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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 1221/2019**

OM PRAKASH CHAUTALA

..... Petitioner

Through: Mr. N. Hariharan, Senior Advocate
with Mr. Amit Sahni, Mr. Anshul
Bajaj, Ms. Sonali Tiwary, Mr. Jasman
Singh Sethi, Mr. Aditya Chandra and
Mr. Sunil Gulia, Mr. Sharang Dhulia,
Mr. Varun Deswal, Ms. Pooja B. Soni
and Mr. Prateek Bhalla, Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel
(Crl.) with Mr. Chaitanya Gosain,
Advocate for State.
Mr. Amresh AS (Legal) Prison Dept.

Reserved on: 26th November, 2019

Date of Decision: 18th December, 2019

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CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J:

1. Present petition has been filed by the petitioner seeking issuance of a writ in the nature of habeas corpus and a direction to set aside the order dated 3rd April, 2019 passed by the respondent-State whereby his case for

early release was rejected. The petitioner further seeks a direction that he is entitled to an early release on the ground that he qualifies under clause (c) and (d) of Special Remission Notification dated 18th July, 2018 issued by Government of India.

BRIEF FACTS

2. Since the respondent-State had not considered petitioner's application dated 6th December, 2018 for special remission, the petitioner had filed an earlier writ petition being W.P. (Crl) 550/2019, which was disposed of by the learned predecessor Bench of this Court vide order dated 20th February, 2019 with a direction to the respondent-State to determine the representation of the petitioner for special remission as expeditiously as possible and positively within a period of four weeks.

3. Thereafter, petitioner's application for special remission was rejected vide order dated 03rd April, 2019 by respondent-State under the signature of Deputy Secretary (Home). The relevant portion of the said order is reproduced hereinbelow:-

“It is clear that prisoners convicted under the Prevention of Corruption Act, 1988 are not to be granted special remission under the scheme and the fact that the convict has undergone any amount of sentence under the Prevention of Corruption Act, 1988 does not hold any good as he has been convicted under the Prevention of Corruption Act, 1988.

Perusal of Ld. Trial Court order dated 22.01.2013 makes it clear that convict has been sentenced for terms of 7 years rigorous imprisonment and a fine in the sum of Rs.1,000/- each u/s 13(2) of the Prevention of Corruption Act and rigorous imprisonment for 10 years and a fine in the sum of Rupees 1000/- each u/s 120-B IPC r/w section 418/467/471 IPC r/w section 13(2) of the Prevention of Corruption Act and as such both these sentences are to be read along with Section 13(2) of

the Prevention of Corruption Act, 1988.

Further, the offences constitute part of the same transaction and cannot be bifurcated for the purpose of extending the benefit of special remission under guidelines notified by Govt. of India. Therefore, the ground taken by the convict that he has already undergone a period of 7 years under the Prevention of Corruption Act, 1988 and should be considered for special remission does not hold good.

Further, no such prisoner has been considered by the committee for grant of remission under this scheme if he falls under any of the categories mentioned in para 4 of the guidelines circulated by Govt. of India. Considering the aforesaid aspect, the case was earlier not placed before the committee by the Prison Department for consideration as it does not fall within the ambit of the guidelines. Prison Department has also again reiterated that the case of convict may not be eligible for Special Remission in view of abovesaid Para 4 of the guidelines whereby Special Remission cannot be granted in cases of prisoners convicted under the Prevention of Corruption Act.

Whereas, after taking into account all the facts and guidelines of MHA, GoI and the recommendation of Prison Department, the Committee decided not to recommend the case of convict Om Prakash Chautala s/o Late Sh. Devi Lal for grant of special remission at this stage.

Whereas, the Hon'ble Lt. Governor, Delhi has accepted the recommendation of State Level Committee. Accordingly, the petition of convict Om Prakash Chautala s/o Lt. Sh. Devi Lal for considering his case to grant Special Remission on the occasion of 150th Birth Anniversary of Mahatma Gandhi as notified by the Government of India is hereby rejected.

**DY. SECRETARY (HOME)
GOVT. OF N.C.T. OF DELHI
Ph. NO.-011-23392071**

4. The present writ petition challenges the aforesaid order.

ARGUMENTS ON BEHALF OF THE PETITIONER

5. Mr. N. Hariharan, learned senior counsel for the petitioner stated that the petitioner is aged about eighty-three years and is suffering from disability. He further stated that the sentence awarded by the Court under the Prevention of Corruption Act, 1988 (hereinafter referred to as “PC Act”) was seven years rigorous imprisonment – which he had already undergone.

6. He submitted that though the petitioner had also been awarded a sentence of ten years under Section 120B IPC read with Sections 418/467/471 IPC and Section 13(2) of PC Act, yet as the maximum sentence prescribed under PC Act, at the relevant time, was seven years, the incarceration under Section 120B IPC read with PC Act in petitioner’s case cannot exceed seven years.

7. He contended that the respondent-State vide its order dated 03rd April, 2019 had erroneously rejected the petitioner’s representation for pre-mature release thereby accepting the recommendations of State Legal Committee dated 19th March, 2019 that as the petitioner had been convicted under the PC Act he cannot be granted special remission in view of the paragraph no. 4 of the Notification dated 18th July, 2018, which states “*special remission will not be given to.....convicts involved in serious and heinous crimes.....and convicted under.....Prevention of Corruption Act etc.*”

8. He submitted that post completion of seven years, the paragraph no. 4 to the Notification dated 18th July, 2018 was not applicable to the case of the petitioner and the petitioner deserved to be released by granting

special remission because the convict/petitioner was no longer involved in any offence under PC Act (having completed seven years of incarceration) and the petitioner was presently undergoing incarceration under Section 467 IPC. In support of his submission, he relied upon the judgment of the Madras High Court in ***P. Veera Bhaarithi vs. The State of Tamil Nadu & Ors., 2016 SCC OnLine Mad 33615*** and the Supreme Court judgment in ***The State of Tamil Nadu & Ors. vs. P. Veera Bhaarithi, 2019 SCC OnLine SC 324.***

ARGUMENTS ON BEHALF OF THE RESPONDENT-STATE

9. *Per contra*, Mr. Rahul Mehra, learned Standing counsel for the respondent-State stated that special remission cannot be granted in cases of prisoners convicted under the PC Act and he placed reliance on paragraph No.4 of the Notification dated 18th July, 2018. He emphasised that no prisoner had been considered by the Committee for grant of remission under the scheme if he fell under any of the categories mentioned in paragraph no. 4 of the Notification dated 18th July, 2018 circulated by the Government of India.

10. Mr. Rahul Mehra stated that the petitioner had been sentenced to rigorous imprisonment for seven years and a fine in the sum of Rs.1,000/- under Section 13(2) of PC Act and further sentenced to rigorous imprisonment for ten years and a fine in the sum of Rs. 1,000/- under Section 120B IPC read with Sections 418/467/471 IPC and Section 13(2) of PC Act. He submitted that the sentence of ten years is to be read with PC Act as the offences constitute part of the same transaction and they cannot be separated for the purpose of extending the benefit of special

remission under the guidelines notified by the Government of India. He reiterated that the Court cannot assume that the sentence of ten years is without the force of PC Act in the present case. Therefore, according to him, the ground taken by the petitioner that he had already undergone his sentence under the PC Act and should be considered for special remission did not hold good.

11. Learned standing counsel for the respondent-State stated that during the total period of incarceration undergone by the petitioner till 30th July, 2019, the petitioner had availed two interim bails, seven paroles and eight furloughs.

12. Learned Standing counsel for the respondent-State contended that the judgments relied upon by the learned senior counsel for the petitioner have no application to the facts of the present case. He pointed out that the judgments relied upon by the learned senior counsel for the petitioner pertained to provisions of IPC, whereas in the present case the sentence had been awarded under a combination of provisions of two separate statutes. He emphasized that in *P. Veera Bhaarithi* (supra), there was a clarification from the State in terms of the letter of the Director General of Prisons, which had supported the case of the petitioner. He further pointed out that in the present case, the State level Committee had decided against recommending the petitioner's case for special remission and the same had been accepted by the Lt. Governor as well.

13. Learned Standing counsel for the respondent-State lastly contended that the present petition had become infructuous inasmuch as the complete cycle of awarding remission on the occasion of 150th birth anniversary of Mahatma Gandhi had already been completed on 2nd October, 2019.

COURT'S REASONING

THE CONTENTION OF THE STATE THAT THE PRESENT PETITION HAS BECOME INFRUCTUOUS IS UNTENABLE IN LAW INASMUCH AS THE PETITIONER HAD FILED THIS WRIT PETITION WELL BEFORE THE LAST PHASE OF RELEASE AS PROVIDED UNDER THE NOTIFICATION i.e. 02nd OCTOBER, 2019. IT IS SETTLED LAW THAT NO PARTY CAN SUFFER DUE TO AN ACT OF THE COURT.

14. The petitioner herein had been convicted and sentenced by the Trial Court vide order dated 22nd January, 2013 which was upheld by this Court vide order dated 5th March, 2015 in ***Rekha Sharma Vs. Central Bureau of Investigation, 2015 SCC OnLine Del 7796***. Even the Special Leave Petition, being SLP (Crl.) 4658/2015, filed challenging the said order of the High Court was dismissed by the Supreme Court vide order dated 03rd August, 2015. Consequently, the sentence awarded to the petitioner has attained finality and the same is reproduced hereinbelow:-

- “12. xxx xxx xxx
- (i) rigorous imprisonment for 7 years and a fine in the sum of Rs.1,000/- each u/s 13(2) of Prevention of Corruption Act. In default of payment of fine, they shall undergo simple imprisonment for six months each
- (ii) rigorous imprisonment for 10 years and a fine in the sum of Rs.1,000/- each u/s 120-B IPC r/w Section 418/467/471 IPC r/w Section 13(2) of Prevention of Corruption Act. In default of payment of fine, they shall undergo simple imprisonment for six months each.”
- (emphasis supplied)

15. The total period undergone in custody, as on 30th November, 2019, by the petitioner is as follows:-

Period including under-trial and as convict	Years	Months	Days
Actual Period	05	11	06
Remission Earned	02	03	26
Total Period Including Remission	08	03	02
Unexpired portion of sentence	01	08	28

16. The Union of India vide Notification dated 18th July, 2018 had approved special remission to prisoners on the occasion of 150th Birth Anniversary of Mahatma Gandhi. The relevant portion of the said Notification is reproduced hereinbelow:-

“Cabinet approves Special Remission to Prisoners on the occasion of 150th Birth Anniversary of Mahatma Gandhi.

The Union cabinet chaired by the Prime Minister Shri Narendra Modi has today given its approval to grant Special Remission to Prisoners as part of commemoration of 150th Birth Anniversary of Mahatma Gandhi.

As part of commemoration of 150th Birth Anniversary of Mahatma Gandhi, the following categories of prisoners will be considered for special remission and released in three phases. In Phase-I, the prisoners will be released on 2nd October, 2018 (Birth Anniversary of Mahatma Gandhi), in Phase-II prisoners will be released on 10th April, 2019 (Anniversary of Champaran Satyagrah) and in Phase-III, prisoners will be released on 2nd October, 2019 (Birth Anniversary of Mahatma Gandhi):-

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(c) Male convicts of 60 years of age and above, who have completed 50% of their actual sentence period.

(d) *Physically challenged/disabled convicts with 70% disability and more who have completed 50% of their actual sentence period.*

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Special remission will not be given to prisoners who have been convicted for an offence for which the sentence is sentence of death or where death sentence, has been commuted to life imprisonment: Cases of convicts involved in serious and heinous crimes like Dowry death, Rape, Human Trafficking and convicted under POTA, UAPA, TADA, FICN, POCSO Act, Money Laundering, FEMA, NDPS, Prevention of Corruption Act, etc.”

(emphasis supplied)

17. At the outset, this Court is of the view that the contention of the learned Standing counsel for the respondent-State that the present petition had become infructuous is untenable in law inasmuch as the petitioner had filed this writ petition well before the last phase of release as provided under the Notification dated 18th July, 2018 i.e. 02nd October, 2019. It is settled law that no party can suffer due to an act of the Court. Consequently, this Court is of the opinion that the rights of the petitioner cannot be prejudiced on account of the pendency of the petition before this Court. The Supreme Court in ***Rajesh D. Darbar and Ors. vs Narasingrao Krishnaji Kulkarni and Ors. (2003) 7 SCC 219*** has held as under:-

“6.There can be no quarrel with the proposition as noted by the High Court that a party cannot be made to suffer on account of an act of the court. There is a well-recognised maxim of equity, namely, *actus curiae neminem gravabit* which means an act of the court shall prejudice no man. This maxim is founded upon justice and good sense which serves a safe and certain

guide for the administration of law. The other maxim is, lex non cogit ad impossibilia i.e. the law does not compel a man to do that what he cannot possibly perform. The applicability of the abovesaid maxims has been approved by this Court in Raj Kumar Dey v. Tarapada Dey, Gursharan Singh v. New Delhi Municipal Committee and Mohd. Gazi v. State of M.P.”

(emphasis supplied)

18. The aforesaid principle has been reiterated by the Supreme Court in a recent judgement in ***Odisha Forest Development Corporation Ltd. vs. M/s Anupam Traders and Anr. C.A. No. 9083/2019*** decided on 28th November, 2019.

THE PETITIONER HAS PRAYED FOR REMISSION OF SENTENCE IMPOSED FOR THE IPC OFFENCES READ WITH SECTION 120B IPC, AND NOT UNDER SECTION 13(2) OF THE PC ACT AS HE HAS UNDERGONE THE MAXIMUM IMPRISONMENT OF SEVEN YEARS UNDER SECTION 13(2) PC ACT.

19. The case of the petitioner is not barred by paragraph no. 4 of the Notification dated 18th July, 2018, as he has already served the first part of his sentence of seven years under Section 13(2) of the PC Act.

20. The submission of the learned Standing counsel for the respondent-State that the second part of the sentence of ten years awarded under Section 120B IPC should be read with Section 13(2) of the PC Act is untenable in law as the maximum punishment that could be awarded under Section 13(2) of the PC Act, at the relevant time, was seven years. This Court is of the opinion that the maximum sentence that can be awarded under Section 120B IPC is the maximum sentence that can be awarded for the substantive offence that is clubbed with Section 120B IPC. Consequently, the punishment awarded under Section 120B IPC in

conjunction with Section 13(2) of the PC Act, at that relevant time, could not exceed seven years. Accordingly, the petitioner has already served out his sentence under the PC Act as he has undergone the maximum imprisonment of seven years under Section 13(2) PC Act.

21. Keeping in view the aforesaid, this Court is of the view that the petitioner has prayed for remission of sentence imposed for the IPC offences read with Section 120B IPC, and not under the PC Act.

THE ARGUMENT OF LEARNED STANDING COUNSEL FOR RESPONDENT-STATE THAT THE PETITIONER WAS INELIGIBLE TO AVAIL BENEFITS UNDER THE NOTIFICATION DATED 18th JULY, 2018 ON ACCOUNT OF HIS CONVICTION UNDER THE PC ACT IS UNTENABLE IN LAW IN VIEW OF THE DECISIONS OF MADRAS HIGH COURT AND SUPREME COURT IN P. VEERA BHAARATHI (SUPRA)

22. Though the argument of learned Standing counsel for respondent-State that the petitioner was ineligible to avail benefits under the Notification dated 18th July, 2018 on account of his conviction under the PC Act is very appealing at first blush, yet this issue is no longer *res integra* in view of the decisions of Madras High Court in **P. Veera Bhaarithi** (supra) and Supreme Court in **The State of Tamil Nadu & Ors. vs. P. Veera Bhaarithi** (supra). The Madras High Court, in **P. Veera Bhaarithi** (supra), has in the context of a similar prison rule, held as under:-

“16. Rule 341 of the Rules, which is very important for the issues involved in the present Habeas Corpus Petition, states as follows:—

“(1) The sentences of all prisoners sentenced to imprisonment for life or to more than twenty years

imprisonment in the aggregate or imprisonment for life and imprisonment for terms exceeding in the aggregate twenty years shall, for the purpose of this rule, be deemed to be sentences of imprisonment for twenty years.

- (2) The cases of prisoners undergoing imprisonment for life shall, ordinarily be placed before the Advisory Board as constituted for consideration as to whether their parole will be recommended, on completion of ten years of actual imprisonment :

Provided that by virtue of provision contained in section 433-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the cases of prisoners sentenced to imprisonment for life on or after 18th December 1978 for an offence for which death is one of the punishments provided by law, or in whose case a sentence of death imposed has been commuted under section 433 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) into one of the imprisonment for life, shall be placed before the Advisory Board only if they have served at least fourteen years of imprisonment.....

- (3) *The cases of prisoners sentenced to more than three years, excepting lifers to whom sub-rule (2) applies, shall be placed before the Advisory Board if they have served two thirds of their sentence including remission:*

Provided that prisoners of the following categories who have been sentenced to imprisonment for more than three years or imprisonment for life shall not be eligible for premature release under the Advisory Board Scheme :—

- (i) Prisoners convicted of rape, dacoity, terrorist crimes, offences against the State or prisoners sentenced under section 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489-A, 489-B and 489-D of the Indian Penal Code (Central Act XLV of 1860);.....

17. A close reading of sub-rule (2) and sub-Rule (3) of the Rules would make it ipso facto clear that the case of a life convict shall be considered for premature release only on his completing ten years of actual imprisonment, [as per Rule

433(A) - 14 years], whereas, in case of convict other than a life convict, his case shall be considered for remission on his completing 2/3rd of the sentence, including the remission. A plain reading of the proviso to sub-Rule (3) would again make it manifestly clear that the prisoners convicted of rape, forgery, dacoity, terrorist crimes, offences against the State and prisoners sentenced under Sections 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489-A, 489-B, and 489-D of the Indian Penal Code, shall not be eligible for being considered for premature release as provided in Sub-Rule(3), which means they are not eligible for being considered on their completing 2/3rd of their sentences. It goes without any doubt that they can be considered only on their completing 14 years of imprisonment as provided in Sub-Rule (2). Sub-Rule (2) does not exclude a life convict, who has been convicted for any offence like an offence under Section 376 of the Indian Penal Code. Irrespective of the nature of the offence committed, if he is a life convict, he will be eligible for consideration for premature release on his completing 14 years of actual imprisonment.

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19. The petitioner assails the impugned order from a different angle also. According to him, assuming that sub-Rule 3 of the Rules, including the proviso is applicable, even then, he is entitled for being considered for premature release. According to him, while he has already served out the entire sentence imposed on him for the offence under Section 376 of the Indian Penal Code, he does not pray for any remission in respect of the sentence for the said offences. In the proviso to Sub-Rule 3 of Rule 341 of the Rules, Section 302 of the Indian Penal Code has not been included. In the instant case, according to the petitioner, since he prays for remission of sentence imposed on him only for the offence under Section 302 of the Indian Penal Code and not for the offence under Section 376 of the Indian Penal Code, the said proviso shall not be a bar for his case being considered for premature release. As we have already held that the petitioner is eligible for being considered under

Sub-Rule 2 of Rule 341 of the Rules for premature release, any further discussion in respect of the proviso to Sub-Rule 3 of Rule 341 of the Rules, shall only be a mere academic exercise. Since it has been argued by the petitioner as well as the learned Public Prosecutor, we wish to go into the said academic debate also.

20. *The learned Public Prosecutor would submit that if a person has been convicted for any offence, besides the offences enumerated in the proviso to Sub-Rule 3 of Rule 341 of the Rules, then, even in respect of the punishment for other offence, he is not eligible for premature release. The learned Public Prosecutor has, however, been very fair in bringing to our notice a clarification issued by the Director General of Prisons in No. 14189, dated 04.11.1989, wherein he clarified that in a case, where a convict is undergoing imprisonment for life for the offence under Section 302 of the Indian Penal Code and has also been convicted and sentenced for the offences under Sections 376 and 396 of the Indian Penal Code, if the sentences were ordered to run concurrently, after he had served out the sentence for the offence under Sections 376 and 396 of the Indian Penal Code, he would be eligible for being considered for premature release in respect of the life sentence for the offence under Section 302 of the Indian Penal Code.”*

(emphasis supplied)

23. The above-mentioned judgment was challenged by the State by way of a Special Leave Petition. The Supreme Court in ***The State of Tamil Nadu & Ors. vs. P. Veera Bhaarathi*** (supra) affirmed the view of Madras High Court and held as under:-

“7. In other words, the argument on behalf of the appellants is that if a person is to be convicted and sentenced under an ineligible Section/ineligible offence he would not be entitled to the benefit of early/premature release under the Prison Rules.

8. The operation of the Rules in the manner as suggested on

behalf of the appellants would result in a highly incongruous situation which the rule making authority could not have been understood to have contemplated or envisaged. Higher offences involving sentence of imprisonment for life or even death sentence commuted to life imprisonment, if not coupled with convictions under the ineligible section(s), would entitle a convict to consideration of his case for early release. But, if a lifer is to be convicted for a much lesser offence, say, offences under Section 224, 498A IPC, etc. and sentenced to small periods of imprisonment, notwithstanding the fact that he had completed more than 10 years of custody, he would still not be eligible for early release. Such a situation, in our considered view, cannot be allowed to prevail by understanding the operation of the Rules in the manner suggested on behalf of the appellants.

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13. The case of the Respondent will now be decided by the Advisory Board in accordance with law. We make it clear that we have not expressed any opinion on the entitlement of the Respondent for early release.”

(emphasis supplied)

24. In view of the aforesaid judgment of the Apex Court, this Court is of the opinion that if the submission of the learned Standing counsel for respondent-State is to be accepted, it would result in a highly incongruous situation inasmuch as a convict who had been sentenced for a higher offence involving, say a sentence of ten years under the IPC and had not been convicted under the ineligible Acts (like PC Act), would be entitled to have his case considered for early release, but, a convict who had been sentenced for lesser offences with shorter periods of imprisonment under IPC and PC Act, say seven years under Section 420 IPC including three years under the PC Act and had completed the sentence under the PC Act would not be eligible for having his case considered for early release!

25. Also, the Supreme Court in *The State of Tamil Nadu & Ors. vs. P. Veera Bhaarithi* (supra), as well as the High Court in *P. Veera Bhaarithi* (supra), had decided the matter *de hors* the view taken by the Inspector General of Prisons in his letter. Consequently, we find no merit in the contention of learned Standing counsel for respondent-State that the aforesaid judgments of the Madras High Court in *P. Veera Bhaarithi* (supra) and the Supreme Court in *The State of Tamil Nadu & Ors. vs. P. Veera Bhaarithi* (supra), will not be applicable to the present case on account of the absence of letter/clarification from the Inspector General of Prisons or the respondent-State.

26. It is pertinent to mention that the Supreme Court in *State of Haryana and Others Vs. Jagdish, (2010) 4 SCC 216* has held that if any benefit of early release accrues in favour of the convict then the same has to be construed liberally by the State. The relevant portion of the aforesaid judgment is reproduced hereinbelow:-

“54. The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a “lifer” for premature release, he should be given benefit thereof.”

(emphasis supplied)

27. In view of the aforesaid mandate of law and the fact that the petitioner is aged about eighty-three years and has completed 50% of his actual sentence period, this Court is of the opinion that the petitioner is eligible to have his case considered by the State Committee for special remission in terms of the guidelines prescribed under the Notification.

CONCLUSION

28. Consequently, the order dated 03rd April, 2019 passed by the respondent-State is set aside and this Court directs that the case of the petitioner should be decided afresh by the State Committee in accordance with law. It is made clear that this Court has not expressed any opinion on the entitlement of the petitioner for early release. With the aforesaid direction, present writ petition stands disposed of.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 18, 2019

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