

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.110 OF 2019

Ravi Patil,
s/o. Vishwanath Patil,
aged 43 years old, Prisoner
No.571/02,
Presently serving sentence at
Central Jail, Colvale, Goa.

.... Petitioner.

Versus

1. state of Goa,
through Chief Secretary,
Secretariat, Porvorim, Goa.

2. The Inspector General of Prisons,
18th June road,
Old Education Building,
Panaji, Goa.

3. The Superintendent of Central Jail,
Colvale, Colvale, Goa.

4) Public Prosecutor,
High Court Building, AG's Office,
High Court, Panaji, Goa.

.... Respondents.

Mr. Nigel da Costa Frias, Amicus Curiae.

Mr. T. George John, Advocate for the Petitioner.

Mr. Pravin Faldessai, Addl. Public Prosecutor for the Respondents.

***Coram : M.S. Sonak &
Nutan D. Sardesai, JJ.***

***Reserved on : 30th August, 2019.
Pronounced on : 13th September, 2019.***

JUDGMENT: (Per M.S. SONAK, J.)

Heard Mr. Nigel da Costa Frias, learned Amicus Curiae.

Heard Mr. Pravin Faldesai, Additional Public Prosecutor
for the Respondents.

Heard Mr. T. George John for the Petitioner.

2. Rule. Rule is made returnable forthwith, with the consent
of and at the request of the learned Counsel for the parties.

3. The Petitioner is presently serving life sentence on
conviction for the offences punishable under Sections 302 and 201 of
the Indian Penal Code. According to the Petitioner, he has
undergone 19 years, four months and one month's imprisonment in
the Central Jail, at Colvale, Goa, as per the nominal roll furnished to
him on or before the date of institution of the present Petition.

4. The case of the Petitioner was referred to the State Sentence
Review Board (Board) for making recommendations for premature
release or otherwise of the Petitioner. The minutes of the meeting of

the Board held on 18th August, 2017 indicated that the following decision was taken by the Board in relation to the Petitioner :

“DECISION TAKEN BY THE BOARD IN THE CASE OF SURESH CHANAPPA – C.P. NO.570/02 and RAVI @ RAVI KUMAR PATIL – C.P. NO.571/02:

*. The Board has discussed both these cases individually in detail, in context with their involvement/role in committing the crime and the gravity of the crime, in accordance with the judgment delivered on 16/09/2002 by the Court of the IInd Addl. Sessions Judge, Panaji, Goa and the Review Board has **recommended** the premature release of convict prisoner **No.571/02-Ravi @ Ravi Kumar Patil only**. However the Government, before actually exercising the power of remission u/s. 432 of the C.R.P.C. may obtain the opinion of the Presiding Judge of the convicting or confirming Court in terms of the Judgment in Criminal Appeal No.490-491 of 2011 of the Hon'ble Supreme Court.”*

5. The matter was, accordingly, referred to the Presiding Judge on 1/1/2018 for opinion. The learned Additional Sessions Judge, Panaji submitted her opinion on 23rd January, 2018, which reads as follows :

“

P A N A J I

No.DJI/PAN/SE 14-2000/2018/13

Dated:-23rd January, 2018

To,

The Under Secretary,

Department of Home (General)

Secretariat,

Porvorim, Goa.

Madam,

*With reference to your letter bearing No.9/9/2016-HD(G) dated 01.01.2018, I am to submit that by letter dated 13.11.2017, bearing No.DSC/RR/Pre-MR/2017/12344, this Court had stated that no grounds have been made out for premature release of convict prisoner Ravi alias Ravikumar Patel as he had been sentenced for life imprisonment. In the case of **Sangeet & Another v/s. State of Haryana Criminal Appeal No. 490-491 of 2011** the Hon'ble Supreme Court has held that there is a misconception that a prisoner serving life sentence has an indefeasible right to release on completion of either fourteen years or twenty years of imprisonment. It was further held that the prisoner had no such right and the convict undergoing life imprisonment is accepted to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Sections 432 of the Code of Criminal Procedure which in turn is subject to the procedural checks in that Section and the substantive check in Section 433-A of the Code of Criminal Procedure. In view of this Judgment the issue of remission may be decided by the Government.*

Sd/-

(Sherin Paul)

Additional Sessions Judge, Panaji.”

6. Thereafter, further correspondence ensued between the Under Secretary (Home) and the Prison Authorities. The matter was further placed before the Board on 19th August, 2019. At this meeting, the Board considered not only the case of the Petitioner, but cases of 21 other convicts, as well. The material portion of the decision, as reflected in the meeting held on 19th August, 2019, reads thus :

*“ First and foremost, the Chairman enquired with the Member Secretary, as to whether, the opinion of the Presiding Judge of the convicting or confirming Court is obtained in terms of the Judgment in Criminal Appeal No.490-491 “Sangeet & Anr. vs State of Haryana” of the Hon'ble Supreme Court of India in all these cases. The Member Secretary informed that no such opinion has been obtained. Hence, the Chairman explained to the Board Members that the Apex Court in the said Judgment has inter-alia given '**Conclusion**' at para 80 on the aspect of premature release of an eligible convict prisoner and specifically brought to the notice of the Members the direction given in Sub-Para (7) of said Para that transcribed here below:-*

“Before actually exercising the power of remission under Section 432 of the Cr.P.C., the appropriate Government must obtain the opinion (with reasons) of the presiding judge of the convicting or confirming Court. Remissions can, therefore, be given only on a case-by-case basis and not in a wholesale manner”.

Considering the above direction of the Apex Court, the Members on deliberations thought it appropriate to obtain opinion of the presiding judge of the convicting or confirming Court before scrutiny of any cases for recommendations for premature release. And therefore, the Members of the Board collectively agreed to direct the Superintendent of Central Jail, Colvale to obtain the opinion of the presiding judge of the convicting or confirming Court, first and then place these cases for review of their sentences, so that an appropriate decision can be taken on merits of each case. The Members have further suggested the Superintendent of Jail to submit all the material of prisoners and reports of the concerned

authorities that are received, in respect of premature release of convict prisoners to the convicting or confirming Court, in order to enable the presiding judge to give fair opinion on case to case basis.

The Chairman directed the Member Secretary to reschedule the meeting, no sooner the opinion of the presiding judge is received.”

7. The matter is now simply pending and the Petitioner consequently seeks appropriate orders for his premature release, having completed almost 20 years of imprisonment.

8. The Government of Goa, in exercise of the powers conferred by Section 59 of the Prisons Act, 1894, as in force in the State of Goa and all other powers enabling it in this behalf, has made the Goa Prisons Rules, 2006 (said Rules). The said Rules provides for remissions to be granted to prisoners. Rule 285 speaks of the kinds of remissions that may be granted. Rule 287 speaks of the classes of prisoners that may be granted ordinary remission at the scales prescribed under Rule 289. Rule 292 stipulates that life sentence shall be taken as imprisonment for 20 years for the purpose of calculation of remission under Section 57 of IPC. It provides that when the Sentence Review Board examines the prisoner's case, the remission to his credit will be one of the factors on the basis of which the review of his sentence will be considered.

9. Rule 397 deals with the Constitution of the State Sentence Review Board. Rule 398(3) provides for categories of prisoners which the Sentence Review Board will review for recommending premature release. Under Rule 398(3)(iv) life convicts (men and adolescent offenders) on completion of 10 years of imprisonment including remission except those covered under Section 433-A of the Cr.P.C can be considered for premature release after completion of 14 years of actual imprisonment.

10. Rule 399 provides for the procedure of holding meetings of the Sentence Review Board.

11. Rule 400 deals with the records to be compiled by the Prison Authorities for review of sentences and release.

12. Rule 403 speaks of the factors and circumstances to be considered for reviewing the sentence. It provides that the Sentence Review Board shall also consider the opinion of the Superintendent of Police and District Magistrate and thereafter on the basis of such overall examination of the case, may recommend deserving prisoners for premature release either on specified conditions or unconditionally after recording the reasons for the recommendations in every case.

13. Under Rule 404, the Superintendent of the Jail, shall submit the recommendations of the Sentence Review Board together with the documents relating to the Prisoners recommended for premature release to the Government within 15 days from the date of recommendations of the Board through the Inspector General. The Inspector General shall forward the papers to the Government with his remarks for orders.

14. Under Rule 404(2), the Government may accept or reject the recommendations on the grounds to be stated. In case the recommendation has been rejected the Government may ask the Sentence Review Board to reconsider the case. The decision of the Government shall be communicated to the concerned prisoner and in case the Government orders to grant remission and his premature release, he shall be released forthwith with or without conditions.

15. From the scheme of the aforesaid Rules, we agree with both, the learned Amicus Curiae, as well as the learned Additional Public Prosecutor that the role of the Board is basically recommendatory in nature and an ultimate decision to grant or refuse the premature release of a convict is to be taken by the Government in terms of Section 432 of the Cr.P.C., having due regard, no doubt,

to the provisions in Section 433-A of the Cr.P.C.

16. Section 432 of the Cr.P.C. reads thus :

"432. Power to suspend or remit sentences.

(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without Conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

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

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

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

(5) The appropriate Government may, by general rules or special orders give directions as to the suspension of

sentences and the conditions on which petitions should be presented and dealt with:

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

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

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

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

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

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

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

Section 433-A of the Cr.P.C. reads thus :

"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."

17. In case of *Sangeet and another vs. State of Haryana* (2013) 2 SCC 452, the Hon'ble Supreme Court has held that a prisoner serving a life sentence has no indefeasible right to release on completion of either 14 years or 20 years in prison. He is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the Cr.P.C. which, in turn, is subject to the procedural checks in that Section and the substantive check in Section 433-A of the Cr. P.C. In case of a convict undergoing life imprisonment he will be in custody for an indeterminate period, therefore remissions earned by or awarded to such a life convict are only notional. In his case to reduce the period of incarceration a specific order under Section 432 of the Cr. P.C. will have to be passed by an appropriate Government, however, the reduced period cannot be less than 14 years as per Section 433A of the Cr. P.C. Before actually exercising the power of remission under Section 432 of the Cr. P.C., the appropriate Government must obtain the opinion (with reasons) of the Presiding Judge of the Convicting or the Confirming Court. Remissions can

only be given on a case to case basis and not on a wholesale manner.

18. Upon conjoint reading of the provisions in Sections 432, 433-A of the Cr.P.C. and the said Rules, in the light of the ruling of the Hon'ble Supreme Court in *Sangeet* (supra), the following principles broadly emerge :

(A) A life convict has no indefeasible right to premature release, but he is entitled upon completion of 14 years of imprisonment, to have his case considered by the Sentence Review Board in accordance with the Prison Rules and for an appropriate recommendation in that regard to the State Government.

(B) The State Sentence Review Board may consider the case of a life convict for premature release upon completion of 14 years imprisonment, and the role of the Sentence Review Board is only recommendatory and the decision on the premature release and the power to grant such release vests with the appropriate Government. The case of such a prisoner for premature release may be considered by the Government, either upon a recommendation made by the State Sentence Review Board in accordance with the Prison Rules or on an application made to it by the Prisoner himself under section 432 of the Cr. P.C.

(C) The State Government before it takes a decision on the

recommendation of the Sentence Review Board, or on an application by the prisoner seeking release, has to seek the opinion of the Presiding Judge of the convicting or confirming Court under Section 432(2) of the Cr. P.C.

(D) The Presiding Judge of the convicting or confirming Court has to state his / her opinion on the case of the concerned prisoner with reasons for such opinion and to forward with the opinion a certified copy of the record of trial or of such record thereof as exists to the Government.

(E) The Government upon receipt of the opinion from the Presiding Judge of the convicting or confirming Court alongwith the records of the case and on considering the opinion of the Court and the relevant material submitted by the Superintendent of the Jail under rule 404(1) of the Prison Rules has to take a decision in accordance with Section 432(1) of the Cr. P.C. read with Rule 404(2) of the Goa Prison Rules, 2006.

19. The contentions raised by the Petitioner will, therefore, have to be examined by applying the aforesaid principles which emerge from the conjoint reading of the provisions in Section 432 and 433-A of the Cr.P.C. and the said Rules applicable to such matters.

20. The decision of the Board in its meeting held on 19.8.2019 to call for opinion of the Presiding Judge of the convicting or confirming Court and to place the same before the Board for its consideration, does not appear to be either appropriate or in consonance with the said Rules. There is no requirement under the said Rules for obtaining opinion of the Presiding Judge before the Board considers the case of a convict for premature release. It is only after the Board makes its recommendation and before the Government takes its decision in terms of Section 432 of the Cr.P.C., that in terms of Section 432(2) of the Cr.P.C., the appropriate Government may require the Presiding Judge of the Court before or by which the conviction was had or confirmed, to state her opinion as to whether the application should be granted or refused, together with her 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. Therefore, we have no hesitation in setting aside the decision of the Board, reflected in the minutes of meeting held on 19th August, 2019 and direct the Board to once again consider the case of the Petitioner, as also other convicts, referred to in the minutes, for premature release. We direct the Board to complete this exercise as expeditiously as possible, and in any case, within a period of two months from today.

21. The opinion furnished by the Presiding Judge in her communication dated 23rd January, 2019 may, by now, have outlived its purpose, nevertheless we deem it appropriate to observe that this is certainly not the manner in which the Presiding Judge is supposed to express her opinion. The Presiding Judge has merely quoted from the decision of the Hon'ble Supreme Court in *Sangeet* (supra) that there is a misconception that a prisoner serving life sentence has an indefeasible right to release on completion of either fourteen years or twenty years of imprisonment and on the said basis, referred the matter back to the Government for its decision. According to us, this is not the proper manner of giving opinion in terms of Section 432(2) of the Cr.P.C.

22. In the present case, the Presiding Judge virtually expressed no opinion whatsoever or, in any case, expressed an opinion which is bereft of any reasons, or in any case, cogent or relevant reasons. If this is the opinion, then, perhaps no life convict can ever aspire to premature release, simply because there may be no indefeasible right to release on completion of either 14 years or 20 years, as the case may be. The Presiding Judge has to apply her mind to all relevant considerations and only thereafter, furnish the opinion, together with her reasons for such opinion and, thereafter, forward with the

statement of such opinion a certified copy of the record or the trial or of such record thereof as exists. All this contemplates application of mind, which is not at all reflected in the communication dated 23rd January, 2018, addressed by the Presiding Judge to the Under Secretary.

23. Accordingly, we declare that the expression of opinion by the Presiding Judge in her communication dated 23rd January, 2018 is no consideration at all in terms of Section 432(2) of the Cr.P.C. Therefore, should the Sentence Review Board recommend the case of the Petitioner for premature release, the State Government will have to obtain the opinion of the Presiding Judge before exercise of powers under Section 432 of the Cr.P.C. On such occasion, the Presiding Judge will have to furnish an opinion consistent with the requirement of Section 432(2) of the Cr.P.C. and not relying upon her earlier opinion dated 23rd January, 2018 which, we note is not at all consistent with the provisions of Section 432(2) of the Cr.P.C.

24. We, accordingly, dispose of this Petition by making the following Order :

- (A) The decision of the Board in its meeting held on 19th August, 2019 is, hereby, set aside;
- (B) The Board is directed to consider the case of the Petitioner,

as also 21 other convicts referred to in the minutes of meeting dated 19th August, 2019 for recommending or otherwise of premature release of such convicts, and the Board is expected to take into account all relevant considerations and eschew irrelevant considerations;

(C) If the Board recommends the release of the Petitioner, as also other convicts referred to in the minutes of meeting dated 19th August, 2019, the same may be forwarded to the Government within 15 days, along with copies to the Petitioner and the other convicts;

(D) The Government, within 15 days from date of receipt of the recommendations from the Board, to call for opinion of the Presiding Judge in terms of Section 432(2) of the Cr.P.C. The Presiding Judge to furnish opinion considering the provisions of Section 432(2) of the Cr.P.C. as expeditiously as possible and, in any case, within a period of four weeks from the date of receipt of the communication from the Government, seeking opinion in terms of Section 432(2) of the Cr.P.C. Since, we have held that the view taken by the Presiding Officer in her communication dated 23rd January, 2018 is inconsistent with the predicates of Section 432(2) of the Cr.P.C., the Presiding Officer will now be expected to furnish her reasoned opinion, consistent with the requirements of Section 432(2) of the Cr.P.C., upon application of mind to all relevant considerations in this regard.

(E) The Government to thereafter make appropriate orders on the issue of premature release of the Petitioner and other convicts, as expeditiously as possible and, in any case, within a period of four weeks from the date of receipt of the opinion from the Presiding Judge.

25. Rule is made absolute in the aforesaid terms.

26. We record our gratitude and appreciation for the most able assistance rendered to us in this matter by Mr. Nigel da Costa Frias, learned Amicus Curiae, as well as by Mr. Pravin Faldessai, learned Additional Public Prosecutor for the State.

27. All concerned to act on the basis of an authenticated copy of this Judgment and Order.

Nutan D. Sardesai, J.

M.S. Sonak, J.