

ITEM NO.1501

COURT NO.4

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SMWP (CRL.) No(s).4/2021

IN RE POLICY STRATEGY FOR GRANT OF BAIL

(IA No. 28005/2024 - APPROPRIATE ORDERS/DIRECTIONS IA No.203408/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 132106/2022 - EXEMPTION FROM FILING O.T., IA No. 164210/2024 - EXEMPTION FROM FILING O.T., IA No. 203407/2022 - INTERVENTION APPLICATION AND IA No. 27999/2024 - INTERVENTION/IMPLEADMENT)

WITH

SLP(Crl) No. 529/2021 (II-C)

(IA No. 125258/2024 - ANTICIPATORY BAIL, IA No. 125257/2024 - CLARIFICATION/DIRECTION, IA No. 21807/2024 - EXEMPTION FROM FILING O.T., IA No. 279441/2024 - INTERVENTION/IMPLEADMENT, IA No. 119551/2024 - INTERVENTION/IMPLEADMENT, IA No. 173609/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND IA No. 21806/2024 - PERMISSION TO FILE APPLICATION FOR DIRECTION)

Date : 18-02-2025 These matters were called on for pronouncement of judgment today.

By Courts Motion

Ms. Liz Mathew, Sr. Adv. (A.C.)
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Ms. Mallika Agarwal, Adv.
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Mr. Omkar Hemanth, Adv.
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Andaman and
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(Tamil Nadu) Mr. Sabarish Subramanian, AOR

(Uttarakhand High Court) Mr. Mukesh K. Giri, AOR
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(Odisha) Mr. Shovan Mishra, AOR

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Mr. Rameshwar Prasad Goyal, AOR

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Ms. Madhuravalli, Adv.

Mr. Pushpinder Singh, AOR

Ms. Mridula Ray Bharadwaj, AOR

Mr. Amol Chitravanshi, AOR

Hon'ble Mr. Justice Abhay S. Oka pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ujjal Bhuyan. The operative portion of the reportable judgment reads thus:

"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 CrPC 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 CrPC 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*⁴, 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.

22) In terms of what we have held earlier, various issues raised regarding the grant of permanent remission stand answered on the above terms. Other issues will be considered on the dates already fixed.

23) A copy of this judgment shall be forwarded to NALSA which in turn will forward the same to the Legal Service Authorities of the States and Union Territories to enable them to monitor implementation of the directions issued under this Judgment.

24) We must record our appreciation for the assistance rendered by Ms. Liz Mathew, learned senior counsel and Shri Navneet R."

(ASHISH KONDLE)
ASTT. REGISTRAR-cum-PS

(AVGV RAMU)
COURT MASTER (NSH)

[THE SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE]

S U P R E M E C O U R T O F I N D I A
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IN RE POLICY STRATEGY FOR GRANT OF BAIL

(IA No. 28005/2024 - APPROPRIATE ORDERS/DIRECTIONS IA No.203408/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 132106/2022 - EXEMPTION FROM FILING O.T., IA No. 164210/2024 - EXEMPTION FROM FILING O.T., IA No. 203407/2022 - INTERVENTION APPLICATION AND IA No. 27999/2024 - INTERVENTION/IMPLEADMENT)

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Hon'ble Mr. Justice Abhay S. Oka pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ujjal Bhuyan. The operative portion of the reportable judgment reads thus:

"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 CrPC 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;

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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*⁴, 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.

22) In terms of what we have held earlier, various issues raised regarding the grant of permanent remission stand answered on the above terms. Other issues will be considered on the dates already fixed.

23) A copy of this judgment shall be forwarded to NALSA which in turn will forward the same to the Legal Service Authorities of the States and Union Territories to enable them to monitor implementation of the directions issued under this Judgment.

24) We must record our appreciation for the assistance rendered by Ms. Liz Mathew, learned senior counsel and Shri Navneet R."

(ASHISH KONDLE)
ASTT. REGISTRAR-cum-PS

(AVGV RAMU)
COURT MASTER (NSH)

[THE SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE]