

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

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

(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)

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

(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 AND IA No. 21806/2024 - PERMISSION TO FILE APPLICATION FOR DIRECTION)

Date : 10-09-2024 These matters were called on for hearing today.

CORAM :

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By Courts Motion

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

1. We have heard Ms. Liz Mathew, learned Senior Advocate appointed as Amicus Curiae, mainly on the issue of implementation of the directions issued under the order dated 7th July, 2021 and the subsequent orders passed by this Court. The directions are about grant of premature release to life convicts. Various directions have been issued by this Court right from the identification of the life convicts, who are eligible for consideration for grant of premature release, to the actual passing of the orders by the State Governments.

IN RE: STATES OF HARYANA AND KARNATAKA

2. Firstly, we will deal with the compliances made by the States of Haryana and Karnataka. As pointed out by the learned Amicus Curiae, both the States have made a good progress when it comes to compliance with the directions issued by this Court. In relation to both the States, certain proposals for grant of premature release have been kept pending as the States are awaiting concurrence/response from the Ministry of Home Affairs of the Government of India. In the case of State of Haryana, there are 02 such cases, whereas in the case of State of Karnataka, there are 15 such cases.

3. We direct the State Governments of the respective States to send a reminder giving particulars of the pending cases to the Secretary of the Ministry of Home Affairs. We also direct the Government of India to look into the proposals and convey its concurrence/opinion to the respective State Governments within a period of two months from today. Along with the written reminder to the Secretary of the Ministry of Home Affairs, the respective State Governments shall forward a copy of this order.

IN RE: STATE OF MANIPUR

4. Now, we come to the compliance reported by the State of Manipur. There are six cases of eligible prisoners. Out of six cases, one is a case of a person (Budha Bahadur Rana) convicted in a court-martial. In the meeting of the State Level Committee held on 10th June, 2024, necessary information has been called for in respect of the said prisoner (Budha Bahadur Rana) who was attached to the Assam Rifles. We direct the Chairperson of the State Level Committee to immediately issue a communication to the Ministry of Home Affairs of the Government of India on this aspect. Within a period of one month from the date of receipt of the communication, necessary information shall be supplied to the State Government.

5. As regards the other five prisoners, who are eligible, the stand of the State Government is that they are of unsound mind and as of today, their family members have not come forward to cooperate. However, they continue to be detained in the jail.

6. Before we issue further directions, keeping in view the provisions of the Mental Healthcare Act, 2017, we direct the Government of Manipur to constitute a Medical Board of Psychiatrist, Psychologist and other experts in the field to examine these five prisoners and give a detailed report about their mental health status. The Medical Board shall also state the nature of medical treatment, if any, which needs to be extended to them, if they are found to be of unsound mind. The Medical Board shall also recommend whether it is necessary to immediately transfer them to any of the suitable mental health establishments. We grant time of one month to the State Government to do the needful and to submit a report directly to the office of the learned Amicus Curiae so that she can address the Court on this aspect.

7. The Government of Manipur will also clarify whether there is a policy which governs exercise of power under Section 432(1) of the Code of Criminal Procedure, 1973 (for short, "the Cr.PC")/Section 473(1) of the Bharatiya Nagarik Suraksha

Sanhita, 2023 (for short, "the BNSS"). Necessary communication be issued to the learned Amicus Curiae within a period of one month from today.

IN RE: STATE OF TAMIL NADU

8. As regards the State of Tamil Nadu, it is revealed from the report submitted by the learned Amicus Curiae that there is no compliance with the directions issued by this Court. About 111 cases out of 264 eligible cases are still at preliminary stage and the proposals have not been placed before the Advisory Board/Sentence Review Board. Out of the cases placed before the Board, the State Government has taken a decision only in 84 cases and 63 cases are pending with the State Government. We find that there is a default on the part of the State Government in complying with the directions issued by this Court. We direct the State Government to ensure that compliance is immediately made. While we say so, we must make a reference to the timelines incorporated in the order dated 7th July, 2021. Though it may appear that those timelines are only in respect of the calendar year 2022, we clarify and direct that these timelines will apply to every calendar year to all the States. An updated report of compliance shall be forwarded by the learned counsel representing the Government of Tamil Nadu to the office of the learned Amicus Curiae within a period of one month from today.

IN RE: STATE OF ARUNACHAL PRADESH

9. As regards the State of Arunachal Pradesh, the learned counsel representing the State Government pointed out that as regards the only eligible prisoner (Lahap Taiju), the State Advisory Committee has not recommended the proposal. Even, the said decision shall be communicated to the prisoner. The Jail Authorities shall inform the prisoner that he has a right to challenge the said decision by filing appropriate proceedings. Needless to add that the State Legal Services Authority will provide necessary legal assistance to the prisoner in the event he wishes to challenge the said decision.

IN RE: STATE OF ASSAM

10. As regards the State of Assam, we must record that there is a non-compliance of the directions issued by this Court. As many as 83 cases are pending under the caption "documents awaited". We wonder why so many cases are pending. If the policy of the State Government requires a large number of documents for consideration of the cases for grant of premature release, the policy has to be rationalized. We may note here that 43 cases were recommended by the State Level Review Board on 22nd July, 2024 and the decision thereon, is still pending at the level of the State Government. We direct the State Government to submit an updated compliance report to

the office of the Amicus Curiae within a period of one month from today.

IN RE: STATE OF WEST BENGAL

11. As regards the State of West Bengal, as of 22nd February, 2024, 793 life convicts were eligible for consideration for grant of premature release. There appears to be a delay at every stage in implementing the orders of this Court. Strangely, we find that after recommendations are made by the State Sentence Review Board, the cases are again being sent to the Judicial Department. In fact, a letter dated 3rd September, 2024 addressed by the Directorate of Correctional Services, West Bengal to the Standing Counsel for the State of West Bengal clearly notes that pursuant to the directions of this Court, it becomes mandatory to seek opinion of the convicting Court before placing the proposal before the Board. We fail to understand why after the recommendations are made by the Board, again proposals are being sent to the Judicial Department. The Government of West Bengal owes an explanation to this Court. The State Government must also explain why the entire process is being delayed. As we can see from the report that hardly 44 cases have been decided. One of the reasons could be that there is lack of coordination between the various Departments which are involved in the process of consideration of applications for grant of permanent

remission. We, therefore, direct the State Government of West Bengal to nominate one or more senior officers as Nodal Officers who will coordinate with all the concerned Departments with a view to ensure that the directions of this Court are scrupulously complied with. The names and contact details of the Nodal Officers so appointed shall be communicated to the office of the learned Amicus Curiae within a period of one week from today.

12. We direct the State Government to submit a further compliance report through the Nodal Officers to the office of the learned Amicus Curiae within a period of one month from today.

OTHER DIRECTIONS

13. All the States and its offices must note that the learned counsel who are appointed as Amicus Curiae are the officers of this Court and therefore, it is the duty of all concerned to cooperate with them.

14. We direct all the State Governments and the Governments of the Union Territories to ensure that as soon as a decision of the rejection of the prayer for grant of premature release is taken, a copy of the said decision shall be immediately provided to the concerned prisoner. It is also necessary to make aware the prisoner of his right to challenge the order of

rejection. It will be appropriate if the National Legal Services Authority (NALSA) looks into this aspect and comes out with suggestions which will ensure that immediate legal aid is made available to those prisoners who receive the orders of rejection so that the said orders can be challenged. After hearing the learned counsel representing the NALSA and the learned Amicus Curiae, we will pass a separate order on this aspect on the next date.

15. We make it clear that the timelines mentioned in the order dated 7th July, 2021 shall apply to every calendar year.

16. On the next date, we will deal with the compliances made by the States of Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Kerala, Odisha and Uttarakhand. We will also consider further compliance made by the States of Manipur, Tamil Nadu and West Bengal.

17. The learned Amicus Curiae submits that many States have not yet responded by submitting their compliance reports. We direct the States of Madhya Pradesh, Maharashtra and Uttar Pradesh to submit their compliance reports within a period of three weeks from today to the office of the learned Amicus Curiae.

18. On the next date, we will also consider the aspect of guiding the prisoners to challenge the adverse orders passed by the State Governments rejecting their prayer for grant of permanent remission. If time permits, we may also consider the issue of conditions which could be incorporated in terms of Section 432(1) of the Cr.PC/Section 473(1) of the BNSS.

19. List these matters on 22nd October, 2024 at 2:00 p.m.

20. As far as E-Prison Module is concerned, we will hear the learned Amicus Curiae on 25th September, 2024 at 2:00 p.m.

(ASHISH KONDLE)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)