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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (PIL) No. 78 of 2017**

Amarnath Pandey S/o Late Brajraj Pandey Aged About 51 Years R/o D 9, Babjee Residency Shubham Vihar Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Chief Secretary Government of Chhattisgarh Mantralaya, Raipur Chhattisgarh.
2. Secretary, Department of Home Government of Chhattisgarh Mantralaya Raipur Chhattisgarh.
3. Director General (Prisons) Jail Headquarters Raipur Chhattisgarh.
4. Jail Superintendent, Raipur Central Jail Raipur Chhattisgarh.
5. Jail Superintendent, Kanker Central Jail Kanker Chhattisgarh.
6. Secretary, State Legal Aid Services Authority Bilaspur Chhattisgarh.

---- Respondents

For Petitioner	:	Ms. Rajni Soren, Advocate
For Respondent/State	:	Ms. Richa Shukla, Dy. Govt. Advocate
For Respondent No.6	:	Mr. Sunil Otwani, Advocate

Hon'ble Shri Prashant Kumar Mishra, Acting Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

By

Prashant Kumar Mishra, Acting Chief Justice

02/05/2019

1. The present PIL would highlight the issue of grant of remission and release of prisoners under Section 432 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC').
2. It is stated in the petition that a large number of inmates have undergone jail sentence of more than 20 years, yet their cases have not been considered by the Prison Review Board constituted under the Chhattisgarh Prisons Rules, 1968 (hereinafter referred to as the 'Rules, 1968'), therefore, a direction needs to be issued for consideration of their cases.
3. In the original petition, relief was sought for compliance of the order passed by this Court in WPCR No.239 of 2015 and WPCR No.240 of 2015 in respect of Mangal Singh and Lakshman. However, since thereafter Mangal Singh has already been released by giving benefit of remission. By moving an application for issuance of a direction on

07/02/2018, the petitioner has prayed for a similar relief in respect of life convicts lodged in Jagdalpur and Raipur jail for consideration of their cases by the Board. In this application, petitioner has also prayed for formulating guidelines to be followed by the Government and convicting Courts while forming opinion regarding release of life convicts while exercising powers under Section 432 of CrPC read with Rule 358 of the Rules, 1968.

4. Respondents have filed complete list of the inmates whose cases have been considered over the period. In Annexure R/9 to the return filed by the State, figures of the life convicts whose cases have been considered under Section 432 of CrPC are provided. The said figures are in form of chart, which is reproduced herein below:-

“जेलवार वर्ष 2017 से 2019 तक दण्ड प्रक्रिया संहिता की धारा 432 के अन्तर्गत दण्डित बंदियों के दण्डादेश का परिहार पाकर रिहा बंदियों की संख्या (दिनांक 25.02.2019 की स्थिति में)

जेल का नाम	वर्ष 2017	वर्ष 2018	वर्ष 2019	योग
केन्द्रीय जेल रायपुर	82	36	13	131
केन्द्रीय जेल दुर्ग	21	04	01	26
केन्द्रीय जेल बिलासपुर	68	20	24	112

केन्द्रीय जेल अम्बिकापुर	35	25	32	92
केन्द्रीय जेल जगदलपुर	13	09	28	50
योग	219	94	98	411

दिनांक 25.02.2019 की स्थिति में शासन स्तर पर कुल 67 प्रकरण विचाराधीन है।”

5. Ms. Rajni Soren, learned counsel for the petitioner and Mr. Sunil Otwani, learned counsel for respondent No.6 have not produced any other data to demonstrate that the data provided in Annexure R/9 is not correct, therefore, the said data is taken to be the present situation as on 25/02/2019 for considering the issue falling for consideration.

6. The above chart would clearly depict that large number of convicts have been released in exercise of power under Section 432 of CrPC and the present pending cases are only 67. However, the chart is not clear on the aspect as to whether the cases which are once rejected have again been considered or not.

7. Ms. Rajni Soren, learned counsel for the petitioner and Mr. Sunil Otwani, learned counsel for respondent No. 6 would refer to the provisions contained in Rule 358 and 359 and thereafter Rule 698 to 717 of the Rules, 1968. Rule 358 of the

Rules, 1968 is reproduced herein below :-

“358. Release of prisoners under 14 years

rule.-(1) When a prisoner has been sentenced to imprisonment for life whether or not he has also been sentenced to a term of imprisonment, or when he has been sentenced to a term or term of imprisonment exceeding 14 years, he shall be considered for release as soon as the term already undergone (together with any remission earned under the rules) and such other special remission if any as have been granted by the Government in celebration of any public event amounts to fourteen years. His case shall be reported to the State Government through the Inspector-General with full information regarding the character of his crime, his conduct in prison and the probability of his reverting after release to criminal habits or instigating others to commit crime, in order to enable the State Government to decide whether he should be released and if so, whether he should be subjected to police supervision or other suitable conditions. If the State Government decides that he should not be released, then after two years from the State Government's order, his case shall be reported again for further consideration.

[Provided that in the case of prisoner

sentenced to imprisonment for life after the 17th December, 1978 under Sections 121, 132, 302, 305, 307 and 396 of the Indian Penal Code his case shall be considered for release only after he undergoes fourteen years of actual sentence.]

(2) The Superintendent of the Jail in which the prisoner is undergoing his sentence shall be primarily responsible for submitting the report under sub-rule (1)."

8. The above Rule categorically provides that any prisoner who has undergone more than 14 years of jail sentence, his case shall be reported to the State Government through the Inspector-General of Prisons with full information regarding the character of his crime, his conduct in prison and the probability of his reverting after release to criminal habits or instigating others to commit crime, in order to enable the State Government to decide whether he should be released and if so, whether he should be subjected to police supervision or other suitable conditions. It also provides that if the State Government decides that he should not be released, then after two years from the State Government's order, his case shall be reported again for further consideration.

9. Although Hon'ble Supreme Court in the matter of **Union**

of India v. V. Sriharan alias Murugan and Others¹ has held that the power of appropriate Government under Section 432(1) of CrPC cannot be exercised suo motu for considering the case for giving benefit of remission, however, under the Rules, 1968, the Inspector-General (Prison) is obliged to report to the State Government about all such convicts who have undergone more than 14 years of sentence. Thus, on account of operation of Rule 358 of the Rules, 1968, the State Government is not considering matter of its own by pick and choose method, but it is carrying on its duty for which, the Rules directs the State Government to follow a particular procedure. To that extent, the exercise by the Inspector-General (Prison) by submitting periodical report to the Prison Review Board or convicting Court would not be termed as suo motu exercise of power, but it is exercise of a statutory power.

10. Section 432 of CrPC empowers the appropriate Government either to suspend the execution of sentence or remit the whole or any part of sentence to which, he has been sentenced and while passing such order, it can impose any condition or without any condition. Such order can be passed at any time. Sub-section (2) of Section 432 provides about the

¹ (2016) 7 SCC 1

opinion to be secured from the Presiding Judge of the Court who convicted the person and imposed the sentence or the Court which ultimately confirmed such conviction as to whether the application under Section 432 of CrPC should be granted or refused.

11. The Presiding Judge is required to forward his opinion along with certified copy of the record of the trial or of such record as exists. The Presiding Judge's powers under Section 432(2) of CrPC is required to be exercised consciously and objectively and not mechanically. While exercising power to accord opinion, the Presiding Judge is not expected to work as a Post-Office, but is required to apply his mind for which, sufficient guideline is provided under Rule 358 of the Rules, 1968. To enable the Presiding Judge to effectively exercise its power under Section 432(2) of CrPC, the Inspector-General (Prison) is required to provide all necessary materials while reporting the matter to the Court.

12. Learned counsels would next submit that there are cases in which application under Section 432 of CrPC has been rejected by State Government more than two years back, but the same has not been taken up for consideration despite there being provision under Rule 358 of the Rules, 1968 which

enjoins the State Government to review the cases again after expiry of two years period from the date of previous rejection.

13. It is also highlighted that 67 cases which are presently pending consideration before the Court have not been taken up for consideration since long and regular meetings of the Board is not taking place.

14. Considering the statutory provisions contained under Section 432 of CrPC read with Rule 358 and 359 of the Rules, 1968, we dispose of this PIL with the following directions :-

(1) The Prison Review Board constituted under Rule 358 of the Rules, 1968 shall meet at least twice in a year to review the cases of all such convicts whose cases are produced before it by the Inspector-General (Prison) for exercise of power under Section 432 of CrPC.

(2) The Prison Review Board shall take up cases of such convicts whose earlier application for release have been considered and rejected more than two years back and this practice should be followed in every meeting of the Board.

(3) Whenever applications under Section 432 of CrPC are sent to the Presiding Judge for its opinion under sub-

section (2) of Section 432, the Presiding Judge shall not exercise his power in a mechanical manner. It is also expected of the Presiding Judge that cases under Section 432(2) of CrPC shall be disposed of within a period of three months from the date on which the matter is first placed before the Presiding Judge.

15. We record our appreciation for the valuable assistance rendered by Mr. Sunil Otwani, Ms. Rajni Soren and Ms. Richa Shukla, learned counsels who have appeared in this PIL.

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge