

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

SMW (CrI.) No(s).4/2021

IN RE POLICY STRATEGY FOR GRANT OF BAIL

Petitioner(s)

VERSUS

Respondent(s)

[TO BE TAKEN UP AT 2.00 P.M.]

MR. GAURAV AGRAWAL, ADV. IS AMICUS CURIAE --

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

WITH

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

(FOR ADMISSION AND I.R AND MR. NEERAJ KUMAR JAIN, SR. ADVOCATE (A.C.), MR. GAURAV AGRAWAL, ADVOCATE FOR NATIONAL LEGAL SERVICES AUTHORITY, MS. RASHMI NANDAKUMAR, ADVOCATE FOR NALSA, MR. DEVANSH A. MOHTA, ADVOCATE (A.C.), MR. ABHIMANYU TEWARI, ADVOCATE FOR STATE OF ARUNACHAL PRADESH, MR. YOGESH KANNA, ADVOCATE FOR STATE OF TAMIL NADU, MR. CHANCHAL K. GANGULI, Advocate for STATE OF WEST BENGAL, MR. SAMIR ALI KHAN, Advocate for State of Bihar, MR. MILIND KUMAR, ADVOCATE FOR STATE OF RAJASTHAN, MAHFOOZ A NAZKI FOR STATE OF ANDHRA PRADESH, MR. SACHIN PATIL FOR STATE OF MAHARASHTRA, MR. D.L CHIDANANDA FOR STATE OF KARNATAKA, MR. PRADEEP MISRA, ADVOCATE FOR STATE OF UP, MR. M.K MARORIA FOR ANDAMAN AND NICOBAR ISLANDS, MR. HARSHAD V HAMEED FOR STATE OF KERALA, MR. SHO VAN MISHRA, ADVOCATE FOR STATE OF ODISHA, DR. MONIKA GUSAIN, ADVOCATE FOR STATE OF HARYANA AND MR. ABHINAV MUKERJI, ADVOCATE FOR STATE OF HIMACHAL PRADESH, Mr. Aaditya Aniruddha Pande, Advocate for State of Maharashtra, Mr. Pukhrambam Ramesh Kumar, Advocate for State of Manipur, Ms. Swati Ghildiyal, Advocate for State of Gujarat, Mr. Shuvodeep Roy, Advocate for State of Assam, Mr. Pashupatinath Razdan, Advocate for State of MP., Ms. K. ENATOLI SEMA, ADVOCATE FOR STATE OF NAGALAND, Mr. Shirin Khajuria, Advocate for State of Goa, Mr. Sameer Abhyankar, Advocate for the State of Sikkim, Ms. Vishakha, Advocate for High Court of Gujarat and Mr. Bhavana Duhoon, Advocate for State of Goa, Ms. Rooh-e-Hina Dua, Advocate for State of Punjab, Ms. Devina Sehgal, Advocate for State of Telangana)

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

Date : 22-10-2024 These matters were called on for hearing today.

CORAM :

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HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

By Courts Motion

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UPON hearing the counsel the Court made the following
O R D E R

1. Note tendered by Ms. Liz Mathew, learned Senior Advocate who is appointed as Amicus Curiae, on "Conditions which could be incorporated in terms of Section 432(1) of the Code of Criminal Procedure, 1973/Section 473(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023" is taken on record.

2. Today, we are considering the compliance of directions issued by this Court under the order dated 10th September, 2024 to different States. We have perused the Note submitted by the learned Amicus Curiae and the data furnished by the States.

IN RE: STATE OF TAMIL NADU

3. As regards the State of Tamil Nadu, we find that the majority of the cases of eligible convicts have not been considered. It appears that the State Government has not adhered to the timelines prescribed in the order dated 7th July, 2021. There are important issues flagged by the learned Amicus Curiae. In the case of 52 convicts, the prayer for premature release has been rejected. However, it is not clear whether there are reasoned orders passed in respect of these cases.

4. While we deal with the issue of compliance by the State of Tamil Nadu, two or more issues, which are to be considered on the next date, must be flagged. The first issue is that where a State Government has adopted a policy for grant of permanent remission under Section 432(1) of the Code of Criminal Procedure, 1973 (corresponding Section 473(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023), whether it is possible to hold that the State Government is duty bound to consider the cases of all the eligible convicts covered by the policy, even if no specific application is made by the convict for grant of permanent remission. Another issue which needs to be considered is about the requirement of passing a reasoned order while rejecting the prayer made for the grant of permanent remission. We will consider these two issues on the next date.

5. As far as the State of Tamil Nadu is concerned, the learned Amicus Curiae has sought the following directions:

"1. The Government of Tamil Nadu be directed to make a decision on all pending applications and

pass appropriate orders, within the next one month.

2. The State Government be directed that the concerned District Collector, Probation Officer, and other authorities should comply with the timelines laid down in NALSA SOP, and submit their reports within the next one month.

3. The Prisons and Correction Department, Tamil Nadu should re-verify the data given against convicts confined in Central Prison Salem, so that a clear and true picture is obtained.

4. Provide information as to whether a reasoned order was passed in respect of the 52 rejected candidates, and whether the order of such rejection was made available to the prisoner.

5. NALSA be directed to coordinate with the Tamil Nadu Legal Services Authority and ensure that, the convicts who are eligible for premature release and whose cases have not been considered timely or whose applications are rejected; or who are barred for remission under Rule 341(3) of the 1983 Prison Rules - can report their grievance and legal assistance, if required, is made available.

6. Tamil Nadu Legal Services Authority be directed to actively follow up with the concerned authorities to adhere to the timelines prescribed in NALSA SOP read with SOP dated 20.11.2023, referred hereinabove, for the process of premature release of prisoners."

6. We agree with the learned Amicus Curiae and issue directions in terms of the above six suggestions with a modification that a decision on all the pending applications shall be taken within a period of two months from today instead of one month as provided in clause '1' above. In addition, we direct the State of Tamil Nadu to immediately communicate the orders of rejection of the prayers for the grant of permanent remission to the concerned convicts by forwarding them copies of the said orders. The copies of the rejection orders be provided to the concerned District Legal Services Authorities to enable them to render legal aid to those

convicts whose applications have been rejected.

7. Further compliance by the State of Tamil Nadu will be considered after two months.

IN RE: STATE OF MANIPUR

8. Now, coming to the State of Manipur, we are of the view that the directions contained in paragraphs 5 and 6 of the earlier order dated 10th September, 2024 need to be complied with in its true letter and spirit. Therefore, it will be appropriate if the Medical Board is reconstituted by including at least two Psychiatrists and one Psychologist on the Medical Board and the exercise, as directed under paragraphs 5 and 6 of the order dated 10th September, 2024, is done afresh within a period of one month from today.

9. The contention raised by the State of Manipur is that paragraph 20.02 of Chapter XX of the Manipur Prison Manual, 2018, governs the power of remission of sentence by the State Government.

10. After receiving the reports of the Medical Board, appropriate directions in terms of paragraph 6 of our order dated 10th September, 2024 will have to be passed.

11. As far as the State of Manipur is concerned, we issue the following directions:

(i) We direct the Ministry of Home Affairs of the Government of India to furnish the details as sought by the State Government by a letter dated 16th October, 2024 within a period of one month from today;

(ii) The State Government shall forward a copy of this order to the concerned officer of the Ministry of Home Affairs so that the concerned officer can act upon this order; and

(iii) As stated earlier, in terms of what is observed above, the Medical Board shall be reconstituted afresh and a fresh report shall be submitted by the State Government within a period of one month from today.

12. It will be appropriate if the Manipur State Legal Services Authority directs the concerned District Legal Services Authorities to get in touch with the immediate family members/relatives of the five prisoners who are allegedly of unsound mind. The District Legal Services Authorities shall furnish information about these five prisoners to their respective family members/relatives and will impress upon them to support the prisoners. A copy of this order shall be forwarded to the Manipur State Legal Services Authority so that the compliance report is filed on or before 29th November 2024.

13. Considering the fact that the issue is of five prisoners who are stated to be of unsound mind, we will take up the issue of compliance on 3rd December, 2024 at 2:00 p.m.

IN RE: STATE OF WEST BENGAL

14. We extend the time granted to the State of West Bengal in terms of paragraph 12 of our earlier order dated 10th September, 2024 to submit a report. The report shall be submitted positively within a period of one month from today, which shall be considered on 3rd December, 2024.

IN RE: STATE OF ASSAM

15. As regards the State of Assam, the learned Amicus Curiae has sought the following directions:

"1. The State Government be directed to dispose of the pending applications of prisoners as on 22.10.2024 and clear the backlog at levels within the next two months. A compliance affidavit be filed to that effect.

2. Provide information as to whether the order of rejection for premature release was communicated to the concerned prisoner i.e., Ganesh Das (AC/995).

3. The Assam Legal Services Authority be directed to actively follow up with the concerned authorities to adhere to the timelines prescribed in NALSA SOP for the process of premature release of prisoners.

4. NALSA be directed to coordinate with the Assam Legal Services Authority and ensure that the convicts who are eligible for premature release and whose cases have not been considered timely or whose applications are rejected can report their grievance and legal assistance, if required, is made available."

16. We issue directions in terms of the above four clauses. Compliance shall be reported before the end of December 2024.

IN RE: STATE OF ARUNACHAL PRADESH

17. As far as the State of Arunachal Pradesh is concerned, we direct the State Government to communicate the order of rejection to the concerned convict immediately. A copy of the said order shall also be forwarded to the concerned District Legal Services Authority. The District Legal Services Authority will render legal aid to the convict to enable him to challenge the said order.

18. A copy of this order shall be communicated to the Government of Arunachal Pradesh.

IN RE: STATE OF KERALA

19. As far as the State of Kerala is concerned, the following directions have been sought by the learned Amicus Curiae:

"1. The State Government be directed to pass appropriate orders on pending proposals, within the next two months.

2. The relevant Acts, rules, regulations and policies should be uploaded on the Official Website maintained by the Kerala Prisons and Correctional Services in English also, apart from the regional language.

3. Provide information as to whether a reasoned order was passed in respect of the candidates rejected by the State Government as also the candidates not recommended by the Advisory Board, and whether the order of such rejection/non-recommendation was made available to the prisoner.

4. NALSA be directed to coordinate with the Kerala State Legal Services Authority and ensure that the convicts who are eligible for premature release and whose cases have not been considered timely or whose applications are rejected can report their grievance and legal assistance, if required, is made available.

5. Kerala State Legal Services Authority be directed to actively follow up with the concerned authorities to adhere to the timelines prescribed in NALSA SOP for the process of premature release of prisoners."

20. We issue directions in terms of the aforesaid five clauses. In addition, we direct the State Government to forward the copies of the rejection orders to the concerned convicts. The copies of the rejection orders shall also be forwarded to the concerned District Legal Services Authorities to enable them to render legal aid to such convicts.

21. Compliance shall be reported before the end of December 2024.

IN RE: STATE OF HIMACHAL PRADESH

22. As far as the State of Himachal Pradesh is concerned, the learned Amicus Curiae has sought the following directions:

"1. The concerned Convicting Courts be directed to expedite and furnish legal opinion on all pending cases, within the next one month.

2. The State Government be directed to expedite the collection of documents from the concerned authorities including District Authority, Chief Probation Officer, Welfare Department, etc, and pass appropriate orders on the pending premature release applications, within the next two months.

3. The Himachal Pradesh Legal Services Authority be directed to actively follow up with the concerned authorities to adhere to the timelines prescribed in NALSA SOP for the process of premature release of prisoners.

4. NALSA be directed to coordinate with the Himachal Pradesh Legal Services Authority and ensure that the convicts who are eligible for premature release and whose cases have not been considered timely or whose applications are rejected can report their grievance and seek legal assistance, if necessary."

23. We issue directions in terms of clauses 1 to 4 above with a modification that a decision on the remaining cases shall be taken within a period of two months from today.

24. Compliance shall be reported before the end of December 2024.

IN RE: STATE OF ANDHRA PRADESH

25. As regards the State of Andhra Pradesh, the following directions have been sought by the learned Amicus Curiae:

"1. The State Government be directed to pass

appropriate orders on all applications pending decision before it, within the next one month.

2. NALSA be directed to coordinate with the Andhra Pradesh Legal Services Authority and ensure that the life convicts who are eligible for premature release or who have undergone 14 years of imprisonment and whose cases have not been considered timely or whose applications are rejected can report their grievance and legal assistance, if required, is made available."

26. The learned counsel appearing for the State of Andhra Pradesh, on instructions, states that the State Government is reviewing and revising its policy on the grant of permanent remission. We, therefore, issue direction to the State Government to come out with the revised policy within a maximum period of one month from today. All the pending cases shall be dealt with in accordance with the applicable policy, and an appropriate decision shall be taken thereon within a period of two months from today. We approve the directions sought in terms of clauses 1 and 2 above.

IN RE: STATE OF ODISHA

27. As far as the State of Odisha is concerned, the learned Amicus Curiae has sought the following directions:

"1. The State Government be directed that the premature release applications of life convicts pending for want of required documents including fresh opinion of district authorities, and appropriate orders be passed on such applications within the next two months.

2. Odisha Legal Services Authority be directed to actively follow up with the concerned authorities to adhere to the timelines prescribed in NALSA SOP for the process of premature release of prisoners.

3. NALSA be directed to coordinate with the Odisha Legal Services Authority and ensure that the convicts who are eligible for premature release and whose cases have not been considered timely or whose applications are rejected can report their

grievance and legal assistance, if required, is made available."

28. We must note here that apart from the policy on the grant of permanent remission, the State Government has formulated a Standard Operating Procedure (SOP) on 20th October 2023, which has a provision for uploading the orders of grant/rejection of permanent remission on the website. Perhaps, this practice needs to be replicated by other States. We issue the directions sought by the learned Amicus Curiae in terms of clauses 1 to 3 above.

29. Compliance shall be reported before the end of this year.

IN RE: STATE OF UTTARAKHAND

30. As regards the State of Uttarakhand, following directions have been sought by the learned Amicus Curiae:

"1. The State Government be directed to pass appropriate orders on all pending applications, within the next one month.

2. The State Government to coordinate with the Uttarakhand Legal Services Authority to develop a mechanism to communicate individually to the life convicts, the reasons for rejection of their application for premature release. Further, NALSA be directed to coordinate with the Uttarakhand Legal Services Authority and ensure that such convicts can report their grievance and legal assistance, if required, is made available.

3. The Uttarakhand Legal Services Authority be directed to actively follow up with the concerned authorities to adhere to the timelines prescribed in NALSA SOP for the process of premature release of prisoners."

31. We pass directions in terms of clauses 1 to 3 above with a modification that instead of one month, the State Government shall pass appropriate orders on all the pending applications within a period of two months from today.

32. We direct the State Government to communicate the orders of rejection to all the concerned convicts and the copies thereof be provided to the concerned District Legal Services Authorities to enable them to render legal aid to those convicts whose applications have been rejected.

33. Compliance shall be reported by the end of this year.

IN RE: STATE OF CHHATTISGARH

34. As far as the State of Chhattisgarh is concerned, it is apparent that the State Government will have to review its policy and provide for setting up machinery like the Sentence Review Board. We direct the State Government to complete the exercise of formulating a better policy within a period of two months from today.

35. The learned Amicus Curiae has sought the following directions as regards the State of Chhattisgarh:

"1. The State Government be directed to pass appropriate orders on all pending applications within the next two months.

2. It is suggested that the Sentence Review Board, as proposed by the Prisons Department of the State, be constituted by the State Government, which is expected to reduce the backlog of cases before the State Government and ensure proper consideration of the individual case of each prisoner for premature release.

3. The concerned Courts be requested to expedite the process qua the pending cases and furnish their opinion within the next one month.

4. Provide information as to whether a reasoned order was passed in respect of the 59 rejected candi-

dates, and whether the order of such rejection was made available to the prisoner.

5. The Chhattisgarh Legal Services Authority be directed to actively follow up with the concerned authorities to adhere to the timelines prescribed in NALSA SOP for the process of premature release of prisoners.

6. NALSA be directed to coordinate with the Chhattisgarh Legal Services Authority and ensure that the convicts who are eligible for premature release and whose cases have not been considered timely or whose applications are rejected can report their grievance and legal assistance, if required, is made available."

36. In addition to the other directions issued on the above terms, we direct the State Government to formulate a better policy within a period of two months from today. The pending cases shall be disposed of in terms of the newly formulated policy within a period of three months from today.

37. We also direct the State Government to communicate the orders of rejection of the prayers for premature release to the concerned convicts. The copies of the said orders shall also be forwarded to the concerned District Legal Services Authorities to ensure that legal aid is rendered to such convicts.

38. The initial report shall be submitted by the end of this year.

IN RE: STATE OF GUJARAT

39. As regards the State of Gujarat, the learned Amicus Curiae has sought the following directions:

"1. The State Government be directed to pass appropriate orders on all pending applications for remission, within the next two months.

2. Provide information as to whether a reasoned order was passed in respect of the rejected candi-

dates, and whether the order of such rejection was made available to the prisoner.

3. The Gujarat Legal Services Authority be directed to actively follow up with the concerned authorities to adhere to the timelines prescribed in NALSA SOP for the process of premature release of prisoners.

4. NALSA be directed to coordinate with the Gujarat Legal Services Authority and ensure that the convicts who are eligible for premature release and whose cases have not been considered timely or whose applications are rejected can report their grievance and legal assistance, if required, is made available."

40. We issue directions in terms of clauses 1 to 4 above. The compliance report shall be submitted by the end of this year.

OTHER DIRECTIONS APPLICABLE TO ALL THE STATES AND UNION TERRITORIES

41. At this stage, we issue the following directions, which will apply to all the States:

- (i) The copies of the existing policies governing the grant of permanent remission shall be made available in each and every prison in the States, and the copies thereof with their English translation shall be uploaded on the appropriate website of the Government. A direction is issued to the Jail Superintendents/Jail Authorities to ensure that the information about the existence of the policies is furnished to all the convicts who are in the zone of consideration;
- (ii) We also direct that whenever there are modifications in the policies, the modified policies shall be made available in terms of the above direction;
- (iii) All the States shall ensure that orders of rejection of

applications for grant of permanent remission are communicated to the concerned convicts. The orders of rejection shall also be forwarded to the concerned District Legal Services Authorities to enable them to take appropriate steps for rendering legal aid to the concerned convicts;

- (iv) We make it clear that the States shall ensure that the rejection orders are communicated in terms of the above directions within a period of one week from the date of passing of the rejection orders;
- (v) If the rejection orders do not contain reasons, the reasons, if any, recorded by the Sentence Review Board or a similar Authority, shall also be forwarded along with the copy of the rejection orders;
- (vi) Some of the States are not processing applications for grant of permanent remission on the ground that appeals against conviction preferred by the concerned convicts are pending. We make it clear that this is no ground not to consider the applications for the grant of permanent remission. There may be some justification for the States to keep the applications pending in those cases where the appeals preferred by the State Government for enhancement of sentence/acquittal are pending; and
- (vii) The States shall be guided by the decision of this Court dated 21st October, 2024 in '*Mafabhai Motibhai Sagar vs. State of Gujarat & Ors.*¹. We also make it clear that the

States shall not impose stereotype conditions while granting permanent remission without application of mind to the facts of each case. The conditions to be applied must depend upon the facts of each case.

(viii) All the States and Union Territories shall hereafter make communication with the learned senior counsel appointed as Amicus Curiae through Shri Navneet R., learned Advocate-on-Record assisting the learned Amicus Curiae. The same Advocate will issue communications on behalf of the learned Amicus Curiae. All the compliance reports and other reports shall also be forwarded to Shri Navneet R., learned Advocate-on-Record. The correspondence details of Shri Navneet R., learned Advocate-on-Record, are as under:

"Shri Navneet R.,
Advocate-on-Record,
J-50, LGF, Lajpat Nagar 3,
New Delhi - 110024
Email: navneetr.law@gmail.com
Contact No.:+91 9870 259 362

42. For considering the issues which are flagged earlier, namely (i) requirement of recording reasons for rejection of the applications for grant of permanent remission; (ii) whether the State Governments are bound to consider the applications of the eligible convicts for grant of permanent remission in terms of their policies, even if the convicts make no such application; (iii) whether any further directions applicable to all the States are required to be issued; and (iv) the conditions which can be imposed while granting permanent remission.

43. The aforesaid four aspects shall be considered on 3rd December, 2024.

44. The learned Amicus Curiae is free to file a report in respect of the States of Madhya Pradesh, Tripura, Mizoram, Nagaland, Goa and Sikkim before the next date of hearing so that the same can be considered on 3rd December 2024.

45. As regards the States of Uttar Pradesh, Jharkhand, Meghalaya, Maharashtra, Punjab, Rajasthan, Bihar and Delhi and Union Territories of Andaman and Nicobar, Chandigarh, Ladakh, Dadra and Nagar Haveli and Daman and Diu, Jammu and Kashmir, Lakshadweep and Puducherry, the learned Amicus Curiae is free to hold consultations with the aforesaid States and Union Territories and call for the data from the said States as well as the Union Territories.

46. We will post this case for consideration of compliances by these States and Union Territories somewhere in January 2025.

47. Needless to add that the Standing counsel of the respective States and Union Territories as well as all the concerned officers shall actively participate in the consultations/meetings convened by the learned Amicus Curiae.

48. On 3rd December 2024, the submissions of the National Legal Services Authority shall also be considered.

49. List both the matters on 19th November, 2024 at 3:00 p.m. for considering the issue relating to E-Prison Module.

(ASHISH KONDLE)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)