



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 CRIMINAL WRIT PETITION NO.109 OF 2025

Rahul Kaniram Jadhav (C-8959),
Age 50 yrs., Occ. Nil,
R/o at present Central Prison, Harsool,
Dist. Chhatrapati Sambhajinagar.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through it's Secretary,
Home Department, Mantralaya,
Mumbai – 400 032.
- 2 Additional Director General of Police,
Prisons and Correctional Services,
Maharashtra.
- 3 The Superintendent,
Central Prison at Harsool,
Dist. Chhatrapati Sambhajinagar.

... Respondents

...

Mrs. Sharda P. Chate, Advocate for petitioner

Mrs. Priya R. Bharaswadkar, APP for respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 17th MARCH, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Petitioner is a life convict, who had filed present writ petition for following prayer -

“(B) This Hon’ble High Court may be pleased to issue appropriate writ, order or directions to the respondent No.1 to decide the Premature Release Proposal of the petitioner pending before the respondent No.1 from 30.03.2022 within two weeks from today.”

2 The proposal for premature release of petitioner was pending with respondent No.1 since 30.03.2022 and, therefore, by order dated 07.02.2025 we had called upon respondents to file affidavit of higher appropriate authority of respondent No.1 – State to file affidavit on the point (i) what is the procedure that is presently adopted when there would be proposal for premature release of a convict. This should include the stage from which the proposal is taken/submitted and through how many authorities it would reach to respondent No.1. We have taken a note of **State of Haryana and others vs. Jagdish** [(2010) 4 SCC 216]. We had also taken a note that the State is duty bound to collect the opinion of Superintendent of Jail, the convicting Court/Sessions Judge and the opinion of the District Magistrate/Collector. We, therefore, wanted to know that in order to get those opinion when the appropriate authority starts collecting opinion and

whether there is any time frame that is imposed upon itself by the State, wherein the proposal would reach to it and then the decision is taken. The second point on which we wanted respondent No.1 to respond was, as regards present matter as to why the proposal is pending with it since 30.03.2022 and the third point was, whether each and every step that is taken in the entire process is informed to the convict or not. Fourth point was, how many proposals were pending before the State. Fifth point was, how many proposals were pending since more than a year and sixth point is, how the State is planning to clear the pendency. In response to the said order passed by this Court affidavit of Mr. Sugriv Dhapate, the Joint Secretary, Home Department, Mantralaya, Mumbai has been filed, wherein apart from the facts in the present case the questions or points on which the affidavit was called have been answered. We would like to deal with them at a later point of time, however, the learned Advocate appearing for petitioner and learned APP for respondents submitted on the day of hearing i.e. on 17.03.2025 that the proposal for premature release of petitioner has been decided on 10.03.2025. Taking into consideration the said order it was stated that since petitioner has committed murder of his wife and four minor children i.e. in all five murders with an intention to perform second marriage, he was put in category No.9 of Guidelines dated 11.04.2008 and in category No.8 of Guidelines dated 15.03.2010 and, therefore, it has been decided that

he will not be released prematurely, taking into consideration the crime as exceptional and heinous in nature. Petitioner would be at liberty to take appropriate action in respect of said order. Therefore, prayer clause 'B' has now become infructuous.

3 However, taking into consideration the fact that the premature proposal of petitioner was pending since 30.03.2022 and in view of our order dated 07.02.2025 we take this case to set right the procedure adopted by the Government. In order and as per the decisions of Hon'ble Supreme Court along with affidavit respondent No.1 has filed a circular issued by Additional Secretary, Home Department, Government of Maharashtra given on 02.08.2004 and in the affidavit it is stated that the prisoners undergoing imprisonment for life are not insisted to submit applications to Prison Administration for their premature release, instead the concerned officials in the respective prisons, *suo motu*, take the case for premature release after completion of 12 years of actual imprisonment. The Government of Maharashtra by letter dated 16.11.1978, 11.05.1992, 11.04.2008, 13.06.2008 and 15.03.2010 has issued comprehensive guidelines for premature release of prisoners sentence to undergo imprisonment for life. The entire procedure is taken in four stages. The first stage is – Identification of life convicts for premature release, the second stage is – Collection of all

documents required for the proposal of premature release, the third stage is – Organization of meeting of Prison Advisory Board and the fourth stage is – Issuance of final orders by Government. In respect of the first stage it is stated that Superintendent of Central/District Prisons are duty bound to make a list of life convicts after every four months viz. in January, May and September, who have going to complete 12 years of actual imprisonment. The list is also required to be forwarded to District Legal Services Authority, who shall assist the eligible prisoners for the legal assistance, if any, required. Then in the second stage the collection of documents which includes opinions/reports would be taken up, that is, District Magistrate, Superintendent/Commissioner of Police and convicting Court. The opinions would then be put in the third stage before the Prison Advisory Board and all the opinions and reports would then be forwarded to the Government. It is then stated in the affidavit that the entire process has to be completed before the completion of 13 years of actual imprisonment and then the forth stage would come regarding the decision to be taken by the Government before completion of 14 years of actual implementation and issue the final orders.

4 Thus, the affidavit gives an overview of the procedure that is contemplated, however, the question is, as to whether actually the things are happening or not ? In the affidavit it is stated that around 196 proposals are

pending with Government since more than one year, wherein we presume that each of those proposals have cleared the three earlier stages, as aforesaid. To the last point i.e. How the State is planning to clear the pendency, it has been stated that Government is proposing a special drive after the Budget Session of 2025 and would clear the backlog soon. We could get that the State is aware about the guidelines given by Hon'ble Apex Court in **Sonadhar vs. State of Chhattisgarh** in Special Leave to Appeal (Cri.) No.529/2021 decided on 07.07.2021, wherein the above four stages are mentioned. At the cost of repetition, then we would say that when the Government is aware about the decisions of the Supreme Court and their own duty, then there ought not to have such pendency of the proposals for premature release. Recently in *Suo Motu* Writ Petition (Criminal) No.4/2021 with Special Leave Petition (Criminal) No.529 of 2021 [i.e. **Sonadhar vs. State of Chhattisgarh** (supra)] further order has been passed on 18.02.2025, wherein it has been held that -

“State must consider all eligible convicts for premature release under its policy without requiring an application, with reasonable conditions, and provide reasoned orders, ensuring fairness and transparency. Necessity to have exhaustive policy has been harped upon.”

It is also observed -

“The Standard Operating Procedure issued by National Legal Services Authority (NALSA) on the subject of premature release is very exhaustive and needs to be implemented in its true letter and spirit. More often than not, we have noticed that the convicts whose prayer for premature release is rejected are not well informed. Writ petitions are being filed in this court wherein either the facts are not fully stated, or there is suppression of facts. The reason is that most of the convicts are placed in such a position that they find it difficult to give correct information to their advocates. Clause 4.3 of the NALSA SOP is of utmost importance and needs strict implementation.”

Following conclusions have been made -

“21. We, therefore, record the following conclusions :

(a) Where there is a policy of the appropriate Government laying down guidelines for consideration of the grant of premature release under Section 432 of the Code of Criminal Procedure or Section 473 of the BNSS, it is the obligation of the appropriate Government to consider cases of all convicts for grant of premature release as and when they become eligible for consideration in terms of the policy. In such a case, it is not necessary for the convict or his relatives to make a specific application for grant of permanent remission. When the jail manual or any other departmental instruction issued by the appropriate Government contains such policy guidelines, the aforesaid direction will apply;

(b) We direct those States and Union Territories that do not have a policy dealing with the grant of remission in terms of Section 432 of the Code of Criminal Procedure or Section 473 of the BNSS to formulate a policy within two months from today;

(c) Appropriate Government has the power to incorporate suitable conditions in an order granting permanent remission. Consideration of various factors, which are mentioned in the paragraph 13 above by way of illustration, is necessary before finalizing the conditions. The conditions must aim at ensuring that the criminal tendencies, if any, of the convict remain in check and that the convict rehabilitates himself in the society. The conditions should not be so oppressive or stringent that the convict is not able to take advantage of the order granting permanent remission. The conditions cannot be vague and should be capable of being performed;

(d) Order granting or refusing the relief of permanent remission must contain brief reasons. The order containing reasons should be immediately communicated to the convict through the office of the concerned prison. The copies thereof should be forwarded to the Secretaries of the concerned District Legal Services Authorities. It is the duty of the prison authorities to inform the convict that he has the right to challenge the order of rejection of the prayer for the grant of remission.

(e) As held in the case of **Mafabhai Motibhai Sagar**, an order granting permanent remission cannot be withdrawn or cancelled without giving an opportunity of being heard to the convict. An order of cancellation of permanent remission must contain brief reasons;

(f) The District Legal Services Authorities shall endeavour to implement NALSA SOP in its true letter and spirit.

(g) Further, the District Legal Services Authorities shall also monitor implementation of conclusion (a) as recorded above. For this purpose, the District Legal Services Authorities shall maintain the relevant date of the convicts and as and when they become eligible to

a consideration for grant of premature release, they shall do the needful in terms of conclusion (a). The State Legal Services Authorities shall endeavour to create a portal on which the data as aforesaid can be uploaded on real time basis.”

These conclusions should be taken as directions and, therefore, we direct respondent No.1 to implement said directions in *Suo Motu* Writ Petition (Criminal) No.4 of 2021 decided on 18.02.2025 by Hon’ble Supreme Court. As regards the special drive which is proposed in the affidavit-in-reply to be held by respondent No.1 between 02.05.2025 and to clear the said pendency of 196 proposals by the end of June, 2025, we hope that henceforth all the four stages as stated in **Sonadhar** (supra) and *Suo Motu* Writ Petition would be followed by respondent No.1 within the time limits.

5 With these directions, we **dispose of** the writ petition.

6 Copy of this order be given to Maharashtra State Legal Services Authority (MALSA) to consider the guidelines given in paragraph Nos.21(f) and 21(g) of *Suo Motu* Writ Petition (Criminal) No.4 of 2021 decided on 18.02.2025.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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