

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP - 2025 - 2019
Date of Decision:- 12.05.2020

Raj Kumar @ Bittu

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Vijay K. Jindal, Advocate, counsel for the petitioner.
Ms. Ashok Singh Choudhry, Addl. A.G., Haryana.

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GURVINDER SINGH GILL, J.

1. The petitioner, who is undergoing life imprisonment, has approached this Court seeking his 'premature' release, in accordance with policy dated 12.4.2002 (Annexure P-3), framed by State of Haryana.
2. The petitioner was convicted vide judgment dated 25.3.2010 (Annexure P-1) passed by learned Additional Sessions Judge, Gurgaon for offences punishable under Sections 148, 285, 323, 506 and 302 IPC and under section 25 of Arms Act, for having committed murder of Amar Singh and Parvesh. The petitioner challenged his conviction by way of filing Criminal Appeal i.e. CRA-D-498-DB of 2010 titled Satbir Singh and others vs. State of Haryana in this Court, which was partly accepted vide judgement dated 28.8.2012 inasmuch as conviction in respect of murder of one of the victims

namely Amar Singh was set aside while conviction qua murder of Parvesh was upheld. The sentences imposed for various offences, which were ordered to run concurrently, are as follows:

Conviction under section	Sentence Imposed
302 IPC	R.I. for life and fine of Rs.25,000
285 IPC	R.I. for three months and fine of Rs.200
323 IPC	R.I. for three months and fine of Rs.200
506 IPC	R.I. for one year and fine of Rs.500
25 of Arms Act	R.I. for three years and fine of Rs.1,000

3. The petitioner, admittedly, as on 29.10.2019, has undergone the following sentence:

		Years	Months	Days
Under trial	:	03	06	04
Post conviction	:	09	07	01

Total	:	13	01	05

Remissions	:	04	04	21
Total including Remissions	:	17	05	26
Less Parole period/ overstay	:	01	06	29

TOTAL SENTENCE	:	15	10	27

4. The learned counsel for the petitioner has submitted that the authorities are not processing his case for his pre-mature release on the premises that his case is to be considered in light of policy dated 13.8.2008 as per which he is ineligible whereas his case is to be considered in accordance with policy dated 12.4.2002(Annexure P-3) as per which his case is fully covered. The

learned counsel has submitted that since policy dated 12.4.2002 (Annexure P-3) was issued in exercise of power of Governor under Article 161 of Constitution of India therefore the subsequent policy of 2008 issued by the State Government in exercise of its powers under 432 and 433 Cr.P.C. cannot have any precedence over former policy which flows from powers conferred by Constitution of India.

5. The learned counsel in order to hammer forth his aforesaid submission places reliance upon a judgement of Hon'ble Supreme Court reported as 2010(4) RCR(Crl) 782 Samjuben Gordhanbhai Koli vs. State of Gujrat, wherein it has been held that section 433-A Cr.P.C. can restrict powers under section 432 or 433 Cr.P.C. but it cannot restrict the powers of the President under Article 72 or of the Governor under Article 161 of Constitution of India, being constitutional powers.
6. The learned counsel has further submitted that, in any case, it is the policy which is more liberal which has to be looked into while considering the case of remission and as such the policy of 2002 being more liberal would be applicable. The learned counsel, in order to hammer forth his aforesaid submission, presses into service a judgement of Hon'ble Supreme Court reported as 2019(2) RCR(Crl) 583 Venkat vs. State of Maharashtra.
7. Opposing the petition, the learned State counsel has submitted that in terms of the ratio of judgement of Hon'ble Supreme Court rendered in State of Haryana vs. Jagdish 2010(2) RCR(Criminal) 464, it is the policy applicable at the time of conviction of the convict which would be applicable for the purpose of considering his case for 'pre-mature' release and since in the present case the policy of the year 2008 was in existence when the petitioner

was convicted in the year 2010, therefore the case of premature release of the petitioner has to be considered as per the said policy and according to which the petitioner would become eligible for consideration after he has undergone an actual sentence of 14 years and a total of 20 years of sentence including remissions and which is also in tune with section 433A of Cr.P.C.

8. The learned State counsel has further submitted that the State, in any case, is competent to lay down certain conditions governing the 'pre-mature' release of convicts even if the matter has been dealt with on an earlier occasion in terms of Article 161 of Constitution of India. The learned counsel in this regard relies upon a judgement of Constitution bench of Supreme Court rendered in a judgement reported as 2017(7)SCC 1 Union of India vs. V. Sriharan.
9. Before proceeding to consider the rival submissions addressed before this Court, it is apposite to refer to the relevant provisions of Article 71 and 161 of Constitution of India and also to the provision of section 432, 433A and 435 of Cr.P.C. Article 72 of the Constitution of India provides as under :-

72. Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases. -

- (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence-
 - (a) in all cases where the punishment or sentence is by a Court Martial;
 - (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
 - (c) in all cases where the sentence is a sentence of death.

- (2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.
- (3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

10. Article 161 of the Constitution of India provides as under :-

161. Powers of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases. -

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends."

11. Section 432 to 435 Cr.P.C. read as follows:

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.

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, or fine.

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.

434. Concurrent power of Central Government in case of death sentences. - The powers conferred by Sections 432 and 433 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government.

435. State Government to act after consultation with Central Government in certain cases. -

- (1) The powers conferred by Sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence -
 - (a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or
 - (b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or
 - (c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, shall not be exercised by the State Government except after consultation with the Central Government.
- (2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends.

12. A perusal of the above referred provisions pertaining to grant of remissions to convicts would show that the said power is vested with the President of

India and the Governor of a State by virtue of Article 72 and 161 of Constitution of India whereas a similar power is also vested with the appropriate authority of the State under provisions of Section 432 and 433 Cr.PC. Although certain limitations have been prescribed by the subsequently added provisions of 433A Cr.P.C., but certainly the said restrictions cannot be made applicable to the powers of the President and the Governor which are drawn from the Constitution of India. A perusal of Samjuben's case(supra), cited by learned counsel for the petitioner would show that a very short point was involved therein as regards the effect of section 433A Cr.PC on the powers of the President of India under article 72 and the Governor under Article 161 of Constitution of India. Hon'ble Supreme Court in its very short and precise judgement held as follows:

“8. However, the appellant will be free to seek appropriate redress from the appropriate Government by making a representation praying for pardon or remission of sentence in terms of Section 432 of the Code of Criminal Procedure or under Articles 72 or 161 of the Constitution of India. We make it clear that the power of the President of India under Article 72 or of the Governor under Article 161, being a constitutional power cannot be under the restriction imposed by Section 433A Criminal Procedure Code. Section 433A Criminal Procedure Code can restrict the power under Section 432 Criminal Procedure Code or Section 433 Criminal Procedure Code but it cannot restrict the constitutional powers under Article 72 or 161 of the Constitution, just as no limitation statute can restrict the constitutional power of the High Court under Article 226 of the Constitution. This is because the Constitution is a higher law and the statute is subordinate to it”

13. There certainly can be no dispute as regards the ratio of the aforesaid judgement to the effect that section 433A Cr.P.C. cannot restrict the powers

of the President or of the Governor in the matters of clemency as provided under Constitution of India. The said issue has also been dealt with in detail by a Constitution Bench of Supreme Court in Maru Ram Vs. Union of India 1981(1)SCC 107, wherein while upholding the vires of section 433-A of Cr.P.C., it was held as follows:

“60. Even so, we must remember the constitutional status of Articles 72 and 161 and it is common ground that Section 433-A does not and cannot affect even a wee-bit the pardon power of the Governor or the President. The necessary sequel to this logic is that notwithstanding Section 433-A the President and the Governor continue to exercise the power of commutation and release under the aforesaid Articles.”

14. It thus, follows that while section 433A Cr.P.C. does impose certain restrictions in the matter of grant of remissions to convicts who have been imposed life imprisonment in respect of offences where death is also one of the punishment provided but the said provisions cannot be treated as fetters on the constitutional powers of the President or the Governor in the matter of grant of pardons or clemency.
15. At this stage the judgement referred to by the learned State counsel also deserves to be discussed. The said judgement i.e. Union of India vs. V. Sriharan @ Murugan and others(supra) came to be delivered in respect of the convicts sentenced in the famous Rajiv Gandhi's assassination case, where it was held that the exercise of powers under section 432 and 433 Cr.P.C. will be available to appropriate government even if such consideration was made earlier under Article 72 by the President or under Article 161 of Constitution of India by the Governor. The said judgement

was delivered in a completely different set of circumstances which may be briefly stated chronologically in the following manner:

- 21.5.1991 : Sh. Rajiv Gandhi, former Prime Minister of India was assassinated in Tamil Nadu. Along with him 15 more persons got killed while another 43 were injured. FIR was registered on the same day.
- 23.5.1991 : Government of India issued a notification extending jurisdiction of Delhi Special Police Establishment Act to the State of Tamil Nadu for the purpose of investigation of the aforesaid case, pursuant to consent for the same having been accorded by Governor of Tamil Nadu on 22.05.1991.
- 28.1.1998 : The trial Court held 26 persons who faced trial guilty of all the charges framed against them for various offences under Indian Penal Code, Terrorist and Disruptive Activities Act 1987, Explosive Substances Act 1908, Arms Act 1959, Passport Act 1967, Foreigners Act 1946 and Indian Wireless Telegraphy Act 1933 and sentenced them to undergo various punishments including punishment of death. The designated Court referred the case to Hon'ble Supreme Court for confirmation of sentence of death in respect of all the convicts.
- 11.5.1999 : The Supreme Court, in its judgement dated 11.5.1999, while deciding the aforesaid reference and also the appeals filed by the accused, set aside the conviction of all the accused for offences under section 3(3) and section 3(4) of TADA while conviction for offences under Explosive Substances Act 1908, Arms Act 1959, Passport Act 1967, Foreigners Act 1946 and Indian Wireless Telegraphy Act 1933 was maintained.

The conviction for the offence under Section 120-B read with Section 302 Indian Penal Code as against A-1 (Nalini), A-2 (Santhan @ Raviraj), A-3 (Murugan @ Thas), A-9 (Robert Payas), A-10 (Jayakumar), A-16 (Ravichandran @ Ravi) and A-18 (Perarivalan @ Arivu) was confirmed while conviction of remaining accused for offences under Section 302 read with Section 120-B was set aside.

Further, out of the aforesaid seven convicts, death sentence was confirmed qua four namely A-1 (Nalini), A-2 (Santhan), A-3 (Murugan) and A-18 (Arivu). However, the death sentence passed on A-9 (Robert), A-10 (Jayakumar) and A-16 (Ravichandran) was altered to imprisonment for life, vide judgement dated 11.5.1999.

- 8.10.1999 : Review petitions filed by the accused and also by CBI against aforesaid judgement were dismissed.
- 27.10.1999 : Mercy petitions filed before Governor of Tamil Nadu by the four convicts sentenced to death were rejected by the Governor.
- 25.11.1999 : High Court set aside the order of rejection passed by Governor and directed reconsideration of mercy petitions.
- 25.4.2000 : Mercy petition was allowed qua one of the convicts namely A-1(Nalini), while the same were rejected qua the remaining three convicts by the Governor.
- 12.8.2011 : The remaining three convicts i.e. A-2, A-3 and A-18 thereafter preferred Mercy Petitions before President of India under Article 72 of Constitution of India which were rejected by the President on 12.8.2011.
- 18.2.2014 : Pursuant to the aforesaid rejection, the convicts filed a writ petition, which was accepted by the Supreme Court and the

death sentence was commuted to imprisonment for life while clarifying that life imprisonment means imprisonment till end of one's life vide judgement dated 18.2.2014.

19.2.2014 : On the very next day i.e. on 19.2.2014, the Government of Tamil Nadu wrote to Secretary, Government of India, Ministry of Home Affairs that the Government of Tamil Nadu proposes to remit the sentence of life imprisonment as imposed upon the aforesaid 3 convicts as they had already served imprisonment for 23 years.

20.2.2014 : Union of India immediately filed miscellaneous petitions seeking to restrain State of Tamil Nadu from releasing the convicts. On the same day, a review petition was also filed by Union of India against judgement dated 18.2.2014.

25.4.2014 : A three Judges Bench, while hearing the aforesaid matter referred the same to Constitution Bench vide referral order dated 25.4.2014 while formulating seven questions requiring adjudication. Question (ii) was formulated as follows:

(ii) Whether the "appropriate Government" is permitted to exercise the power of remission under Section 432/433 of the Code after the parallel power has been exercised by the President under Article 72 or the Governor under Article 161 or by this Court in its Constitutional power under Article 32 as in this case?

16. The Supreme Court answered the aforesaid question in Union of India vs. V. Sriharan @ Murugan and others' case (supra) as follows:

“Ans. The exercise of power under sections 432 and 433 of Code of Criminal Procedure will be available to the Appropriate Government even if such consideration was made earlier and exercised under Article 72 by the President or under Article 161 by the Governor. As far as the application of Article 32 of the

Constitution by this Court is concerned, it is held that the powers under Sections 432 and 433 are to be exercised by the Appropriate Government statutorily and it is not for this Court to exercise the said power and it is always left to be decided by the Appropriate Government.”

17. It is noteworthy that in the cited case there had been a delay of 23 years in execution of the death sentence inasmuch as while the occurrence had taken place in 1991, the conviction was recorded by the trial Court in the year 1998 and it was ultimately in the year 2014 that the death sentence was commuted to imprisonment for life. Section 433A, in any case was not attracted in the cited case, as the convicts had put in much more than an actual sentence of 14 years. Further, even the Governor had rejected the mercy petition for the first time in the year 1999 and then in the year 2000. A period of about 15 years after the previous consideration by itself could bring about material change of circumstances justifying consideration of the matter afresh. There could even be likelihood that by such great efflux of time a convict may lose his potentiality for committing a crime and thus would not pose any threat to peace in an orderly society. One of the Honourable Judges in the cited case, while concurring with the majority view on the aforesaid question pertaining to power of “Appropriate Government” under section 432 and 433 Cr.P.C. after such parallel power had been exercised by President or Governor discussed the issue as follows:

“208. We see no hindrance or prohibition in second or subsequent exercise of power under Section 432/433 Cr.P.C. As stated above, such exercise is in fact contemplated under Section 433A. An exercise of such power may be required and called for depending upon

exigencies and fact situation. A person may be on the death bed and as such the appropriate Government may deem fit to grant remission so that he may breathe his last in the comfort and company of his relations. Situations could be different. It would be difficult to put the matter in any straight jacket or make it subject to any guidelines, as was found in *Kehar Singh*. The aspects whether "the convict had lost his potentiality in committing the crime and whether there was any fruitful purpose of confining the convict any more" as stated in *State of Haryana v. Jagdish* (supra) could possibly yield different assessment after certain period and can never be static. Every case will depend on its individual facts and circumstances. In any case, if the repeated exercise is not for any genuine or bona fide reasons, the matter can be corrected by way of judicial review. Further, in the light of our decision as aforesaid, in any case an approach would be required to be made under Section 432(2) Cr.P.C. to the concerned court which would also result in having an adequate check.

209. Thus the Governor while exercising power under Article 161 on the earlier occasion had considered the cases of only three of the convicts and that too when they were facing death sentence. The cases of other three were not even before the Governor. In the changed scenario namely the death sentence having been commuted to that of the imprisonment for life under the orders of this Court, the approach would not be on the same set of circumstances. Each of the convicts having undergone about 23 years of actual imprisonment, there is definitely change in circumstances. An earlier exercise of power under Article 72 or 161 may certainly have taken into account the gravity of the offence, the effect of such offence on the society in general and the victims in particular, the age, capacity and conduct of the offenders and the possibility of any retribution. Such assessment would naturally have been as on the day it was made. It is possible that with the passage of time the very same assessment could be of a different nature. It will therefore be incorrect and unjust to rule out even an assessment on the subsequent occasion.”

18. The import of the aforesaid judgement is that under substantially changed circumstances, fresh consideration in respect of grant of remission or premature release of a convict may be warranted more particularly in cases of extreme exigencies or where on account of efflux of time the circumstances have absolutely changed. In other words there is no absolute bar in respect of exercise of powers under 432 or 433 of Cr.P.C. despite the fact that such consideration may have been made earlier by the President or the Governor in exercise of powers under Article 72 or Article 161 of Constitution of India. However, the ratio of the said judgement cannot be interpreted to mean that the State Government, under all circumstances, would be justified setting at naught any order passed in exercise of powers under 161 of Constitution of India.
19. As already stated above, though the powers of State Government under Section 432 and 433 Cr.P.C. and of the Governor under Article 161 of Constitution are parallel powers in the matter of grant of remissions and premature release of convicts but powers of Governor are wider and unfettered. Given the fact that the Governor has wider powers, the State Government may have a different set of guidelines for exercise of powers under 432 and 433 Cr.P.C. while there could be another set of guidelines when a case is to be processed for being put up before the Governor for exercise of his powers under Article 161 of Constitution of India. However, in order to ensure that there is no discrimination, an effort should be made to maintain consistency in policies as regards the broad parameters of consideration.

20. Although it has been vehemently argued by learned counsel for the petitioner that since the instructions of the year 2008 issued in exercise of powers under Section 432 and 433 of Cr.P.C., militate against the instructions of the year 2002 issued in terms of Article 161 of Constitution of India, therefore the instructions of the year 2008 cannot operate so as to negate the operation of earlier instructions, but this Court is unable to accept the aforesaid contention inasmuch as the State Government may have its own yardstick for the purpose of '*premature*' release of life convicts and which may be somewhat more stricter than the guidelines which are adopted when the matter is considered by the Governor in exercise of its power under Section 161 of Constitution of India. The existence of stringent or stricter guidelines of the State Government certainly cannot have the effect of curtailing the powers of Governor under Section 161 of Constitution of India. In a given case, despite the fact that the State Government chooses to decline the request of a convict for his '*premature*' release, the Governor or the President can still go ahead to '*prematurely*' release such convict in exercise of their powers under Article 72 or under Article 161 of Constitution of India. The very essence of the scheme vesting with wider powers with the President and Governor in the matter of grant of remissions and '*premature*' release would justify a stricter policy for the State when considering cases of premature release in exercise of powers under section 432 and 433 Cr.P.C.
21. The State of Haryana has issued instructions from time to time in respect of premature release of convicts. On the asking of this Court, the learned State counsel furnished a complete set of relevant instructions and policies issued

by State Government in respect of premature release of convicts. It would be appropriate to briefly notice the text and the context of the said instructions, the relevant extracts of which are reproduced below:

Letter dated 23.4.1987

From

The Commissioner & Secretary to Govt.
Haryana, Jails Department, Chandigarh.

To

The Director General of Prisons, Haryana,
SCO No. 809, ManiMajra, UT, Chandigarh.

Memo No. 36/11/86-JJ(2)
Dated, Chandigarh the 2^{3rd} April, 1987.

Subject: Premature release of life convicts-Issuance of consolidated instructions.

Reference your Memorandum no. 1607/GI/G-3/T-19-C dated 28.1.1987 on the subject cited above.

The matter regarding the issuance of consolidated instructions regarding premature release of convicts sentenced to life imprisonment by criminal courts has been under consideration of the State Govt. In **supersession** of all previous instructions on the subject, the following instructions are hereby issued. These consolidated instructions are being issued keeping in view the observations made by the Hon'ble Supreme Court of India in the case of Maru Ram Vs. Union of India (A.I.R. 1980, SC 2147).

- i) The premature release cases of prisoners sentenced to life imprisonment by criminal Courts in Haryana State except those covered under sub para (ii) below will be reviewed by State Govt. on completion of sentence stated against each category as follows :-

a) x x x

b) x x x

c) x x x

- ii) The premature release cases of prisoners sentenced to life imprisonment by criminal Courts in Haryana State covered under section 433-A of Criminal Procedure Code read with the observations of Hon'ble Supreme Court of India made in the case of Maru Ram Vs. Union of India etc. cited above or those life convicts on whom punishment of life imprisonment is imposed on conviction of an offence for which death is one of the punishments provided by law or where the sentence of death imposed on a person had been commuted under section 433 of the Criminal Procedure Code into imprisonment of life on or after 18.12.78 will be considered by the State Govt. after they have undergone 14 years of substantive sentence including undertrial detention period provided the total of such sentence/detention including remissions is not less than 20 years.
3. The review will be carried out by the State Level Committee, which will comprise of the following members:-
- | | | |
|----|---|------------------|
| 1. | Jails Minister | Chairman |
| 2. | Commissioner & Secretary to Government, Jails Deptt. | Member |
| 3. | Legal Remembrancer, Haryana | Member |
| 4. | Director General & Inspector General of Prisons, Haryana. | Member Secretary |
4. The concerned Jail Superintendents shall submit cases of life convicts two months before they complete the sentence mentioned in para 2 above alongwith their comments to the Director General and Inspector General of Prisons, Haryana, who will put up all such cases along with his recommendations, for consideration, before the State Level Committee. The Committee will meet once a month according to the convenience of Jails Minister, Haryana. The Director General and Insepctor General of Prisons, Haryana will forward a copy of the decision taken by the State Level Committee alongwith the roll of each of life convict to the Government within one week, for further action.

Joint Secretary, Home-II for
Commissioner & Secretary to Govt. Haryana,
Jails Department, Department.

* * * * *

Letter dated 1.2.1988

From

The Director General of Prisons, Haryana,
Manimajra, Chandigarh.

To

All the Superintendent of Jails in the State.
No.1190-1209/GI/G-3 Dated 1/2/88Subject: Announcement of Changing Policy of Premature Release of
Life Convict by Chief Minister on 25.1.1988..

....

The Hon'ble Chief Minister had announced on 25.1.88 at Central Jail, Hissar that in future premature release of life convicts will be considered in case of Juveniles and Females after completion of six years sentence and 10 years including remissions. In case of male adult convicts the premature release cases will be considered after 8 ½ years sentence and 14 years including remissions.

2. In the case of crimes of heinous nature like Dacoity with murder etc. the cases will be considered after 14 years of actual imprisonment.
3. You are, therefore, required, to submit eligible cases which have become due for consideration of premature release so that these may be placed before the State Level Premature Release Committee.
4. The Policy for consideration as under :

(i)	x x x
(ii) to (viii)	x x x
5. You are requested to send these cases in next 10 days so that these are processed here in my office and then in the Secretariat.

(M. S. Bawa, I.P.S)
Director General of Prisons, Haryana

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Letter dated 28.9.1988

From

The Financial Commissioner & Secy. to
Government, Haryana, Jails Department.

To

The Director General & Inspector General of Prisons,
Haryana, Chandigarh.

Memo No. 36/11/86-JJ(2)
Dated, Chandigarh the 28th Sept., 1988.

Subject: Premature release of life convicts-Issuance of consolidated
instructions.

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Please refer to Government Memo of even No. dated 24th July, 1987 and
earlier correspondence on the subject noted above.

2. The matter regarding premature release of life convicts has further been
considered by the Government and in supersession of all previous
instructions, the following policy is laid down on the subject :-

xxx xxx xxx xxx xxx

xxx xxx xxx xxx xxx

3. As in the past, the cases for premature release will be reviewed by the State
Level Committee comprising of the following :-

- | | | |
|----|---|----------|
| 1. | Minister for Jails | Chairman |
| 2. | Financial Commissioner
and Secretary to Govt.,
Haryana, Jails Department. | Member |

- | | | |
|----|--|------------------|
| 3. | Legal Remembrancer, Haryana | Member |
| 4. | Inspector General of Prisons, Haryana. | Member Secretary |

4. The Superintendents of the Jail concerned shall submit cases of life convicts 2 months before they complete the sentence mentioned above along with their comments to the Inspector General of Prisons, Haryana, who will put up all such cases along with his recommendations for consideration before the State Level Committee. In the case of category (e) and (f) above, it shall be the responsibility of the Superintendent of the Jail to arrange for medical examination by the Medical Board designated by the Government well in time and forward the medical report to the Inspector General Prisons, who will place the matter before the State Level Committee alongwith his comments for consideration. The Committee will meet once a month according to the convenience of Minister for Jails Haryana. The Insepctor General, Prisons, Haryana will forward a copy of the decisions taken by the State Level Committee alongwith the roll of each of life convict to the Government within one week for further action.
5. *The Policy, as enunciated in paragraphs 2,3 and 4 above will also apply in the case of life convicts falling within the purview of section 433-A of Cr.P.C. However, their premature release will be considered on individual basis. Such cases will be put up to the Governor* through the Minister for Jails and the Chief Minister with full background of the prisoner and recommendations of State Level Committee, alongwith the copy of judgment etc. for order under Article 161 of the Constitution of India.

(emphasis supplied)

Deputy Secretary, Home
for Financial Commissioner & Secretary to
Govt. Haryana, Jails Department, Department.

* * * * *

Letter dated 19.11.1991

(To be substituted letter bearing same number and date)

From

The Financial Commissioner & Secy. to Govt.,
Haryana, Jails Department.

To

The Addl. Director General of Prisons,
Haryana, Manimajra, Chandigarh.

Memo. No.36/135/91-1JJ(II)

Dated Chandigarh, the 19th Nov. 1991.

Subject: Policy regarding premature release of life convicts.

Reference Haryana Government memo. No.36/11/86-JJ(2), dated 28.9.1988 on the subject noted above.

2. The matter regarding premature release of life convicts has further been considered by the Government and **in supersession of all previous instructions**, the following policy is laid down on the subject:-
3. x x x
4. x x x
5. Such cases will be put up to the Governor through the Minister for Jails and the Chief Minister, with full background of the Prisoner, and recommendations of the State Level Committee, alongwith the copy of judgment etc. for orders under Article 161 of the Constitution of India.

Sd/-

Superintendent, Jail & Judicial
for Commissioner & Secretary to Govt.
Haryana, Jails Department.

* * * * *

Letter dated 4.2.1993

From

The Commissioner & Secy. to Govt., Haryana
Jails Department.

To

The Addl. Director General of Prisons,
Haryana, Manimajra, Chandigarh.Memo. No.36/135/91-1JJ(II)
Dated Chandigarh, the 4-2-1993.

Subject: Policy regarding premature release of Life convicts.

Reference Haryana Govt. Memo. of even No. dated 19-11-91 on the subject noted above.

2. In para-2(C) of the instructions issued vide Memo No.36/135/91-1JJ(II), dated 19-11-91, a juvenile life convict and a female life convict are treated at par and are considered for premature release after completion of actual sentence of 8 years including under trial period provided that the total period of such sentence including remission is not less than 10 years. It has been seen that many juveniles are progressively resorting to heinous crimes and there is no need to adopt a more strict and deterrent policy towards them. In view of this, the matter has been reconsidered by the Govt. and it has been decided that the juvenile convicts who commit a heinous crime should be treated at par with adult life convicts and they will be considered for premature, release only after completion of 14 years actual sentence, including undertrial period, and after earning at least 6 years remission. **After incorporating this decision in the instructions dated 19-11-1991, the policy for consideration of cases for premature release of life convicts henceforth will be as under:-**

3. X X X

4. X X X

5. Such cases will be put up to the Governor through the Minister for Jails and the Chief Minister, with full background of the prisoner and recommendations of the State Level Committee, alongwith the copy of judgment etc. for orders under article 161 of the Constitution of India.

Sd/-

Superintendent, Jail & Judicial
for Commissioner & Secretary to Govt.
Haryana, Jails Department.

* * * * *

Letter dated 8.8.2000

(TO BE SUBSTITUTED MEMO BEARING SAME NUMBER AND DATE)

From

The Financial Commissioner & Secretary to
Govt., Haryana, Jails Department,
Chandigarh

To

The Director General of Prison,
Haryana, Chandigarh.

Memo No.36/135/91-1JJ(II)
Dated, Chandigarh the 8th August, 2000.

Sub:- Policy regarding premature release of life convict.

.....

Reference your memo No.10872-GI/G-3, dated 9-5-2000 on the subject
noted above.

2. The Haryana Government has from time to time amended the policy regarding premature release of life convicts. There is a need to incorporate all the amendments made from time to time in the policy at one place. As such, in view of this, it has been decided that the premature release case of life convicts will be considered hereafter as per policy laid down below. **All earlier instructions issued in this regard, shall stand superseded.**
3. x x x
4. x x x
5. Such cases will be put up to the Governor through the Minister for jails and the Chief Minister, Haryana with full background of the prisoner and recommendations of the committee alongwith the copy of judgment etc. for orders under Article 161 of the Constitution of India.

Sd/-
Superintendent, Jail & Judicial
for Commissioner & Secretary to
Govt. Haryana, Jails Department.

* * * * *

Letter dated 12.4.2002

From

The Financial Commissioner & Principal
Secretary to Government, Haryana, Jails Department.

To

The Director General of Prisons,
Haryana, Manimajra, Chandigarh.

Memo No.36/135/91-1JJ (II)
Dated, Chandigarh the 12-4-2002.

Sub:- Policy regarding premature release of life convicts.

.....

Reference your memo No.29896-GI/G-3, dated 29.10.2001 on the subject noted above.

2. In supersession of Haryana Government memo No.36/135/91-1JJ(II), dated 8-8-2000 which was further substituted bearing same number and date on 23-2-2001, the Government have decided to revise the policy regarding premature release of life convicts as follows:-

3. x x x

4. x x x

5. Such cases will be put up to the Governor through the Minister for Jails and the Chief Minister, Haryana with full background of the prisoner and recommendations of the committee alongwith the copy of judgment etc. for orders under article 161 of the Constitution of India.

Sd/-

Under Secretary, Jails & Judicial
for Financial Commissioner & Secretary
to Govt. Haryana, Jails Department.

* * * * *

HARYANA GOVERNMENT.

Jails and Judicial Department.

Notification.

the 13th August, 2008

No.36/135/91-1JJ(II) - In exercise of the powers conferred by Sub-section (1) of Section 432 read with Section 433 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) and in supercession of Haryana Government Memo, the following policy regarding premature release of life convicts namely -

- (a) Convicts whose death sentence
has been commuted
- (b) Convicts who have been imprisoned
for life having committed.... ..
- (c) Convicts who have been imprisoned
for life having committed

8. The Director General of Prisons, Haryana shall put up all such premature release cases to State Level Committee for consideration. ...
... ..

However, the powers of pre-mature release of a life convict in cases covered under section 435 of the Cr.P.C. shall not be exercised by the State Government except after consultation with the Central Government.

FIROZA MEHROTRA

Financial Commissioner and Principal Secretary to
Government Haryana, Jails Department.

* * * * *

22. A perusal of the above referred policies does show that while some guidelines have been framed for exercise of the powers by the State Govt., some are in respect of powers of the Governor. It is however interesting to

note that the initial policy of the year 23.4.1987 does not really reflect as to whether the said policy pertains to exercise of powers of the Government under section 432 and 433 Cr.P.C. or as to the same pertains to the powers of the Governor under Article 161 of Constitution of India. Since parallel powers are vested with the State Government and also with the Governor in respect of premature release of convicts, it was certainly expected that any policy issued by government pertaining to premature release of convicts should be explicit as to whether the same pertains to exercise of powers under 432/433 Cr PC or as to whether the same is in respect of powers to be excised by Governor under Article 161 of Constitution of India.

23. A perusal of the subsequent policy dated 28.09.1988 would tend to show that while the cases of convicts not hit by 433A were to be dealt with by the Government, the other cases hit by 433A were to be put before the Governor. A perusal of the relevant extract from said policy reads as follows:

“5. The Policy, as enunciated in paragraphs 2,3 and 4 above will also apply in the case of life convicts falling within the purview of section 433-A of Cr.P.C. However, their premature release will be considered on individual basis. Such cases will be put up to the Governor through the Minister for Jails and the Chief Minister with full background of the prisoner and recommendations of State Level Committee, alongwith the copy of judgment etc. for order under Article 161 of the Constitution of India.”

24. The subsequent policies issued in supersession of the aforesaid policy i.e. the policy of the year 1991, 1993 and of the year 2002 would however show

that all such cases were required to be put before the Governor. The concluding paragraph of the said instructions which is identical reads as follows:

“Such cases will be put up to the Governor through the Minister for Jails and the Chief Minister, with full background of the Prisoner, and recommendations of the State Level Committee, alongwith the copy of judgment etc. for orders under Article 161 of the Constitution of India.”

25. All the aforesaid policies have been issued under the signatures of some functionary of the Government and it can be presumed that the same have been issued validly in exercise of the executive powers of the State Government and had been duly authenticated in the manner specified in the rules framed by the Government for transaction of business of the Government. The said policies pertain to the procedure to be adopted when the matter is to be laid before the Governor for exercise of powers under Article 161 of Constitution of India.
26. The subsequent policy of the year 2008 is however entirely different inasmuch as the very opening paragraph of the same clearly shows that it has been issued by the Governor. However the same is stated to have been issued in exercise of powers under 432 and 433 Cr PC and is stated to have been issued in supersession of earlier policy dated 12.4.2002 and all other earlier policies. A perusal of the said policy, as has been reproduced above would clearly show that the same strictly pertains to exercise of powers under section 432 and 433 Cr PC and there is no reference to exercise of powers under article 161 of the Constitution of India. However the recital that the same is being issued in supersession of earlier policy dated

12.4.2002 and all other policies is rather leading to an anomalous situation. In case the recital of supersession of earlier policies is to be read in letter and spirit the same would mean that there is no policy in existence pertaining to exercise of powers under article 161 of Constitution of India.

27. Although the vires of the notification of the year 2008 has not been challenged and has not been set aside till date and it still holds good, Hon'ble Supreme Court in Jagdish Singh's case(supra) went on to observe that the notification of the year 2008 cannot be interpreted to mean that the same would override policy dated 4.2.1993 which pertains to exercise of powers under article 161 of Constitution of India. The relevant extract from said judgement reads as follows:

“42. We have already noticed that the earlier policies including the policy dated 04.02.1993 refers to the exercise of powers under Article 161 of the Constitution whereas the policy dated 13.08.2008 is in exercise of the powers under Section 432 read with Sections 433 and 433A of Criminal Procedure Code The restriction under Section 433-A is only to the extent of the powers to be exercised in respect of offences as referred to under Section 432 Criminal Procedure Code The notification dated 13.08.2008 is, therefore, under a rule of procedure, which is subordinate to the Constitution. The power exercised under Article 161 of the Constitution is obviously a mandate of the Constitution and, therefore, the policy dated 13.08.2008 cannot override the policy dated 04.02.1993.”

28. It is noteworthy that in Jagdish Singh's case (supra) the policy of 2008 was sought to be implemented retrospectively despite the fact that there was no such specific provision or clause for retrospective operation of the policy of

the year 2008. The policy dated 13.8.2008 had come into existence much after the date of conviction. The petitioner, in the cited case, had been convicted in the year 1999 whereas the State had rejected the case of the petitioner by applying policy of the year 2008 which had come into existence much after his conviction. In fact the specific question posed in the said reference to three Judge's Bench was as to whether it is the policy in existence at the time of conviction which is applicable or the policy in existence at the time of consideration of case of convict for his premature release which would be applicable. It was held by the Supreme Court that it is the policy in existence at the time of conviction which would be applicable and it was held that the policy of the year 1993 would be applicable and not the policy of the year 2008.

29. The learned counsel also relied upon Venkat's case(supra) to contend that it is the policy which is more liberal which has to be followed in the matter of 'premature' release of a convict. A perusal of the cited judgement would show that it was a case where despite the fact that the convict had been convicted in the year 1993 by the trial Court and the convict had already undergone sentence of 18 years, the State Government rejected his case for premature release by applying the guidelines dated 15.3.2010 and also guidelines dated 11.05.1992. Although the High Court upheld the rejection order while observing that since the guidelines which were in the force in the year 1992 had been considered along with the guidelines of the year 2010, but the Supreme Court set aside the rejection order while directing the State Government to consider the matter afresh in accordance with relevant guidelines. The operative portion reads as follows:

“10. From the above, it is clear that the guidelines, which were in force at the time of conviction of the accused or any guidelines which are placed at the time of consideration of case for remission, the policy which is more liberal had to be looked into while considering the case of remission”

30. The petitioner cannot derive any advantage from the above cited judgement inasmuch as the petitioner has been convicted in the year 2010 and by virtue of 2008 instructions, issued by Governor, the earlier instructions stood superseded. No doubt, as held in Jagdish Singh's case, the instructions issued in terms of 432 and 433 Cr.P.C. can not override instructions issued in respect of Article 161 of Constitution of India, but at the same time, an anomalous situation has arisen on account of supersession of all the earlier instructions by the Governor himself. The position in Jagdish Singh's case could be tidied up conveniently because the convict in the said case had been convicted in the year 1999 and thus 2008 notification, in any case could not be made applicable to him. As already stated above, the fact that notification dated 13.8.2008 has not been set aside till date, rather leads to a situation where there would be no specific guidelines for consideration of cases for exercise of powers under Article 161 of Constitution of India especially for those convicted after 13.08.2008. In such a scenario each case would have to be considered individually, depending upon circumstances and exigencies of each case.

31. Coming back to the anomalous situation brought about by the policy of the year 2008 wherein the policy purports to have been issued in exercise of powers under section 432 and 433 Cr.PC only and there is no reference to powers of the Governor under Article 161 of Constitution of India though

the policy purports to have been issued in supercession of earlier policies, the authorities concerned would certainly be in a dilemma as regards the applicability of the policy. The said anomaly is going to show its effect all the more now since it is now in the year 2020 that the cases of the convicts convicted in the year 2008 and onwards would come in the consideration zone as they would have completed about 10 years of actual confinement..

32. While the powers of the Governor under Article 161 of Constitution of India are unfettered but it is expected that there is some uniformity and consistency in exercise of such powers so that it does not smack of any arbitrariness even though the same may be involuntary. In any case, the cases which are now being processed for premature release of life convicts may be processed on individual basis by taking some cue from the existing policies and also from 433A Cr PC, though as already stated above section 433A cannot be construed as any restriction on the powers of the Governor. In Maru Ram's case (supra), one of the Hon'ble Judges comprising the Constitution Bench, while agreeing with the majority view expressed his views as follows:

“100. Doubtless, the President of India under Article 72 and the State Government under Article 161 have absolute and unfettered powers to grant pardon, reprieves, remissions etc. This power can neither be altered, modified or interfered with by any statutory provision. But the fact remains that higher the power, the more cautious would be its exercise. This is particularly so because the present enactment has been passed by the Parliament on being sponsored by the Central Government itself. It is, therefore, manifest that while exercising the powers under the

aforesaid Articles of the Constitution neither the President, who acts on the advice of the Council of Ministers, nor the State Government is likely to overlook the object, spirit and philosophy of Section 433A so as to create a conflict between the legislative intent and the executive power. It cannot be doubted as a proposition of law that where a power is vested in a very high authority, it must be presumed that the said authority would act properly and carefully after an objective consideration of all the aspects of the matter.”

(emphasis supplied)

33. The following position may be discerned from the discussion made in the preceding paragraphs:

- (a) that notification dated 13.8.2008, issued by Governor has not been set aside till date;
- (b) that said notification was issued in respect of exercise of powers under section 432 and 433 Cr.P.C. for 'premature' release of life convicts;
- (c) the said guidelines in policy dated 13.8.2008 can not be made applicable when case of a convict is to be examined for exercise of powers of Governor under Article 161 of Constitution of India;
- (d) the Governor, vide said notification, has superseded policy dated 12.4.2002 and all earlier policies ;
- (e) the persons convicted prior to 13.8.2008 continue to be governed by policies which were in existence prior to the said date. However, it is now that the anomalous situation created

by 13.8.2008 policy would be showing its effects inasmuch as all those convicts who were convicted post 13.8.2008 will now be completing the requisite period so as to seek their 'premature' release;

- (f) the nett result of notification dated 13.8.2008 is that while there are guidelines for examining the case of convict for premature release in exercise of powers by appropriate Government under section 432 and 433 Cr.P.C. i.e. the guidelines laid down in policy dated 13.8.20028 itself but there are virtually no guidelines in existence for the purpose of considering a case for exercise of powers under Article 161 of Constitution of India as all earlier policies stand scrapped by Governor vide notification dated 13.8.2008;
- (g) purpose of policies is mainly to ensure uniformity and consistency in decision making and operational procedures. Policies can be a fine tool for reducing perceptions of arbitrary treatment amongst identically situated persons so as to help keep the system fair and unbiased;
- (h) in any case, the absence of a policy can not possibly restrain the Governor from exercising powers under Article 161 of Constitution of India. However, in the absence of policy guidelines regarding exercise of powers under Article 161 of Constitution of India, each case would be required to be processed individually and meticulously. All the relevant circumstances and exigencies would have to be taken into account during the process of consideration.

34. In order to tidy up the aforesaid state of confusion brought about by the policy of 2008 , the following directions are issued to State of Haryana:

- (i) The State to consider the feasibility of drafting a fresh policy in the matter of exercise of powers for premature release of life convicts particularly in respect of exercise of powers under Article 161 of Constitution of India.
- (ii) Though the normal rule of application of all such orders, policies and legislation is that the same are applicable prospectively unless specifically ordered to have retrospective operation on account of some compelling and justifying reasons but in the present case, keeping in view the fact that it is only now that cases of accused convicted after issuance of policy dated 13.8.2008 would be completing 10 years and more of their actual confinement and would be seeking their premature release, the State may also consider the feasibility of having a policy with retrospective operation provided the same does not lead to discrimination amongst substantial number of identically situated convicts so as to be termed as arbitrary. In any case, it being well settled that a convict can not claim his 'premature' release as of right and that powers of Governor in this regard are purely discretionary, there is no absolute bar in having a set of guidelines with retrospective operation, especially if the circumstances so warrant. The only thing to be ensured is that the purpose sought to be achieved by such exercise does not give the impression of bias or favouritism and is solely in the larger interest of administration. No doubt, there would always be some persons to whom a certain order, direction, guideline or policy does not suit but it is again well settled that general good must prevail over individual

good. Discretionary powers are to be exercised in a systematic manner informed by reason. Discretionary powers can not be sought to be invoked as a largesse to be doled out on whims and fancies. As has been held in Maru Ram's case(supra) - "*higher the power, the more cautious would be its exercise*". Certainly, if such exercise is based on "pick and choose" policy, the same may be called in question, despite being an act in exercise of discretionary powers.

- (iii) Needless to mention, any such policy pertaining to exercise of powers of Governor under Article 161 of Constitution of India would be required to be thrashed threadbare and final decision in the matter would be taken in consultation with the Governor.
- (iv) The aforesaid exercise be completed expeditiously, preferably within three months from today.
- (v) Till any such decision is taken, it shall be open to the Appropriate Government to exercise its powers under section 432 and 433 of Cr.P.C. in terms of policy dated 13.8.2008, but while strictly adhering to the restrictions imposed under 433-A Cr.P.C.
- (vi) The aforesaid directions, under no circumstances, are to be construed as any bar for exercise of powers by the Governor under Article 161 of Constitution of India. Till any decision pertaining to reframing of policy is taken by the Govt., it shall also be open to the Govt. to process the cases of convicts for grant of premature release in exercise of powers under Article 161 of Constitution of India, on individual basis, if some grounds justifying the same exist. Such cases may be

examined on case to case basis in view of circumstances and exigencies of each case.

35. The case of the petitioner be also examined in light of the aforesaid directions. The petition stands disposed of with the aforesaid directions.

12.05.2020
(kamal)

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No