

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Cr.) No.88 of 2018

Pardeshi Ram, S/o Pusau Ram Sonkar, aged about 41 years, Prisoner No.8205/90, Central Jail Raipur, District Raipur (C.G.)

Through his son Rajan Kumar Sonkar, C/o. Smt. Rukhmani Sonkar, aged about 19 years, R/o Bhanddevalpara, Ajad Chowk, Arang Ward No.07, Police Station Aarang, District Raipur (C.G.)

(In Jail)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Home Department, Mahanadi Bhawan, New Mantralaya, New Raipur, District Raipur (C.G.)
2. Secretary, Law Department, New Mantralaya, Raipur, District Raipur (C.G.)
3. The Jail and Correctional Services Chhattisgarh, the Director General Prisoners, Jail Road, Raipur, District Raipur (C.G.)
4. The Jail Superintendent, Central Jail Raipur, District Raipur (C.G.)
5. The District and Sessions Judge, Raipur, District Raipur (C.G.)
6. The District Magistrate, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. C.R. Sahu, Advocate.

For State/Respondents: -

Mr. S.C. Verma, Advocate General and Mr. Gagan Tiwari,
Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/06/2020

1. The petitioner is a convicted person and prisoner undergoing the sentence of imprisonment for life pursuant to the judgment of conviction recorded and order of sentence awarded by the learned Sessions Judge in Sessions Trial No.378/2002, dated 4th March, 2003 which was duly

affirmed by this Court in Criminal Appeal No.177/2004. The petitioner after having served 21 years of jail sentence made an application for remission of his sentence through the Superintendent of Central Jail, Raipur on which he (Superintendent of Central Jail, Raipur) called for the recommendation of the learned Sessions Judge, Raipur who, in turn, on 23-2-2017, considering the nature and gravity of the offence of murder which the petitioner is alleged to have committed and undergoing life imprisonment, did not find favour with the application and recommended for not remitting the rest of the sentence awarded to him. Accordingly, the application was thereafter rejected by the Deputy Inspector General of Police vide Ex.P-1 accepting the recommendation of the Presiding Officer / Court of Sessions which is sought to be challenged in this writ petition branding the same as arbitrary, illegal and without authority of law.

2. Return has been filed by the State stating inter alia that looking to the gravity of the offence which the petitioner has committed, his application for remission has rightly been rejected by the competent authority.
3. Mr. C.R. Sahu, learned counsel appearing for the petitioner, would submit that merely on the basis of recommendation of the Presiding Officer / Sessions Judge, the application of the petitioner for remission has been rejected by an incompetent authority i.e. the Deputy Inspector General of Police and it has not been considered by the appropriate Government which is an authority competent to decide the application under Section 432(1) of the CrPC. He would further submit that no

reasons have been assigned while rejecting the application except accepting the recommendation of the Presiding Judge who had convicted the petitioner, as such, there is no application of mind while rejecting the application. Therefore, the impugned order deserves to be set-aside in the light of the decision of the Supreme Court in the matter of Union of India v. V. Sriharan alias Murugan and others¹.

4. Mr. S.C. Verma, learned Advocate General appearing for the State / respondents, would submit that looking to the gravity of the offence which the petitioner has committed and undergoing sentence, though the Jail Superintendent has recommended for remission of jail sentence considering the good conduct of the petitioner, but the Presiding Judge who has convicted the petitioner did not recommend for the same and therefore his application has rightly been rejected by the competent authority. He would further submit that the petitioner has no vested right to be granted remission and remission of balance sentence cannot be claimed as a matter of right.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 432 of the CrPC which states as under: -

“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) to (7) xxx xxx xxx”

7. The power to consider remission under Section 432(1) of the CrPC has been conferred to the appropriate Government to consider and suspend the execution of his sentence or to remit the whole or any part of the punishment to which the accused person has been sentenced i.e. the petitioner in this case.
8. It is well settled that Section 432 of the CrPC has application only in two situations *firstly*, where a convict is to be given “additional’ remission or remission for a period over and above the period that he is entitled to or he is awarded under a statutory rule framed by the appropriate Government or under the Jail Manual, and *secondly*, where a convict is sentenced to life imprisonment, which is for an indefinite period, subject to procedural and substantive checks. (See Sangeet and another v. State of Haryana².)
9. It is also settled that a convict undergoing life imprisonment 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 CrPC

which in turn is subject to the procedural checks mentioned in the said provision and further substantive check in Section 433A of the CrPC. (See Mohinder Singh v. State of Punjab³.)

10. The question now is, who is the appropriate Government, as power and jurisdiction to remit sentence has been conferred to the said Government under Section 432(1) of the CrPC?
11. The Supreme Court in the matter of State of M.P. v. Ratan Singh and others⁴ while considering Section 401 of the Code of Criminal Procedure, 1898 which is equivalent to Section 432 of the Code of Criminal Procedure, 1973 has clearly said that the State where the accused was convicted and sentenced, the Government of that State would be the appropriate Government within the meaning of Section 401 of the Code of Criminal Procedure, 1898.
12. The principle of law laid down in Ratan Singh's case (supra) was followed subsequently in the matter of State of Madhya Pradesh v. Ajit Singh and others⁵ in which it has clearly been held that appropriate government means the government of the State in which the prisoner had been convicted and sentenced by the court of that State. In paragraph 2 of the report it has been held as under: -

“We have already held in Criminal Appeal No. 246 of 1971 that the appropriate Government within the meaning of Section 401 of the Code of Criminal Procedure would be the Government of the State in which the prisoner had been convicted and sentenced by the Court of that State. We have also held that the decision of the Madhya Pradesh High Court

3 2013 Cri. L.J. 1559

4 AIR 1976 SC 1552

5 (1976) 3 SCC 616

in *Sitaram Barelal v. State of Madhya Pradesh*⁶ has absolutely no bearing on the question of the remission to be granted under Section 401 of the Code of Criminal Procedure. It is therefore clear that the Punjab Government was fully justified in making a request to the Madhya Pradesh Government which was the appropriate Government for the purpose of exercising its discretion under Section 401 of the Code of Criminal Procedure and as the Government of Madhya Pradesh refused to exercise its discretion there was no error of law committed by the State Government and the High Court was, therefore, not justified in quashing the order of the Madhya Pradesh Government and directing the Punjab Government to consider the case of the respondent for his release.”

13. In the matter of Hanumant Dass v. Vinay Kumar and others⁷, the principle of law laid down in Ratan Singh's case (supra) has been followed with approval and it has been held as under: -

“14. According to this section the appropriate Government is the Government of the State of conviction and not the Government of the State where the offence was committed. A somewhat similar question came up for consideration in the *State of M.P. v. Ratan Singh*, where the respondent was convicted and sentenced to imprisonment for life by a court in the State of Madhya Pradesh. At his request he was transferred to a jail in the State of Punjab, to which State he belonged. He applied to the Government of Punjab that under the Punjab Jail Manual he is entitled to be released since he had completed more than 20 years of imprisonment. The application was sent to the Government of Madhya Pradesh, which rejected it. In a writ petition filed by him the High Court of Punjab & Haryana held that the State of Punjab was the appropriate authority to release him and directed the State of Punjab to consider the matter. This Court in appeal observed “a perusal of this provision clearly reveals that the test to determine the appropriate Government is to locate the State where the accused was convicted and sentenced and the Government of that State would be the appropriate Government within the meaning of Section 401 of the Code of Criminal Procedure. Thus since

⁶ AIR 1969 MP 252

⁷ (1982) 2 SCC 177

the prisoner in the instant case was tried, convicted and sentenced in the State of Madhya Pradesh, the State of Madhya Pradesh would be the appropriate Government to exercise the discretion for remission of the sentence under Section 401(1) of the Code of Criminal Procedure..." That was a case based on Section 401 of the old Criminal Procedure Code, but the Code of Criminal Procedure, 1973 has put the matter completely beyond any controversy and reiterated the provisions of Section 402(3) in sub-section (7) of Section 432."

14. As such, it is quite vivid that in the present case, the appropriate Government to consider the application for remission under Section 432(1) of the CrPC would be the State of Chhattisgarh, as the petitioner was convicted by the Court of Sessions, Raipur within the territory of the State of Chhattisgarh.
15. A careful perusal of the impugned order would show that the application under Section 432(1) of the CrPC has not been considered by the State Government, but by the Deputy Inspector General of Police on behalf of the Director General of Police. No such provision has been shown or demonstrated as to how the Deputy Inspector General of Police has exercised the power of remission on behalf of the State Government. Accordingly, the impugned order deserves to be set aside only on the ground that the application for remission has not been considered by the competent authority which is the State Government, as provided under Section 432(1) of the CrPC and principles laid down by their Lordships of the Supreme Court noticed herein-above.
16. There is one more additional reason for not upholding the impugned order. The impugned order states as under: -

उपरोक्त विषय एवं संदर्भ में लेख है कि केन्द्रीय जेल रायपुर में

परिरुद्ध दंडित बंदी परदेशी राम पिता पुसऊराम सोनकर के प्रकरण में माननीय न्यायालय के पीठासीन न्यायाधीश द्वारा अनुशंसा नहीं किये जाने के कारण प्रकरण अमान्य किया गया है।

उपरोक्तानुसार जानकारी सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है।

17. The impugned order simply states that since the presiding Judge has not recommended for grant of remission to the petitioner, therefore, remission cannot be granted. There is no independent consideration and no reason has been assigned for not considering the petitioner's application for remission.
18. At this stage, it would be appropriate to notice the argument of learned Advocate General that the order under Section 432(1) of the CrPC being discretionary, the order passed by the Government rejecting the application of a prisoner undergoing the sentence of imprisonment for life for premature release, is an executive order and even otherwise, reason has been assigned in the impugned order.
19. In the matter of **Damji v. State of Gujarat and others**⁸ the application under Section 432(1) of the CrPC was rejected without giving reasons, that was challenged and ultimately, their Lordships of the Supreme Court allowed the writ petition and directed the State Government to reconsider and dispose of the application made by the petitioner therein for premature release which states as under: -

“1. By an order dated January 3, 1985, the State Government of Maharashtra, in exercise of the powers conferred by sub-section (1) of Section 432 of the Code of Criminal Procedure, 1973, purported to remit that portion of the sentence of imprisonment, which is in excess of 20

years of total imprisonment, including all remissions, is the case of the petitioner undergoing imprisonment for life on his conviction under Section 302 of the Indian Penal Code, 1860, subject to his good behaviour and conduct in prison. The impugned order declining to give to the petitioner the benefit of premature release does not disclose any reasons. Presumably, the government was misled that the case of the petitioner is governed by Section 433-A of the Code. According to the decision of this Court in *Maru Ram v. Union of India*⁹, the provision contained in Section 433-A of the Code is not applicable in those cases where the conviction was recorded prior to December 18, 1978 i.e. the date on which Section 433-A was introduced by the Code of Criminal Procedure (Amendment) Act, 1976.

2. We must accordingly allow the petition, and issue a direction to the State Government to reconsider and dispose of the application made by the petitioner for premature release within a period of four weeks from today. It shall be open to the government to come to its own decision as to whether the benefit of premature release should be extended to the petitioner or not, having regard to all the attendant facts and circumstances of the case.”

20. In view of the aforesaid discussion, it is quite vivid that the State Government was obliged to give a brief reason in order to demonstrate that the case of the petitioner has been considered.

21. In V. Sriharan alias Murugan's case (supra), in paragraph 259, their Lordships of the Supreme Court held that the convicted person has a right to invoke the provision for remission, but he cannot claim such benefit as a matter of right and further held that the competent authority has to consider his application in a fair and reasonable manner.

Paragraphs 259 and 260 of the report read as follows: -

“259. The convict undergoing the life imprisonment can always apply to the authority concerned for obtaining remission either under Articles 72 or 161 of the

Constitution or under Section 432 CrPC and the authority would be obliged to consider the same reasonably. This was settled in *Godse*¹⁰ which view has since then been followed consistently in *State of Haryana v. Mahender Singh*¹¹, *State of Haryana v. Jagdish*¹², *Sangeet v. State of Haryana*¹³ and *Laxman Naskar v. Union of India*¹⁴. The right to apply and invoke the powers under these provisions does not mean that he can claim such benefit as a matter of right based on any arithmetical calculation as ruled in *Godse*⁸. All that he can claim is a right that his case be considered. The decision whether remissions be granted or not is entirely left to the discretion of the authorities concerned, which discretion ought to be exercised in a manner known to law. The convict only has right to apply to competent authority and have his case considered in a fair and reasonable manner.

Our answer to sub-question (a) of Question in paragraph 52.1 of the Referral Order¹⁵ is:

(a) Whether imprisonment for life in terms of Section 53 read with Section 45 of the Indian Penal Code meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission?

Answer

260. The sentence of life imprisonment means imprisonment for the rest of the life or the remainder of the life of the convict. Such convict can always apply for obtaining remission either under Articles 72 or 161 of the Constitution or under Section 432 CrPC and the authority would be obliged to consider the same reasonably.

Re: Sub-question (b) of Question 1 in paragraph 52.1 of the Referral Order³

(b) Whether as per the principles enunciated in paras 91 to 93 of *Swamy Shraddananda (2)*¹⁶, a special category of

10 Gopal Vinayak Godse v. State of Maharashtra, AIR 1961 SC 600 : (1961) 1 Cri LJ 736 : (1961) 3 SCR 440

11 (2007) 13 SCC 606 : (2009) 1 SCC (Cri) 221

12 (2010) 4 SCC 216 : (2010) 2 SCC (Cri) 806

13 (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611

14 (2000) 2 SCC 595 : 2000 SCC (Cri) 509

15 Union of India v. V. Sriharan, (2014) 11 SCC 1 : (2014) 3 SCC (Cri) 1

16 Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113

sentence may be made for the very few cases where the death penalty might be substituted by the punishment for imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?"

22. Reverting to the facts of the present case in the light of the aforesaid pronouncement, it is quite vivid that the impugned order deserves to be set-aside on two grounds, *firstly*, the application for remission has not been considered by the State Government and order has not been passed by the State Government and *secondly*, no reason has been assigned, only the incompetent authority has agreed with the recommendation of the learned presiding Judge who had convicted the petitioner herein and rejected the application filed under Section 432(1) of the CrPC unreasonably, which is contrary to the well settled law noticed herein-above in this regard.

23. Accordingly, the order impugned is set-aside and the matter is remitted to the State Government to reconsider and dispose of the application made by the petitioner for his premature release after calling the opinion of the Presiding Officer of the convicting court, within a period of four weeks from today. It shall be open to the State Government to reach to its own conclusion as to whether the benefit of premature release should be extended to the petitioner or not having regard to all the facts and circumstances of the case. The State Government may also take into consideration the decision rendered by this Court in the matter of Amarnath Pandey v. State of Chhattisgarh and others¹⁷.

24. It is made clear that this Court has not expressed any opinion on the

merits of the matter.

25. With the aforesaid observation, the writ petition stands finally disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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