

**IN THE HIGH COURT OF ANDHRA PRADESH AT
AMARAVATI**

W.P.No.44501 of 2018

Between:

S. Swapna,
D/o.Chalapathi Rao,
D.No.5-57-20, 2nd Line, Kobalpet, Guntur,
Andhra Pradesh 522 004.

... Petitioner

And

\$ 1. State of Andhra Pradesh
Rep. by Home Secretary, A.P Secretariat, Velagapudi,
Guntur, Andhra Pradesh.

2. The Director General of Prisons and
Correctional Institutions for the State of
Andhra Pradesh, D.No.24-28/1-8A, Durgapuram,
Gulabithota, Vijayawada 520 003, Andhra Pradesh.

3. The Superintendent, Central Prison,
Nellore, SPSR Nellore District.

... Respondents

Date of Judgment pronounced on : 09.04.2025

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy: Yes/No
Of the Judgment?

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AMARAVATI**

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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... Respondents

! Counsel for petitioner : Sri D. Suresh Kumar

^Counsel for Respondents : Special G.P in the office of
learned Advocate General

<GIST :

>HEAD NOTE:

? Cases referred:

¹ (2015) 15 SCC 55

² (2010) 4 SCC 216

³ (2019) 16 SCC 584

⁴ AIR 1961 SC 600

⁵ (2012) 13 S.C.R.85

⁶ 13 SCC 767 : (2009) 3 SCC (Cri) 113 : 2008 SCC OnLine SC 1116 at
page 798

⁷ (2023) 8 SCC 257

⁸ (2022) 17 SCC 718

⁹ (2006) 8 SCC 161

APHC010899042018



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3508]

WEDNESDAY, THE NINETH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

WRIT PETITION NO: 44501/2018

Between:

S. Swapna

...PETITIONER

AND

State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.D SURESH KUMAR

Counsel for the Respondent(S):

1.THE ADVOCATE GENERAL (AP)

The Court made the following Order:

(per Hon'ble Sri Justice R. Raghunandan Rao)

On 07.03.1993, two persons, in the course of robbing the passengers of an APSRTC Bus, in Guntur district, had set fire to the bus, resulting in the death of 23 persons, including a six year old girl. These two persons were convicted for offences under Sections 302,

120-B, 392, 307, 341 and 440 of I.P.C in S.C.No.662 of 1993, by the III Additional District & Sessions Judge, Guntur. Upon such conviction, and after hearing both sides, on the question of sentence, the III Additional District & Sessions Judge, Guntur, on 07.09.1995, passed a sentence of death on both the persons. The conviction and sentence were affirmed, in R.T. No. 1 of 1995 and Criminal Appeal No. 620 of 1995, by judgment dated 02.11.1995, by the erstwhile High Court of Judicature of Andhra Pradesh. The appeal filed before the Hon'ble Supreme Court of India, in CrI.A.No.193 of 1996, was dismissed on 30.08.1996. Thereafter, the Hon'ble President of India, in exercise of his powers, under Article 72 of the Constitution of India, commuted the sentence of Death to that of life imprisonment for both these persons. The III Additional District Judge, on 21.05.1998, had issued a consequential warrant of commitment on a sentence of imprisonment for life. The operative part of the warrant reads as follows:

“This is to authorize and require you, the said SUPERINDENT to detain the said prisoner S. Chalapathi Rao (A-2) in your custody in the said jail together with this warrant and carry the aforesaid SENTENCE OF LIFE IMPRISONMENT as ordered by the PRESIDENT OF INDIA into execution according to law.”

2. Both these persons have been in jail since then. The daughter of one of these persons, namely, S. Chalapathi Rao, (hereinafter referred to as the prisoner) has filed this Writ petition seeking release of her father from central prison, Nellore. The case of the petitioner, as set out in the affidavit, is:

- i) The prisoner has been in jail since 1993 and has completed 25 years of actual imprisonment, by the time of filing of the Writ Petition. He was never granted regular parole for one month, as per his eligibility, in the past 25 years. He was granted emergency parole on four occasions. He was released for 48 hours, on escort parole to attend his father's funeral on 29.08.2001. He was granted parole, for 14 days, in 2008 and surrendered in time, on 22.05.2008. Thereafter, he was granted 48 hours escort parole, in 2014, to attend the funeral of his mother. The 4th parole was given for three days, in June 2014, to attend the death ceremony of his mother.
- ii) The prisoner had enrolled himself into various degree courses, which he had completed and has reformed himself. He has taken up painting and has drawn up hundred of pictures while in the prison. On account of his good behavior, the head of the prison, in which he was lodged, is said to have recommended his release to the

government, by communication, dated 25.09.2014. The prisoner is said to have applied on various occasions for regular parole of one or two months, which was rejected eight times, in writing.

iii) Rule 320(A) of the A.P. Prisoner Rules, 1979 stipulates that a sentence of imprisonment for life or for more than 20 years for the purpose of that rule shall be deemed to be a sentence of imprisonment for 20 years. Since the sentence of the prisoner, was commuted to life imprisonment, it would mean that the sentence works itself out, upon completion of imprisonment for 20 years. Accordingly, the prisoner would have to be released.

iv) The jurisprudence of this country, is to treat imprisonment as a method of reformation and corrective justice. In view of the exemplary behavior of the prisoner and the manner in which he was improved himself and has assisted the prison authorities, the release of the prisoner would be appropriate and necessary.

3. The 3rd respondent filed a counter affidavit, on 27.12.2018. Thereafter, a rejoinder was filed by the writ petitioner. After the filing of the rejoinder, the 3rd respondent again filed an additional counter affidavit, on 26.10.2019.

4. The 3rd respondent, in his counter affidavit opposed the plea of the petitioner on various grounds which are set out below:

- a) He is accused in S.C.No.662/1993 on the file of the III Additional Sessions Judge, Guntur. By Judgment, dated 07.09.1995, he was convicted for the offence under Sections 302, 120-B, 392, 307, 341, 440 of I.P.C and was awarded death sentence. The same was confirmed by the Hon'ble High Court and the Supreme Court.
- b) Subsequently, the death sentence was commuted for life imprisonment by the Hon'ble President of India exercising the jurisdiction under Article 72 of the Constitution of India.
- c) The special remission granted to the life convicted prisoners by the Government applies to the Prisoners, who have been convicted for life, but not to the Prisoners sentenced to death sentence, which is later commuted to life sentence.
- d) The Hon'ble Supreme Court's judgment in **Asfaq vs. State of Rajasthan and Others.**,¹ dealt with parole/regular parole in certain cases, but does not relate to grant of special remission to the Prisoners sentenced to death sentence, which is later commuted to life sentence;

¹ (2015) 15 SCC 55

- e) He was awarded with death penalty by the Hon'ble Courts taking into consideration the magnitude of the offence committed by him, and the same was subsequently commuted to life sentence by the Hon'ble President of India, thus his right to life has been protected.
- f) He does not require any reformation within him having committed heinous crime and awarded death penalty.
- g) Rule No.320 (A) of A.P Prison Rules, 1979 applies to the Prisoners sentenced to imprisonment for life, but not to the prisoners who were sentenced to death, which is later commuted to life sentence u/s 433 of Cr.P.C.
- h) Section 55 of I.P.C also applies to life convicts but not to the prisoners who have been sentenced to death, subsequently commuted to life imprisonment.
- i) Though he filed Habeas Corpus W.P.No.25575 of 2009 seeking to set aside his continued detention for uncertain period, but not with reference to G.O.Ms.No.338, Home (Prisons.c) Department, dated 24.07.2009 where under the Government granted special remission to certain Prisoners, but not to the Prisoners sentenced to death sentence, which is

later commuted to life sentence. The Hon'ble High Court had not considered the said aspect in the said writ petition, however directed him to submit a representation to the Government. His representation did not merit consideration by the Government since he did not satisfy any of the requirements operating in the field.

- j) As per Section 432 of Cr.P.C. the Government may grant remission to any of the Prisoner convicted by Court of Law, and as per Section 433(a) of Cr.P.C. the Government may commute a sentence of death, for any other punishment provided by the Indian Penal Code. Here in this case, the Hon'ble Courts have awarded death penalty to the Convicted Prisoner and the Hon'ble President of India commuted it to life imprisonment.
- k) Section 433 (a) of Cr.P.C contemplates commutation of death sentence to any other punishment provided by the Indian Penal Code, but does not provide for grant of special remission, therefore the Convict Prisoner is not entitled for special remission.

- l) The Hon'ble Supreme Court of India in **Union of India vs. V. Sriharan @ Murugan & Ors**² restrained all the State Governments from exercising their powers of remission and commutation of sentence u/s. 432 and 433 of Cr.P.C. 1973 to life convicts. The Hon'ble Supreme Court of India modified the orders dated 09.07.2014 in its judgment dated 23.07.2015 and permitted premature release of life convicts with certain restrictions while clarifying that the Hon'ble President of India and the Hon'ble Governors of the State are not prevented from exercising their powers under Articles 72 and 161 of the Constitution of India. As per the Hon'ble Supreme Court's Order dated 09.07.2014 and modified judgment dated 23.07.2015, it applies only to the life convicts but not to the prisoners who were inflicted with death penalty and later the same was commuted by exercising the power of clemency by the Hon'ble President of India under Article 72 of the Constitution of India.
- m) Since he is a prisoner sentenced to death sentence, which was later commuted to life sentence by the Hon'ble President of India, and as the Hon'ble Supreme Court's order squarely

² (2015) 15 SCC 55

applies to life convicts only, his case for grant of special remission does not merit any consideration and cannot be considered.

5. The rejoinder of the petitioner essentially reiterated her contentions in the writ petition. The 3rd respondent, in the additional counter affidavit sought to contend that the prisoner was not entitled to remission, in terms of G.O.Ms.No.8, on account of the fact that the said G.O. did not permit remission of sentence, to life convicts who have committed offences against girls upto 18 years of age and prisoners sentenced to death, which is later commuted to life sentence. The 3rd respondent contended that since one of the victims was a six year old girl and the sentence of the prisoner was commuted from death to life imprisonment, no remission is permissible. Apart from this, the 3rd respondent also gave certain details of the punishments imposed on the prisoner on account of his behaviour in prison to contend that the conduct of the prisoner has been unsatisfactory. The petitioner filed a reply to this counter affidavit disputing and denying the averments in the additional counter affidavit.

6. Sri D. Suresh Kumar, learned counsel for the petitioner had contended that the prisoner had completed 14 years of incarceration, on 23.02.2007, and 25 years of incarceration by the time of the filing of

the writ petition. He would contend that the prisoner has been in jail for more than 30 years now.

7. The learned counsel for the petitioner, apart from reiterating the contentions raised in the writ petition has addressed arguments on two issues. The right of the prisoner for grant of parole and the right of the prisoner for remission and release from jail.

8. The learned counsel for the petitioner while pressing for grant of parole, had taken this Court through the various requests made for parole and the grounds of rejection on each of the occasions. The record would show that parole was being rejected on the ground of danger to the prisoner because there was a possibility of the relatives of the deceased attacking the prisoner; the inability to ensure proper escort to the prisoner on account of man power shortage in the department and the possibility of the prisoner committing further crime. Sri D. Suresh Kumar would contend that all the aforesaid reasons are incorrect. The learned counsel would point to the fact that the prisoner had been released on parole, on four different occasions when he had visited his village. No untoward incident, of any nature, had occurred during these visits. He would also point to the report of the local police station that there was no such threat. Learned counsel for the petitioner would contend that the prisoner is being treated with bias and not on

an objective basis by applying the relevant provisions for grant of parole. Learned counsel for the petitioner would rely upon the Judgment of the Hon'ble Supreme Court in the case of **Asfaq vs. State of Rajasthan and Others**, to contend that the case of the petitioner would fall squarely within the four corners of this Judgment and that the prisoner is entitled for grant of parole.

9. Sri D. Suresh Kumar, learned counsel would contend that the sentence of life imprisonment would mean imprisonment for 20 years as per Rule No.320(A) of the Andhra Pradesh Prison Rules, 1979. He would contend that the prisoner has already undergone imprisonment of more than 30 years and as such, is entitled to be released. Learned counsel for the petitioner would also argue that even otherwise the prisoner is entitled to remission in terms of G.O.Ms.No.8. Learned counsel for the petitioner would draw the attention of this Court to the following discrepancies in G.O.Ms.No.8;

A) The Hon'ble Supreme Court had passed certain orders dated 09.07.2014 in W.P.(Crl.)No.48 of 2014 in the case of **Union of India vs. V. Sriharan @ Murugan & Ors**. In the course of the orders, the Hon'ble Supreme Court which had initially restrained all State Governments from exercising their power of remission and commutation of sentence under Section 432 and 433 of the Code of

Civil Procedure, in the cases of life convicts, had later permitted premature release of such prisoners, with certain restrictions. The Government of Andhra Pradesh, issued G.O.Ms.No.8, dated 23.01.2018, after noting the orders of the Hon'ble Supreme Court. In paragraph No.5 of the said order, it was noted that case of prisoners who fall under the restrictions placed by the Hon'ble Supreme Court were not taken into consideration by the Government of Andhra Pradesh. However, paragraph No. 6 goes to say that the executive power of the State is being exercised for grant of subject remission, on the occasion of Republic Day, which falls on 26.01.2018, under Article 161 of the Constitution, though they are covered by Section 433-A of the Code of Criminal Procedure. Section 433-A of the Code of Criminal Procedure states that, when a sentence of death imposed on a person has been commuted into one of imprisonment for life, such person shall not be released unless he served at least 14 years of imprisonment. This would mean that even persons whose initial sentence of death had been commuted to life imprisonment would be eligible for remission. Paragraph No.7 set out a onetime exemption for considering special remission. Paragraph No.7(b) stated that all convicted male prisoners, sentenced to imprisonment for life including those falling within Section 433-A of the Cr.P.C. shall be released if

they have undergone an actual sentence of seven years including remand period and total sentence of ten years including remission as on 26.01.2018. Paragraph No.8, stipulated that prisoners falling in the categories mentioned therein would not be eligible to remission.

Category 2 (ix) and xv) are as follows:

ix) Life convicts who have committed offence/offences against girls upto 18 years of age and boys upto 16 years of age.

xv) Prisoners sentenced to death sentence, which is later commuted to life sentence.

10. The learned counsel would contend that while the conditions stipulated in paragraph No.5 and Paragraph No.8 preclude grant of remission to the prisoner, the stipulation in paragraph No.6 and 7 permit release of the prisoner. He would submit that the inherent contradiction between these opposing instructions/directions set out in the G.O., would have to be harmonized by reading down the provisions in favour of the release of the prisoner.

11. Learned counsel for the petitioner relying upon the Judgment of the Hon'ble Supreme Court in the case of **State of Haryana and Ors vs. Jagdish³** and **Hitesh @ Bavko Shivshankar Dave vs. The State of Gujarat** in W.P.(Crl.)No.105/2022, **Mohd.**

³ (2010) 4 SCC 216

Mannan @ Abdul Mannan vs. State of Bihar⁴ and **Gopal Vinayak Godse vs. State of Maharashtra and Ors.**,⁵ would contend that the provisions available for remission of sentence, at the time when original sentence was passed, would be applicable and the restrictions set out in G.O.Ms.No.8 would not be applicable as G.O.Ms.No.8 came to be issued in the year 2018 while the original sentence was passed in 1995. The learned counsel would contend that there were no restrictions in relation to grant of remission in 1995 and as such, remission should have been granted to the prisoner in accordance with the prison rules.

12. The learned Government Pleader, opposed the said contentions. She contended that prisoner was not entitled to any parole on account of apprehensions by the Superintendent of Police as well as the Superintendent of the jail.

13. The learned Government Pleader would contend that irrespective of the fact of whether remission is permissible or not, the prisoner would not be entitled for such remission as the conduct of the prisoner has been unsatisfactory and the prisoner is not entitled to any remission of his sentence. She relies upon the reports and the counter

⁴ (2019) 16 SCC 584

⁵ AIR 1961 SC 600

affidavits filed by the 3rd respondent to state that the prisoner has indulged in various violations of the Prison Rules as well as provoking other prisoners to misbehave and file false complaints against the prison officials.

14. The learned Government Pleader, would contend that the observations of the Hon'ble Supreme Court in the case of **Asfaq vs. State of Rajasthan and Others.**, would not be applicable as none of the conditions set out in the said Judgment are made out. She would further contend that Rule 320 of the Jail Manual, setting out the remission system in place, is not applicable to the prisoner, in view of his conduct. Apart from this, the stipulation in Rule 320-A that stipulates a sentence for life would amount to sentence for 20 years, was in a different context and cannot be used in the present case. The learned Government Pleader would rely upon the Judgment of the Hon'ble Supreme Court in the case of **Sangeet & Anr vs. State of Haryana**⁶, to contend that a sentence for life means imprisonment till the end of life.

15. The learned Government Pleader submits that the contention of the learned counsel for the petitioner that no restrictions, for grant of remission, for life convicts, was available in the year 1995

⁶ (2012) 13 S.C.R.85

when the original order of conviction and sentence had been passed is incorrect. The petitioner has not demonstrated as to what was the remission regime available at that point of time.

Consideration of the Court:

16. The aforesaid submissions give rise to the following issues:

- 1) What is the period of incarceration that a person, sentenced to imprisonment for life, would have to undergo?
- 2) What are the provisions of law under which a prisoner can be granted remission of the period of sentence?
- 3) Whether an application for remission of sentence should be considered according to the policy at the time of such application or whether the application should be considered in terms of the policy at the time when the prisoner was convicted and sentenced, if such policy is more conducive for his release?
- 4) Whether a prisoner can be released on the basis of the remission granted under the Prison Rules?
- 5) What are the conditions for grant of parole and whether the prisoner would be entitled for such parole?

17. Issue No.1:

What is the period of incarceration that a person sentenced to life would have to undergo?

A sentence of imprisonment for life, would ordinarily mean incarceration of the prisoner for the rest of his natural life. However, this view is challenged on the basis of certain provisions of I.P.C. as well as the Andhra Pradesh Prison Rules. The law regulating the

functioning of prisons, is contained in the Prisons Act, 1894. Rule 59 (1) (5), of this Act, empowers the State government to make Rules for:

“Rule 59 (1) (5) : For the award of marks and shortening of sentences”.

Pursuant to this provision, the Government of Andhra Pradesh had issued the A.P. Prisons Rules, 1979. Rule 320 of the said Rules reads as follows:

Rule 320. (a) The sentences of all prisoners sentenced to imprisonment for life or more than 20 years' imprisonment in the aggregate (i.e., for terms exceeding in the aggregate 20 years) shall, for the purpose of this rule, be deemed to be sentences of imprisonment for 20 years.

.....

18. Section 57 of the Indian Penal Code reads as follows:

57. Fractions of terms of punishment.- In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

19. In **Gopal Vinayak Godse vs. State of Maharashtra and Ors.**, the prisoner had been sentenced to various terms of imprisonment and for transportation for life with all sentences directed to run concurrently. The prisoner sought release from jail on the ground that he had been granted remission of about 2,963 days. The Hon'ble Supreme Court went into the question of the period for which the prisoner has to be imprisoned when he is sentenced to

transportation for life. The Hon'ble Supreme Court held that the sentence of transportation for life should be understood to be imprisonment for life. On that basis, the Hon'ble Supreme Court then considered a question of whether a sentence of life imprisonment, without any formal remissions by an appropriate Government can be automatically treated as a sentence for a definite period. The Hon'ble Supreme Court after considering the provisions of the Indian Penal Code, Code of Criminal Procedure and the Prisons Act, had held that, a sentence of transportation for life or imprisonment for life must prima facie be treated as transportation for or imprisonment for the whole of the remaining period of the convicted persons natural life.

20. In **Mohd. Mannan @ Abdul Mannan vs. State of Bihar.**, the question of the length of sentence, in a case where a sentence of death had been commuted to life imprisonment came up for consideration. The Hon'ble Supreme Court held that life imprisonment means imprisonment till the end of life and commuted the death sentence imposed on the petitioner therein, to life imprisonment, till his natural death, without reprieve or remission. The Hon'ble Supreme Court, while holding in this manner, had also considered the provision of Section 57 of the Indian Penal Code

stipulating that 20 years imprisonment was equivalent to imprisonment for life.

21. In **Swamy Shraddananda (2) v. State of Karnataka, (2008)**⁷, the Hon'ble Supreme Court, considering similar rules and the provisions of Section 57 of I.P.C. had held as follows:

75. It is now conclusively settled by a catena of decisions that the punishment of imprisonment for life handed down by the Court means a sentence of imprisonment for the convict for the rest of his life. [See the decisions of this Court in *Gopal Vinayak Godse v. State of Maharashtra* [AIR 1961 SC 600 : (1961) 3 SCR 440] (Constitution Bench), *Dalbir Singh v. State of Punjab* [(1979) 3 SCC 745 : 1979 SCC (Cri) 848] , *Maru Ram v. Union of India* [(1981) 1 SCC 107 : 1981 SCC (Cri) 112] (Constitution Bench), *Naib Singh v. State of Punjab* [(1983) 2 SCC 454 : 1983 SCC (Cri) 536] , *Ashok Kumar v. Union of India* [(1991) 3 SCC 498 : 1991 SCC (Cri) 845] , *Laxman Naskar v. State of W.B.* [(2000) 7 SCC 626 : 2000 SCC (Cri) 1431] , *Zahid Hussein v. State of W.B.* [(2001) 3 SCC 750 : 2001 SCC (Cri) 631] , *Kamalanantha v. State of T.N.* [(2005) 5 SCC 194 : 2005 SCC (Cri) 1121] , *Mohd. Munna v. Union of India* [(2005) 7 SCC 417 : 2005 SCC (Cri) 1688] and *C.A. Pious v. State of Kerala* [(2007) 8 SCC 312 : (2007) 3 SCC (Cri) 544] .]

76. It is equally well settled that Section 57 of the Penal Code does not in any way limit the punishment of imprisonment for life to a term of twenty years. Section 57 is only for calculating fractions of terms of punishment and provides that imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. (See *Gopal Vinayak Godse* [AIR 1961 SC 600 :

⁷ 13 SCC 767 : (2009) 3 SCC (Cri) 113 : 2008 SCC OnLine SC 1116 at page 798

(1961) 3 SCR 440] and *Ashok Kumar* [(1991) 3 SCC 498 : 1991 SCC (Cri) 845] .) The object and purpose of Section 57 will be clear by simply referring to Sections 65, 116, 119, 129 and 511 of the Penal Code.

82. To throw light on the question Mr Hegde submitted a note on remission of sentences of imprisonment as followed in the State of Karnataka, with specific reference to the facts of this case. The note also encloses the relevant extracts from the Karnataka Prison Rules, 1974 and the Karnataka Prison Manual, 1978. Chapter XII of the Karnataka Prison Manual deals with the remission system; Rule 215 defines remission of sentence and provides for three kinds of remissions, namely, ordinary remission, special remission and remission by the State Government. But what is significant for our purpose is the stipulation made in Rule 214(c) which reads as follows:

“The sentence of all prisoners sentenced to imprisonment for life or to more than 20 years' imprisonment in the aggregate to imprisonment for life and imprisonment for exceeding in the aggregate 20 years, shall for these Rules *be deemed to be sentence of imprisonment for 20 years.*”

(emphasis added)

88. It is thus to be seen that both in Karnataka and Bihar remission is granted to life convicts by *deemed* conversion of life imprisonment into a fixed term of 20 years. The deemed conversion of life imprisonment into one for fixed term by executive orders issued by the State Governments apparently flies in the face of a long line of decisions by this Court and we are afraid no provision of law was brought to our notice to sanction such a course. It is thus to be seen that life convicts are granted remission and released from prison on completing the fourteen-year term without any sound legal basis. One can safely assume that the position would be no better in the other

States. This Court can also take judicial notice of the fact that remission is allowed to life convicts in the most mechanical manner without any sociological or psychiatric appraisal of the convict and without any proper assessment as to the effect of the early release of a particular convict on the society. The grant of remission is the rule and remission is denied, one may say, in the rarest of rare cases.

90. Earlier in this judgment it was noted that in the decision in *Shri Bhagwan* [(2001) 6 SCC 296 : 2001 SCC (Cri) 1095] there is a useful discussion on the legality of remission in the case of life convicts. The judgment in *Shri Bhagwan* [(2001) 6 SCC 296 : 2001 SCC (Cri) 1095] , in SCC para 22, refers to and quotes from the earlier decision in *State of M.P. v. Ratan Singh* [(1976) 3 SCC 470 : 1976 SCC (Cri) 428] which in turn quotes a passage from the Constitution Bench decision in *Gopal Vinayak Godse* [AIR 1961 SC 600 : (1961) 3 SCR 440] . It will be profitable to reproduce here the extract from *Ratan Singh* [(1976) 3 SCC 470 : 1976 SCC (Cri) 428] : (SCC pp. 473-74, para 4)

“4. As regards the first point, namely, that the prisoner could be released automatically on the expiry of 20 years under the Punjab Jail Manual or the Rules framed under the Prisons Act, the matter is no longer *res integra* and stands concluded by a decision of this Court in *Gopal Vinayak Godse v. State of Maharashtra* [AIR 1961 SC 600 : (1961) 3 SCR 440] , where the Court, following a decision of the Privy Counsel in *Pandit Kishori Lal v. King Emperor* [(1944-45) 72 IA 1 : AIR 1945 PC 64] observed as follows: (AIR pp. 602-03, paras 4-5)

‘4. ... Under that section a person transported for life or any other terms before the enactment of the said section

would be treated as a person sentenced to rigorous imprisonment for life or for the said term.

5. If so the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the Penal Code, Code of Criminal Procedure or the Prisons Act. ... A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.'

It is, therefore, manifest from the decision of this Court that the Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. This Court further pointed out that the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 401 of the Code of Criminal Procedure and neither Section 57 of the Penal Code nor any Rules or local Acts can stultify the effect of the sentence of life imprisonment given by the court under the Penal Code. In other words, this Court has clearly held that a sentence for life would ensure till the lifetime of the accused as it is not possible to fix a particular period the prisoner's death and remissions given under the Rules could not be regarded as a substitute for a sentence of transportation for life."

(emphasis supplied)

22. In **Sangeet & Anr vs. State of Haryana.**, the Hon'ble Supreme Court again held in the following manner:

74. "Under the circumstances, it appears to us there is a misconception that the prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years or twenty years imprisonment. The prisoner has no such right. 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 Cr.P.C which in turn is subject to the procedural checks in that Section and the substantive check in Section 433-A of the Cr.P.C.

76. In case of a convict undergoing life imprisonment, he will be in custody for an indeterminate period. Therefore, remissions earned by or awarded to such a life convict are only notional. In his case, to reduce the period of incarceration, a specific order under Section 432 of the Cr.P.C. will have to be passed by the appropriate Government. However, the reeducated period cannot be less than 14 years as per Section 433-A of the Cr.P.C".

23. In view of the aforesaid judgments of the Hon'ble Supreme Court, it must be held that a sentence of life means a sentence of incarceration of the prisoner for the remainder of his natural life and neither section 57 of I.P.C. or Rule 320 (a) of the Andhra Pradesh Prison Rules reduce that sentence to 20 years or 14 years of imprisonment.

ISSUE NOS. 2 TO 4:

- 2) What are the provisions of law under which a prisoner can be granted remission of the period of sentence?
- 3) Whether an application for remission of sentence should be considered according to the policy at the time of such application or whether the application should be considered in terms of the policy at the time when the prisoner was convicted and sentenced, if such policy is more conducive for his release?
- 4) Whether a prisoner, sentenced to imprisonment for life, can be released on the basis of the remission granted under the Prison Rules?

24. Article 72 of the Constitution grants power to the President of India, and Article 161 grants power to the Governor of a State, to grant pardons and to suspend, remit or commute sentences of any person convicted for an offence, including cases of sentence of death. Similarly, Section 432 of Cr.P.C grants power to the appropriate government to remit sentences in the following terms:

Section 432 of Cr.P.C: 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 properly.
- 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.

The power of remission, available under section 432 of Cr.P.C. is restricted by Section 433-A, which reads as follows:

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 punishment provided by laws 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.

25. Section 432, of Cr.P.C., grants power to the appropriate government to suspend or remit any part of the sentence, in whole or in part. There are no restrictions, in Section 432, on this power except, the conditionalities that may be attached to an order of remission. However, Section 433-A stipulates that the power of remission under Section 432 can be exercised only when a person, sentenced to imprisonment for life or whose sentence of death has been commuted to a sentence of life, has a served a minimum of 14 years in jail. However, the power, under Articles 72 or 161 of the Constitution of India, is not circumscribed by the restriction placed by Section 433-A of Cr.P.C.

26. Section 59 (5) of the Prisons Act, 1984 grants power to the government to make rules for the award of marks and shortening of

sentences. This power has been exercised while formulating the A.P Pension Rules 1979. Rule 320 of the Prisons Rules stipulates as follows:

Rule 320. (a) The sentences of all prisoners sentenced to imprisonment for life or more than 20 years' imprisonment in the aggregate (i.e., for terms exceeding in the aggregate 20 years) shall, for the purpose of this rule, be deemed to be sentences of imprisonment for 20 years.

(b) the cases of all prisoners, other than those prisoners sentenced to life imprisonment, who have served half of their sentences including remission and have served not less than two and a half year including remission and;

The cases of all the prisoners sentenced to life imprisonment who have served half of their sentences including remission and have served not less than seven years actual sentences shall be placed before the Advisory Board, as constituted, for consideration as to whether their premature release will be recommended. The cases of prisoners imprisoned for failure to give security under Chapter VIII of the Code of Criminal Procedure, 1973, (ct No.2 of 1974) shall not be placed before the Advisory Board.

(c) The cases of all prisoners sentenced to two years in the aggregate of more but not exceeding three years and who have served three-fourths of their sentence INCLUDING REMISSION shall be placed before the Advisory Board; provided that their conduct in jail

has been exemplary. Only such cases of prisoners as are recommended for release by the Advisory Board shall be submitted to Government for Orders. The cases of prisoners imprisoned for failure to give security under Chapter VIII of the Code of Criminal Procedure, 1973 (ct 2 of 1974), shall not be placed before the Advisory Board.

NOTE:- (1) The cases of prisoners convicted by courts martial should also be placed before the Advisory Board for consideration under sub-rules (b) and (c)

(2) Sentences of imprisonment for failure to furnish security should not be taken into account in determining the aggregate sentence for the purpose of sub-rules (b) and (c).

(d) (i) the cases of prisoners coming under sub-rule (a) shall be submitted to Government for orders with the recommendation of the Advisory Board whether it recommends release or not, together with the Judgment of the Court and other connected papers.

If the Government consider that it would be safe to release the prisoners, the unexpired portion of the sentence or sentences shall be remitted under the provision of section 432 Code of Criminal Procedure, 1973, (ct No.2 of 1974), where any such sentence is for an offence against any law relating to a matter to which the executive power of the Central Government extends, a suitable recommendation for remission shall be made to the Central Government.

(ii) If the Government refuse to order the release of a prisoner under the one-half remission rules, they shall direct the resubmission

of his case for their consideration again after such period as they may deem fit.

Provided that prisoners other than life prisoners shall, on the expiry of their sentences, less than periods or remission earned, be released unconditionally without the specific orders of Government.

(e) The Superintendent of the prison in which such prisoners are confined shall maintain a register in which the name of each prisoner shall be entered under a date two months before he would be eligible for consideration of his release after allowing for normal remission and if, for any reason, he ceases to earn remission or earns special remission, the due date shall be altered accordingly.

(f) The cases of old and decrepit prisoners who are certified by the Medical Officer as incapable of doing any real work and would appear to be unable to commit or organize crime after their release should also be placed before the Advisory Board for consideration and recommendation, irrespective of the term of imprisonment already served by them.

NOTE:- The following categories of diseases shall be considered as incurable and decrepit and any prisoner suffering from them, if certified to that effect by the Medical Officer may be recommended for release by the Advisory Board after satisfying itself by verification of the prisoner with the medical certificate:-

1. Advanced bilateral pulmonary tuberculosis.
2. Incurable malignancy

3. Incurable blood diseases.
4. Portal hypertension and ascities
5. Congestive heart failure
6. Hypertension of malignant nature
7. Chronic epilepsy with mental degeneration
8. Advanced leprosy with deformities and trophic ulcers
9. Total blindness of both eyes.
10. Loss of both legs (if this occurs during the period of imprisonment).
11. Loss of both arms (if this occurs during the period of imprisonment).
12. Incurable paraplegia and hemiplegia.
13. Advanced Parkinsonism.
14. Brain tumor
15. Incurable aneurysms.

(g) The cases of all prisoners who satisfy the following conditions shall be placed before the Advisory Board for consideration, namely:-

- (1) That the prisoners are over 65 years of age and have served not less than 2 ½ years of their sentence, including remission; and
- (2) That they are serving sentences for their first and only conviction.

(h) The cases of prisoners in respect of whom appeals, either from the prisoners or from the State are pending and also the cases of the prisoners who are facing trial in other cases, shall not be placed before the Advisory Board for consideration.

27. The petitioner is not relying upon Article 72 or 161 of the Constitution, nor would they be applicable in the present case, as such power is vested in the President of India and the Governor of the state of Andhra Pradesh only. That leaves the power of the Government under Section 432 of Cr.P.C. and the provisions of the Prison Rules and more specifically Rule 320 of the said Rules, to be considered.

28. The power of the State, for exercising such provisions, came up for consideration before the Hon'ble Supreme Court in the case of **State of Haryana and others vs. Jagadish, A.G. Perarivalan vs. The State of Tamilnadu**,⁸ and in the case of **R.P. Ravichandran vs. The State of Tamilnadu**⁹. In **State of Haryana vs. Jagadish**, the Hon'ble Supreme Court considered various facets of power of remission under the provisions of Cr.P.C, the Prison Rules as well as the Constitution of India and held as follows:

28. Nevertheless, we may point out that the power of the sovereign to grant remission is within its exclusive domain and it is for this reason that our Constitution makers went on to incorporate the provisions of Article 72 and Article 161 of the Constitution of India. This responsibility was cast upon the Executive through a Constitutional mandate to ensure that some public purpose may require fulfillment by grant of remission in appropriate cases. This power was never intended to be used or utilised by the Executive as an unbridled power of reprieve. Power of clemency is to be

⁸ (2023) 8 SCC 257

⁹ (2022) 17 SCC 718

exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate. The act of remission of the State does not undo what has been done judicially. The punishment awarded through a judgment is not overruled but the convict gets benefit of a liberalised policy of State pardon. However, the exercise of such power under Article 161 of the Constitution or under Section 433-A Cr. P.C. may have a different flavour in the statutory provisions, as short sentencing policy brings about a mere reduction in the period of imprisonment whereas an act of clemency under Article 161 of the Constitution commutes the sentence itself.

29. It may also be noted that the Hon'ble Supreme Court, in this case, had noticed the earlier Judgment of the Hon'ble Supreme Court in **E. Sudhakar vs. Government of Andhra Pradesh**¹⁰, in the following manner:

29. In *Epuru Sudhakar v. Govt. of A.P.* [(2006) 8 SCC 161 : (2006) 3 SCC (Cri) 438 : AIR 2006 SC 3385] this Court held that reasons had to be indicated while exercising power under Articles 72/161. It was further observed (per Kapadia, J.) in his concurring opinion : (SCC pp. 190-91, paras 62 & 65-67)

“62. Pardons, reprieves and remissions are manifestation of the exercise of prerogative power. These are not acts of grace. They are a part of constitutional scheme. When a pardon is granted, it is the determination of the ultimate authority that public welfare will be better served by inflicting less than what the judgment has fixed.

65. Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. ...

¹⁰ (2006) 8 SCC 161

66. Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets aside the punishment for a crime. ...

67. The power under Article 72 as also under Article 161 of the Constitution is of the widest amplitude and envisages myriad kinds and categories of cases with facts and situations varying from case to case."

30. The Hon'ble Supreme Court, in **Swamy Shraddananda (2)**

v. State of Karnataka, had considered the issue of grant of remission and subsequent release of prisoners , after grant of remission , in the following manner:

80. From the Prisons Acts and the Rules it appears that for good conduct and for doing certain duties, etc. inside the jail the prisoners are given some days' remission on a monthly, quarterly or annual basis. The days of remission so earned by a prisoner are added to the period of his actual imprisonment (including the period undergone as an undertrial) to make up the term of sentence awarded by the Court. This being the position, the first question that arises in mind is how remission can be applied to imprisonment for life. The way in which remission is allowed, it can only apply to a fixed term and life imprisonment, being for the rest of life, is by nature indeterminate.

90. Earlier in this judgment it was noted that in the decision in *Shri Bhagwan* [(2001) 6 SCC 296 : 2001 SCC (Cri) 1095] there is a useful discussion on the legality of remission in the case of life convicts. The judgment in *Shri Bhagwan* [(2001) 6 SCC 296 : 2001 SCC (Cri) 1095] , in SCC para 22, refers to and quotes from the earlier decision in *State of M.P. v. Ratan Singh* [(1976) 3 SCC 470 : 1976 SCC (Cri) 428] which in turn quotes a passage from the Constitution Bench decision in *Gopal Vinayak Godse* [AIR 1961 SC 600 : (1961) 3 SCR 440] . It will be profitable to reproduce here the

extract from *Ratan Singh* [(1976) 3 SCC 470 : 1976 SCC (Cri) 428] : (SCC pp. 473-74, para 4)

“4. As regards the first point, namely, that the prisoner could be released automatically on the expiry of 20 years under the Punjab Jail Manual or the Rules framed under the Prisons Act, the matter is no longer *res integra* and stands concluded by a decision of this Court in *Gopal Vinayak Godse v. State of Maharashtra* [AIR 1961 SC 600 : (1961) 3 SCR 440] , where the Court, following a decision of the Privy Counsel in *Pandit Kishori Lal v. King Emperor* [(1944-45) 72 IA 1 : AIR 1945 PC 64] observed as follows: (AIR pp. 602-03, paras 4-5)

‘4. ... Under that section a person transported for life or any other terms before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term.

5. If so the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the Penal Code, Code of Criminal Procedure or the Prisons Act. ... A sentence of transportation for life or imprisonment for life must *prima facie* be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.’

The Court further observed thus: (AIR pp. 603-04, paras 7-8)

‘7. ... *But the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules*

made under the Act should be construed within the scope of the ambit of the Act. ... Under the said rules the order of an appropriate Government under Section 401, Criminal Procedure Code, are a prerequisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

8. ... The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release.'

It is, therefore, manifest from the decision of this Court that the Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. This Court further pointed out that the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 401 of the Code of Criminal Procedure and neither Section 57 of the Penal Code nor any Rules or local Acts can stultify the effect of the sentence of life imprisonment given by the court under the Penal Code. In other words, this Court has clearly held that a sentence for life would ensure till the lifetime of the accused as it is not possible to fix a particular period the prisoner's death and

remissions given under the Rules could not be regarded as a substitute for a sentence of transportation for life.”

(emphasis supplied)

Further, in para 23, the judgment in *Shri Bhagwan* [(2001) 6 SCC 296 : 2001 SCC (Cri) 1095] observed as follows: (SCC pp. 306-07)

“23. In *Maru Ram v. Union of India* [(1981) 1 SCC 107 : 1981 SCC (Cri) 112] a Constitution Bench of this Court reiterated the aforesaid position and observed that the inevitable conclusion is that since in Section 433-A we deal only with life sentences, *remissions lead nowhere and cannot entitle a prisoner to release*. Further, in *Laxman Naskar v. State of W.B.* [(2000) 7 SCC 626 : 2000 SCC (Cri) 1431] , after referring to the decision of *Gopal Vinayak Godse v. State of Maharashtra* [AIR 1961 SC 600 : (1961) 3 SCR 440] , the Court reiterated that sentence for ‘imprisonment for life’ ordinarily means imprisonment for the whole of the remaining period of the convicted person's natural life; that a convict undergoing such sentence may earn remissions of his part of sentence under the Prison Rules but such remissions in the absence of an order of an appropriate Government remitting the entire balance of his sentence under this section does not entitle the convict to be released automatically before the full life term if served. It was observed that though under the relevant Rules a sentence for imprisonment for life is equated with the definite period of 20 years, there is no indefeasible right of such prisoner to be unconditionally released on the expiry of such particular term, including remissions and that is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose.”

(emphasis supplied)

31. In **Sangeet & Anr vs. State of Haryana**, the Hon'ble Supreme Court after considering the very same provisions, held as follows:

74. "Under the circumstances, it appears to us there is a misconception that the prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years or twenty years imprisonment. The prisoner has no such right. 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 Cr.P.C which in turn is subject to the procedural checks in that Section and the substantive check in Section 433-A of the Cr.P.C.

80. The broad result of our discussion is that a relook is needed at some conclusions that have been taken for granted and we need to continue the development of the law on the basis of experience gained over the years and views expressed in various decisions of this Court. To be more specific, we conclude:

1. This Court has not endorsed the approach of aggravating and mitigating circumstances in *Bachan Singh*. However, this approach has been adopted in several decisions. This needs a fresh look.

In any event, there is little or no uniformity in the application of this approach.

2. Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up for comparing the two. The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review.

3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing.

4. The Constitution Bench of this Court has not encouraged standardization and categorization of crimes and even otherwise it is not possible to standardize and categorize all crimes.

5. The grant of remissions is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced.

6. Remission can be granted under Section 432 of the Cr.P.C. in the case of a definite term of sentence. The power under this Section is available only for granting “additional” remission, that is, for a period over and above the remission granted or awarded to a convict under the Jail Manual or other statutory rules. If the term of sentence is indefinite (as in life imprisonment), the power under Section 432 of the Cr.P.C. can certainly be exercised but not on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.

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

32. Rule 320 of the Prison rules, provides for grant of remission and premature release. Section 432 of Cr.P.C., also provides for grant of remission. Under Rule 320, remission is given, as a reward for good conduct. The said period of remission does not assist, in any manner, to reduce the term of imprisonment, when the sentence of imprisonment is for life. It is only remission, by an order under Section 432 of Cr.P.C., that can reduce the period of incarceration, in a sentence of imprisonment for life. In other words, premature release of a prisoner, suffering a sentence of imprisonment for life, can be done by an order of

remission, under Section 432 of Cr.P.C. The Hon'ble Supreme Court has also cautioned that the remission, if any, granted by the government under section 432, would require to be done, subject to the procedural and substantive safeguards set out in the statute.

33. The contention of the learned Counsel, for the petitioner, is that Rule 320 of Prison Rules provides for remission and premature release, on an autonomous basis. It is contended that for the purposes of calculating remission and premature release, the period of sentence of life is 20 years and the prisoner has already served more than that period and would automatically be entitled to such release. This contention has to be rejected on three grounds. Firstly, the rules framed above do not reduce the term of a sentence of imprisonment for life and cannot be relied upon for such a proposition. Secondly, it is only when remission is given under section 432 of Cr.P.C., that the question of premature release can be taken up. Thirdly, Rule 320, even if it were applicable, does not provide for an automatic release, the rule only requires the advisory board to consider the request of the prisoner to give him premature release. We are fortified in this view, for the first two reasons, by the decision of the Hon'ble Supreme Court In **Sangeet & Anr vs. State of Haryana, which** held as follows:

68. On the basis of the above decisions, the conclusion drawn in *Ashok Kumar* [(1991) 3 SCC 498 : 1991 SCC (Cri) 845] was that remissions have a limited scope. They have no significance till the exercise of power under Section 432 CrPC. It was held, in the following words: (SCC p. 516, para 15)

“15. It will thus be seen from the ratio laid down in the aforesaid two cases that where a person has been sentenced to imprisonment for life the remissions earned by him during his internment in prison under the relevant remission rules have a limited scope and must be confined to the scope and ambit of the said rules and do not acquire significance until the sentence is remitted under Section 432, in which case the remission would be subject to limitation of Section 433-A of the Code, or constitutional power has been exercised under Article 72/161 of the Constitution.”

69. On this issue, it was questioned in *Godse* [AIR 1961 SC 600 : (1961) 1 Cri LJ 736] : (AIR p. 602, para 5)

“5. ... whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by [the] appropriate Government, can be automatically treated as one for a definite period.”

It was observed that no such provision is found in the Penal Code, the Code of Criminal Procedure or the Prisons Act. It was noted that though the Government of India stated before the Judicial Committee of the Privy Council in *Kishori Lal v. King Emperor* [(1944-45) 72 IA 1 : AIR 1945 PC 64] that, having regard to Section 57 IPC, twenty years' imprisonment was equivalent to a sentence of transportation for life, the Judicial Committee did not express its final opinion on that question. However, in *Godse* [AIR 1961 SC 600 : (1961) 1 Cri LJ 736] (AIR p. 603, para 7) the Constitution Bench addressed this in the light of the Bombay Rules governing the remission system and concluded that orders of the appropriate Government under Section

401 of the Criminal Procedure Code [now Section 432 Cr.P.C] are a prerequisite for release. It was held that a prisoner sentenced to transportation for life has no indefeasible right to an unconditional release on the expiry of a particular term including remissions. "The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life."

70. This view was followed in *State of M.P. v. Ratan Singh* [(1976) 3 SCC 470 : 1976 SCC (Cri) 428] in the following words: (SCC p. 474, para 4)

"4. ... It is, therefore, manifest from the decision of this Court [in *Godse* [AIR 1961 SC 600 : (1961) 1 Cri LJ 736]] that the Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. This Court further pointed out that the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 401 of the Code of Criminal Procedure and neither Section 57 of the Penal Code nor any Rules or local Acts can stultify the effect of the sentence of life imprisonment given by the court under the Penal Code. In other words, this Court has clearly held that a sentence for life would enure till the lifetime of the accused as it is not possible to fix a particular period of the prisoner's death and remissions given under the Rules could not be regarded as a substitute [of a lesser sentence] for a sentence of transportation for life. In these circumstances, therefore, it is clear that the High Court was in error in thinking that the respondent was entitled to be released as of right on completing the term of 20 years including the remissions."

71. Under the circumstances, it appears to us that there is a misconception that a prisoner serving a life sentence has an

indefeasible right to release on completion of either fourteen years' or twenty years' imprisonment. The prisoner has no such right. 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 CrPC which in turn is subject to the procedural checks in that section and the substantive check in Section 433-A Cr.P.C.

72. In a sense, therefore, the application of Section 432 Cr.P.C to a convict is limited. A convict serving a definite term of imprisonment is entitled to earn a period of remission or even be awarded a period of remission under a statutory rule framed by the appropriate Government or under the Jail Manual. This period is then offset against the term of punishment given to him. In such an event, if he has undergone the requisite period of incarceration, his release is automatic and Section 432 Cr.P.C will not even come into play. This section will come into play only if the convict is to be given an “additional” period of remission for his release, that is, a period in addition to what he has earned or has been awarded under the Jail Manual or the statutory rules.

73. In the case of a convict undergoing life imprisonment, he will be in custody for an indeterminate period. Therefore, remissions earned by or awarded to such a life convict are only notional. In his case, to reduce the period of incarceration, a specific order under Section 432 CrPC will have to be passed by the appropriate Government. However, the reduced period cannot be less than 14 years as per Section 433-A Cr.P.C.

74. Therefore, Section 432 Cr.P.C has application only in two situations:

- (1) 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.

(2) Where a convict is sentenced to life imprisonment, which is for an indefinite period, subject to procedural and substantive checks.

34. Apart from the above provisions of Law, the petitioner is also relying upon G.O.Ms. No. 8, dated 23.01.2018, to contend that the prisoner is entitled to be released. The provisions of the G.O. would not be available to the prisoner as there is a clear bar against considering the cases of prisoners whose sentence of death has been commuted to a sentence of life and to those prisoners, who have been convicted, for the offences against girls, who have not crossed the age of 18. Even otherwise, it is the case of the petitioner, that there was a more liberalised policy of remission and release, available at the time, when the prisoner was sentenced and the subsequent restrictions brought in, through G.O. Ms. No. 8, cannot be applied to the prisoner. In such circumstances, this court need not go any further in applying G.O.Ms.No. 8 to the present case.

35. In this regard, the issue of the law, that should be applied, would remain. The Hon'ble Supreme Court, considering this issue in **State of Haryana v. Jagdish**, had held as follows:

54. The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the

sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a “lifer” for premature release, he should be given benefit thereof.

36. This principle was followed in **Hitesh @ Bavko Shivshankar Dave vs. The State of Gujarat** in W.P.(Crl.)No.105/2022. The above judgments took the above view on the ground that the prisoner is entitled to expect that the law and conditions of premature release, as available at the time he was sentenced would be available to the prisoner. In the present case, the prisoner was sentenced to death, which precluded any chance of remission or release. The possibility of remission and premature release would arise only when the President of India had commuted the sentence of death to a sentence of life. Therefore, the law, applicable at the time when the sentence of death was commuted to the sentence to life, would be the law which would be applicable to any request of the prisoner for remission and premature release.

ISSUE NO. 5:

What are the conditions for grant of parole and whether the prisoner would be entitled for such parole?

37. The Hon'ble Supreme court in **Asfaq v. State of Rajasthan**, while considering the question of grant of parole had set out in the policy and guidelines for grant of parole in the following manner:

18. The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

19. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become a threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the

aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that they aspire to live as law-abiding citizens. Thus, parole programme should be used as a tool to shape such adjustments.

21. To sum up, in introducing penal reforms, the State that runs the administration on behalf of the society and for the benefit of the society at large cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a court) of having perpetrated a criminal act. One of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It is, therefore, understandable that while meting out humane treatment to the convicts, care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough, the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large for the time being under the furlough leave granted to him by way of a measure of penal reform.

38. The petitioner claims that the prisoner is entitled to parole for setting his family affairs in order and to reintegrate with society. The petitioner also contends that the reasons, being offered by the respondents, to deny parole to the prisoner are not correct and the respondent authorities are acting with bias, against the prisoner.

39. The respondents contend that there is a danger of the family members of the victims trying to wreak vengeance against the prisoner if he is allowed to go home on parole. However, there were no such incidents when the prisoner was earlier released on parole. The other reason given by the respondent authorities is that of shortage of staff. It is not as if no other prisoner is being released on parole, despite the shortage of staff. The authorities would have to reconsider this issue. Though, the authorities contend that the prisoner has been egging on other prisoners to file complaints against jail staff, there are no allegations of any violence perpetrated by the prisoner.

40. In the circumstances, the respondent authorities need to consider the requests, of the prisoner, for release on parole, on par with that of all other, similarly situated, prisoners and pass necessary orders, keeping in view the above observations.

41. The above discussion can be summarised in the following manner:

A) A sentence of imprisonment for life shall mean that the prisoner shall be incarcerated for the remainder of his natural life. The provisions of Section 57 of I.P.C. and Rule 320 of the Andhra Pradesh Rules, 1979, do not, in any manner restrict a sentence of imprisonment for life to a sentence of 20 years.

B) Any remission obtained, under the prison rules or otherwise, would not reduce the sentence of Life imprisonment nor create a right to be released, before the end of the natural life of the prisoner.

C) A person, sentenced to imprisonment for life, can be released, if he or she is granted remission, under Section 432 of Cr.P.C.

D) G.O. Ms. No. 8, dated 23.01.2018, had at best, provided an opportunity, for prisoners, to be released prematurely, on good behaviour. The policy that can be extracted from G.O.Ms.No. 8 is that while remission and premature release would be considered even for persons sentenced to life imprisonment, the same would not be available to persons involved in more heinous cases, such as offences against girls who were less than 16 years of age or persons whose death sentence has been commuted to imprisonment for life. This distinction drawn by the State cannot be faulted, in this regard. The apparent contradictions sought to be raised by the learned counsel can be reconciled, by taking the above view.

E) For the purpose of obtaining remission under Section 432 of Cr.P.C., the prisoner would have to move an application, for remission and premature release..

F) The said application would have to be considered, in accordance with the procedure and terms of Section 432 of Cr.P.C. and by applying the policy in vogue, when the sentence of death passed on the prisoner was commuted to life imprisonment.

G) Under Section 432 of Cr.P.C., the Government would also be entitled to consider the question of whether the prisoner has reformed himself and whether the behaviour of the prisoner has shown that he can be released. In the present case, the petitioner contends that the behaviour of the prisoner has been exemplary, while the respondents claim otherwise. These are questions of fact which can be gone into by the authorities, as and when an application, under Section 432 of Cr.P.C. is filed, before the authorities.

H) Any application for parole, submitted by the prisoner, shall be considered in the light of the guidelines of the State read with the observations of the Hon'ble Supreme Court in **Asfaq v. State of Rajasthan**.

42. In view of the aforesaid discussion, this writ petition is disposed of by leaving it open to the prisoner, to seek remission and early release by applying under Section 432 of Cr.P.C. and the respondents shall consider the said application, in accordance with law. Needless to say, the application will be considered according to the policy subsisting, when the sentence of death, passed against the prisoner, had been commuted to a sentence of imprisonment for life, shall be applied. Any application, for parole, submitted by the prisoner shall be considered in the light of the above observations.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

MAHESWARA RAO KUNCHEAM, J

RJS

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

WRIT PETITION NO.44501 OF 2018

(per Hon'ble Sri Justice R. Raghunandan Rao)

Dt: 09.04.2025

RJS