*, awarded as substitute for *death penalty* beyond any *remission* and to be carried out as may be directed by the Court so that it may be followed, in appropriate cases, as a uniform policy not only by the Supreme Court, but also by the High Courts.

66. Recollecting a suggestion to this effect made by Supreme Court, in **Dalbair Singh v. State of Punjab**, reported in **(1979) 3 SCC 745**, wherein it had been observed that *life imprisonment*, which strictly means imprisonment for the whole of the men's life, but, in practice, amounts to incarceration for a period between 10 and 14 years, may, *at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts, where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large*. This would, according to the Supreme Court, in **Dalbair Singh** (supra), take care of judicial apprehensions that unless physically liquidated, the culprit may, at some remote point of

time, repeat murder.

67. In **Swami Shraddanand's** case (supra), the Supreme Court, we may point out, gave a stamp of recognition to the above observations made in **Dalbir Singh** (supra).

68. While analyzing the requirement, for giving full effect to the expression '*life imprisonment*' to *imprisonment till the natural life of the convict*, the Supreme Court. in **Swami Shraddanand**, (supra), also considered some previous authorities, namely, *Subash Chander v. Krishan LaL* (2001) 4 SCC 458, *Shri Bhagwan v. State of Rajasthan* (2001) 6 SCC 296, *Prakash Dhawal Khairnar (Patil) v. State of Maharashtra* (2002) 2 SCC 35 *Ram Anup Singh v. State of Bihar* (2002) 6 SCC 686, *Mohd. Munna v. Union of India* (2005) 7 SCC 417, *Jayawant Dattatraya Suryarao v. State of Maharashtra* (2001) 10 SCC 109, *Nazir Khan v. State of Delhi* (2003) 8 SCC 461.

69. The Supreme Court, in **Swami Shraddanana** (supra), observed that on a perusal of the seven decisions discussed above and the decisions referred to therein, it would appear that the *death sentence* has been modified to *imprisonment for life* or, in some cases, imprisonment for a term of twenty years with the further direction that the convict must not be released from prison for the rest of his life or before actually serving out the term of twenty years, as the case may be, mainly on two premises;

- one, *imprisonment for life*, in terms of Section 53 read with Section 45 of the Penal Code, meant imprisonment for the rest of life of the prisoner; and
- two, a convict undergoing *life imprisonment* has no right to claim *remission*.

70. It was, however, argued before the Supreme Court, in **Swami Shraddanand** (supra), that so far as second proposition that a convict, undergoing *life imprisonment*, in grave cases of murder and such other cases, shall have no right to claim *remission*, amounted to suspending the operation of the statutory provisions of remission and restraining the *appropriate Government* from discharging its statutory function. The Supreme Court, in **Swami Shraddanand** (supra), however, overruled this argument terming this argument as misconceived and untenable in law. The Supreme Court reasoned its conclusion that it is permissible for a Court, while directing a sentence of imprisonment for life, that the accused be not released for whole of his life or for such period as the Court may direct and that provisions, with regard to remission, would not apply to the punishment so given.

71. The Supreme Court, while making references to the cases of *Gopal Vinayak Godse* (supra), *Dalbir Singh v. State of Punjab* (supra), *Maru Ram* (supra), *Naib Singh v. State of Punjab* (1983) 2 SCC 454, *Ashok Kumar v. Union of India* (1991)



3 SCC 498 *Laxman Naskar (supra)* *Zahid Hussein v. State of W.B.*(2001) 3 SCC 750, *Kamalanantha v. State of T.N.* (2005) 5 SCC 194, 29, *Mohd. Munna v. Union of India (supra)* and *C.A. Pious v. State of Kerala* (2007) 8 SCC 312, observed, in **Swami Shraddanand** (supra), that it is, now, conclusively settled that the punishment of imprisonment for life, handed down by the Court, means a sentence of imprisonment for the rest of convict's life and it is equally well settled that Section 57 of the Indian Penal Code does not, in any way, limit the punishment of *imprisonment for life to a term of twenty years* inasmuch as Section 57 of the Indian Penal Code is only for calculating fractions of terms of punishment and provides that *imprisonment for life* shall be reckoned as equivalent to *imprisonment for twenty years* and that such an object and purpose of Section 57 will be clear by simply referring to Sections 65, 116, 119, 129 and 511 of the Penal Code.

72. While making references to the provisions of remission and commutation as mentioned in Section 432 and 433 of the Code of Criminal Procedure, the Supreme Court, in **Swami Shraddanand** (supra), pointed out that from the Prisons Acts and the Rules, it appears that for good conduct and for doing certain duties, etc., inside the jail, the prisoners are given some days of remission on a monthly, quarterly or annual basis. The days of remission, so earned by a prisoner, are added



to the period of his actual imprisonment (including the period undergone as an undertrial) to make up the term of sentence awarded by the Court. This being the position, the first question that arises in mind is how remission can be applied to imprisonment for life. The Supreme Court also pointed out, in **Swami Shraddanand** (supra), that the way remission is allowed, it can only apply to a fixed term and life imprisonment, being for the rest of life, is by nature indeterminate.

73. With regard to the above, the Supreme Court, in **Swami Shraddanand** (supra), taking note of the Prison Manuals of Karnataka and Bihar, found that remission is granted to *life convicts* by *deemed* conversion of life imprisonment into a fixed term of 20 year, and this deemed conversion of life imprisonment into one for a fixed term by executive orders issued by the State Governments, not only flies in the face of the precedents laid down by Supreme Court, but also lacks sanction of any law.

74. Thus, as a matter of rule, points out the Supreme Court, in **Swami Shraddanand** (supra), *life convicts* are being granted *remission* and released from prison on completing the fourteen-year term without any sound legal basis in the most mechanical manner without any sociological or psychiatric appraisal of the convict and without any proper assessment as to the effect of the early release of a particular

convict on the society.

75. Taking support from the case of **Jagmohan Singh v. State of U.P. (1973 Cri.L.J. 370)**, a Constitution Bench judgment, wherein it was held that in the context of our criminal law, which punishes murder, one cannot ignore the fact that life imprisonment works out, in most cases, to a dozen years of imprisonment and it may be seriously questioned whether that sole alternative will be an adequate substitute for the *death penalty*, the Supreme Court held, in **Swami Shraddanand** (supra), that the legal position, as enunciated in **Pandit Kishori Lal** (supra), **Gopal Vinayak Godse** (supra), **Maru Ram** (supra), **Ratan Singh** (supra) and **Shri Bhagwan** (supra) and the unsound way in which remission is actually allowed in the cases of life imprisonment, make out a very strong case to lay down a special category for the very few cases, where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put this category beyond the application of remission.

76. In support of its above conclusion, the Supreme Court, in **Swami Shraddanand** (supra), pointed out that the issue of sentencing has two aspects. A sentence may be excessive and unduly harsh *or it may be highly disproportionate or inadequate*. In some cases, it may be found that a convict,



carrying a *death sentence*, awarded by the trial court and confirmed by the High Court, just falls short of the *rarest of the rare* category and, consequently, the Court may feel, somewhat, reluctant in endorsing the *death sentence*; but at the same time, having regard to the nature of the crime, the Supreme Court may strongly feel that a sentence of life imprisonment, subject to *remission*, which normally, works out to a term of 14 years, would be grossly disproportionate and inadequate.

77. What, then, should the Court do? This was the question posed by the Supreme Court for its own consideration.

78. Reacting to the question so posed by it, the Supreme Court, in **Swami Shraddanand** (supra), pointed out that if the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the *death penalty*. Such a course would, indeed, be disastrous and, thereafter, a far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death.

79. Thus, what surfaces from the decision of **Swami Shaddanand** (supra) is that at the time of ascertaining the sentence of a person for an offence, which attracts *death*

penalty, if the Court, in a given cases, does not, having considered the mitigating factors and aggravating factors, choose to award the *death penalty*, it can nonetheless award a sentence of imprisonment for life without *remission* being available to the convict.

80. In **Union of India vs V. Sriharan @ Murugan**, reported in **(2014) 11 SCC 1**, one of the questions, which arose for consideration before the Constitution Bench of Supreme Court, was: Is it legally permissible for a Court, as held in **Swami Shraddhananda** (supra), to award, instead of *death penalty*, imprisonment *for life* and making the *sentence of imprisonment* beyond application of *remission*.

81. Having referred to the cases of **Godse** (supra), **Maru Ram** (supra), **Sambha Ji Krishan Ji** (supra), and **Ratan Singh** (supra), the Constitution Bench of the Supreme Court, in **Sriharan** (supra), held that in exceptional cases, death penalty, when altered to life imprisonment, would only mean rest of one's life span. Therefore, where the life imprisonment, in the light of the decisions in **Godse** (supra), **Maru Ram** (supra), **Sambha Ji Krishan Ji** (supra), and **Ratan Singh** (supra), means a person's life span in incarnation, the Court cannot be said to have, in anyway, violated the law in directing, while awarding sentence of imprisonment for life, that the convicted person shall remain incarcerated for the rest of his life or for such period as the

Court may direct.

82. Pointed out the Supreme Court, in this regard, in **Sriharan** (supra), that where the judicial mind — after weighing the pros and cons of the crime committed in a golden scale and keeping in mind the paramount interest of the society and to safeguard the society from the unmindful conduct of such offenders — takes a decision to ensure that an offender does not deserve to be let loose in the society for a certain period, it cannot be said to be impermissible in law.

83. Further pointed out the Supreme Court, in **Sriharan** (supra), that when a Court, having regard to the proportionality of the crime committed, decides that the offender deserved to be punished with sentence of life imprisonment, i.e., for whole of his life or for a specific period of 20 years, or 30 years, or 40 years, such a conclusion should survive without any interruption.

84. It needs to be borne in mind that the Supreme Court, in **Sriharan** (supra), however, confined itself to the implication of statutory power of *remission*, provided under the Criminal Procedure Code and did not comment on the Executive's power, under Articles 72 and 161 of the Constitution of India.

85. The Supreme Court, eventually, held that the *ratio*, laid down in **Swamy Shraddanand** (supra), a special

category of sentence, instead of *death penalty*, exceeding a term of 14 year and putting such a sentence beyond the scope of *remission*, is well founded.

86. In tune with the *ratio*, laid down in **Swamy Shraddanand** (supra), the Constitution Bench, in **Sriharan's** case (supra), has held, in no uncertain words, that instead of imposition of *death penalty*, it is permissible for a court, while awarding sentence of *life imprisonment*, to order that the sentence so imposed shall amount to imprisonment for the whole span of the life of the convicted person without any application of statutory provisions of *remission* and/or that a life convict shall undergo imprisonment till the end of his natural life without statutory provisions of *remission* being applicable thereto.

87. The question, thus, posed at paragraph 61 aforementioned, is answered in the affirmative and we, therefore, make it clear and reiterate, in the light of the decision in **Swami Shraddanand** (supra) and **Sriharan** (supra), that it is permissible for a court, while awarding sentence of *life imprisonment*, to order that the sentence so imposed shall amount to imprisonment for the whole span of the life of the convicted person without any application of statutory provisions of *remission* and/or that the convicted person shall undergo imprisonment for a specified period, without statutory provisions

of *remission* being applicable thereto.

88. Let us, now, take into account the scenario in the State of Bihar with regard to application of *remission*, especially, in the case of a *life convict*.

89. In the case of State of Bihar, Bihar Prison Manual, 2012 has divided the period of *life imprisonment* into two broad categories.

90. Before we deal with the two broad categories, we may reiterate that Section 433-A of the Code of Criminal Procedure applies to cases, 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 of the Code of Criminal Procedure, into one of imprisonment for life, such a person shall not be released from prison unless he has served, at least, fourteen years of imprisonment.

91. Bearing in mind the provisions of Section 433-A of the Code of Criminal Procedure, when we turn to Rule 481 of Bihar Prison Manual, 2012, we find that ordinarily, according to Rule 481 of Bihar Prison Manual, 2012, a convicted person (whether male or female), undergoing sentence of *life imprisonment* and covered by the provisions of Section 433-A of the Code of Criminal Procedure, shall be eligible to be considered



for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment meaning thereby that while Section 433-A of the Code of Criminal Procedure makes it mandatory for a convict, who has been sentenced to *imprisonment for life*, to serve the minimum sentence of 14 years, Rule 481 of Bihar Prison Manual, 2012, makes it clear that if a life convict has served out 14 years of actual imprisonment without *remission*, his case shall be considered, on completion of fourteen years of actual imprisonment, for release by according a life convict remission.

92. In short, in the State of Bihar, the case of a life convict, who is covered by Section 433-A of the Code of Criminal Procedure, is taken up, in terms of Rule 481 of Bihar Prison Manual, 2012, for review for the purpose of deciding if he shall be released by *remitting* his further sentence.

93. Notwithstanding the fact that in the State of Bihar, a life convict becomes eligible for consideration of his release from imprisonment by awarding him remission on serving out the actual imprisonment of fourteen years, Rule 481 of Bihar Prison Manual, 2012, has carved out an exception to this category of life convicts by making it clear that in the following category of cases, a life convict becomes eligible for consideration for his release by awarding him remission only when he has served out a sentence of actual imprisonment for a

period of 20 years in order to enable his premature release by awarding him remission. The class of cases, where life convict is required to undergo actual imprisonment of 20 years in order to enable him to seek his release on *remission*, are as follows:

(a) Convicts who have been imprisoned for life for murder in heinous cases such as murder with rape, murder with dacoity, murder involving an offence under the Protection of Civil Rights Act, 1955, murder for dowry, murder of a child below 14 years of age, multiple murder, murder committed after conviction while inside the prison, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty;

(b) Gangsters, contract killers, smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-meditation and with exceptional violence or perversity;

(c) Convicts whose death sentence has been commuted to life imprisonment.

94. Let us, now, consider, the question: whether a sentence of imprisonment, in default of payment of fine, would run concurrently or consecutively to the sentence of substantive punishment?

95. While considering the question posed above, one needs to bear in mind that Section 64 of the Indian Penal Code



provides that a court, while passing a sentence of *fine*, can direct that the offender shall suffer imprisonment for such a term as the Court may direct and that such an imprisonment shall be in excess of any other substantive imprisonment to which he may have been sentenced or to which he may be liable under commutation of sentence. Rule 453 of Bihar Prison Manual, 2012, explicitly lays down that the sentence, in default of payment of fine, shall not run concurrently with a substantive sentence unless the Court directs that the sentence, in default of payment of fine, shall run concurrently with a substantive sentence meaning thereby that if a convict is sentenced to suffer imprisonment for a term and also for imprisonment in default of payment of fine, the period of imprisonment, in default of payment of fine, shall commence after the substantive sentence of imprisonment has been suffered by the convict unless the Court, while passing the sentence, makes it clear that the sentence of imprisonment with the sentence of imprisonment, in default of payment of fine, will run concurrently with a substantive sentence of imprisonment. In other words, Rule 453 of Bihar Prison Manual, 2012, makes it clear that a sentence of imprisonment for non-payment of fine will commence subsequent to the completion of the term of the substantive punishment of imprisonment.

96. In the case of **Donatus Tony Ikwanusi v.**



Investigating Officer, N. C. B., reported in **2013 Cri.L.J. 1938 (FB)**, a Full Bench of Madras High Court has observed that default sentences for non-payment of fine cannot be ordered to run concurrently. **In Shashi Nath Sharma v. State of Assam (1967 Cri.L.J. 1597)**, Gauhati High Court made it clear that under law, there can be no question of a concurrent sentence of fine at all and, therefore, every sentence of fine that is imposed on any count has to be a separate liability of the convicted person and the fine is payable.

97. In fact, it has been very clearly held by the Supreme Court, in **Shanti Lal v. State of Madhya Pradesh**, reported in **(2007) 11 SCC 243**, that the term of imprisonment, in default of payment of fine, is not a sentence; rather, it is a penalty, which a person incurs on account of non-payment of fine, and the sentence, in default of payment of fine, is something, which an offender must undergo unless it is set aside or remitted in part or in whole, either in appeal or in revision or in other appropriate judicial proceedings or otherwise.

98. A term of imprisonment, ordered in default of payment of fine, stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount.



99. What is, however, of some significance to note, in **Shanti Lal** (supra), is that the convict was sentenced to pay a fine of Rs. One lakh, which is the minimum fine specified by Section 18 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, and the Supreme Court pointed out that since imposition of fine of Rs. One lakh was the minimum fine, which is required to be imposed by Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985,, such a fine cannot be reduced; but in order to serve the ends of justice, the Supreme Court reduced the period of imprisonment, in default of payment of fine, to six months instead of 3 years, which the convict had been sentenced if he had defaulted in making payment of fine.

100. Taking note of **Shanti Lal** (supra), the Madras High Court has clearly held, in **Donatus Tony Ikwanusi** (supra), at paragraph 20, thus:

"it is also made clear that if such default sentence is imposed, undoubtedly, an offender must undergo unless it is modified or varied in part or whole in the judicial proceedings. Therefore, there is no power for the Court to order the default sentences to run concurrently."

101. In short, the imprisonment, in default of payment of fine, which is a penalty, would be consecutive and



not concurrent, i.e., it would be calculated after the convict serves out the substantive term of punishment and, in case of life imprisonment, where no default sentence for fine is given owing to the principle "*life means the rest of convict's life*", the fine is payable and recoverable in terms of Section 421 of the Code of Criminal Procedure, which permits issuance of warrant for levy of fine by attachment and sale of property and, in fact, Section 70 of the Indian penal Code very clearly postulates that even death of an offender would not discharge property from liability.

102. The discussions, held hereinbefore, may be summarized as follows;

- a.** *The distinction between remission and commutation* is that *remission* is reduction of the quantum of a sentence without changing its character. In the case of a *remission*, the guilt of the offender is not affected nor does *remission* alter the sentence of the court except in the sense that the convicted person does not suffer incarceration for the entire period of the sentence, but is relieved from serving out a part of the sentence. On the other hand, *commutation* of sentence is conversion or alteration of the sentence into another form of sentence, such as, a *sentence of death* into a sentence of

imprisonment for life as prescribed by the Indian Penal Code or conversion or alteration of a sentence of *imprisonment for life* into a sentence of *imprisonment for any other term*.

b. Section 433-A of the Code of Criminal Procedure puts a restriction on the power of the *appropriate Government* to *commute* a sentence of *imprisonment for life* by laying down that *commutation* of sentence of *imprisonment for life* to a sentence of *imprisonment for a term* cannot be for a period of less than *fourteen years*. This apart, the restriction, which Section 433-A of the Code of Criminal Procedure imposes on the power of the *commutation*, operates only after the power of *commutation* under Section 433 of the Code of Criminal Procedure is exercised meaning thereby that if the sentence of *imprisonment for life* is *commuted* to a sentence of *imprisonment for a term*, or *for fine*, the convict cannot be released until he undergoes the minimum prescribed period of 14 years of imprisonment. However, if the *imprisonment for life* is not *commuted*, the imprisonment continues till the end of natural life.

c. In view of the decision in **Bhagirath's** case (supra),



and the proviso to Section 428 of the Code of Criminal Procedure, *set off* is, now, available (and shall be deemed to have been always available) to those convicts, who may have been sentenced to *imprisonment for life*, or to one, whose sentence of *death* has been *commuted* to sentence of *imprisonment for life*. In other words, while computing the period of 14 years or 20 years, as the case may be, a *life convict* is entitled to the benevolent provisions of *set off*. On completion of the minimum period of fourteen years of actual imprisonment, a *life convict* does not acquire any indefeasible right to be released by granting him benefit of *remission*. Consequently, no *writ* of *mandamus* can be issued directing release of a person, who may have completed the minimum period of imprisonment.

- d.** Ordinarily, *imprisonment for life* would mean the convict person's natural life unless his sentence of *imprisonment for life* is either *commuted* or *remitted* by the *appropriate Government* on completion of a *period of 14 years of actual imprisonment*.
- e.** The punishment of *imprisonment for life*, handed down by a Court, means a sentence of



imprisonment for the rest of the convict's life and Section 57 of the Indian Penal Code does not, in any way, limit the punishment of *imprisonment for life* to a term of twenty years inasmuch as Section 57 of the Indian Penal Code is only for calculating fractions of the terms of punishment and provides that *imprisonment for life* shall be reckoned as equivalent to *imprisonment for twenty years* and that such an object and purpose of Section 57 will be clear by simply referring to Sections 65, 116, 119, 129 and 511 of the Penal Code.

f. In view of the law laid down in **Swami Shraddanand** (supra) and affirmed by the Constitution Bench, in **Sriharan's case** (supra), it becomes clear that instead of imposition of *death penalty*, it is permissible for a court, while awarding sentence of *life imprisonment*, to order that the sentence, so imposed, shall amount to imprisonment for the whole span of the life of the convicted person without any application of statutory provisions of remission and/or that the convicted person shall undergo imprisonment for life without statutory provisions of remission being applicable thereto.



g. The imprisonment, in default of payment of fine, which is a penalty, would be consecutive and not concurrent, i.e., it would be calculated after the convict serves out the substantive term of punishment and, in case of *life imprisonment*, where no default sentence for fine is given owing to the principle "*life means the rest of convict's life*", the fine is payable and recoverable in terms of Section 421 of the Code of Criminal Procedure.

103. In the result and for the reasons discussed above, we find that since the petitioner herein has already undergone 14 years of imprisonment, if his custodial period prior to his conviction, is taken into account, it is necessary for the State Government to consider the petitioner's case for *remission* of sentence and, if upon such consideration, the State Government decides to *remit* his sentence of *imprisonment for life* to a sentence of imprisonment for a term *not exceeding 14 years* and, then and then, only the question of release of the petitioner by granting him *remission*, if any, by the *appropriate Government* would arise.

104. We, therefore, dispose of this writ petition with a direction to the *appropriate Government* to consider the petitioner's case under Section 433 of the Code of Criminal Procedure. This direction for consideration shall not be taken to

mean that we have mandated the State Government to *remit* the petitioner’s sentence of *imprisonment for life* to a sentence of imprisonment for a term and we, thus, leave it to the judicious discretion of the State Government to *remit* or not to *remit* the petitioner’s sentence of *imprisonment for life*. We, however, make it clear that in case the State Government decides not to *remit* the sentence of imprisonment passed against the petitioner, it must assign reasons for not giving him *remission*, which is, ordinarily, given to other similarly situated prisoner(s).

105. The Registry shall circulate a copy of this judgment to all the courts subordinate to this High Court and a copy of this judgment shall also be sent to the Director, Bihar Judicial Academy, for the purpose of use in judicial education.

(I. A. Ansari, ACJ.)

Chakradhari Sharan Singh, J.: I agree.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/AFR

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