2023 LiveLaw (SC) 717

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
S. RAVINDRA BHAT; J., PRASHANT KUMAR MISHRA; J.
WRIT PETITION (CRIMINAL) NO(S). 252 OF 2023; AUGUST 25, 2023
RAJO @ RAJWA @ RAJENDRA MANDAL *versus* **THE STATE OF BIHAR & ORS.**

Code of Criminal Procedure, 1973; Section 432 - Premature Release - Factors which a Government should take into account while deciding to grant remission of sentence to convicts – Explained. *(Para 21)*

Code of Criminal Procedure, 1973; Section 432 - Premature Release - Apart from other considerations (such as the nature of the crime, whether it affected the society at large, the chance of its recurrence etc.), the government, while considering the potential of the convict to commit crimes in the future, should also consider whether there remains any fruitful purpose of continued incarceration. The government should also take into account factors such as age, health, familial relationships, reintegration possibilities, extent of earned remission, and post-conviction conduct including, but not limited to – whether the convict has attained any educational qualification whilst in custody, volunteer services offered, job/work done, jail conduct, whether they were engaged in any socially aimed or productive activity, and the overall development as a human being. The government could also benefit from a report prepared by a qualified psychologist after interacting with the convict. This would provide a more comprehensive understanding of the individual's post-conviction development, rehabilitation efforts, and potential for reintegration into society. *(Para 21)*

Code of Criminal Procedure, 1973; Section 432 - Premature Release - Remission should not be denied solely on reports of presiding judge or police. Mechanical reliance on the Presiding Judge's report could undermine the core objective of remission. *(Para 16)*

For Petitioner(s) Mr. Randhir Kumar Ojha, AOR

For Respondent(s) Mr. Azmat Hayat Amanullah, AOR Mr. T. G. Shahi, Adv.

J U D G M E N T

S. RAVINDRA BHAT, J.

1. The petitioner, currently serving a sentence of life imprisonment for commission of offences punishable under Section 302/34 of the Indian Penal Code, 1860 and Section 27 of the Arms Act, 1959 approaches this court under its Article 32 jurisdiction, seeking appropriate direction to the first respondent to prematurely release him, on the ground that he has been in custody for 24 years without grant of remission or parole.

2. The petitioner (aged 40, at the time), with three other co-accused persons, was convicted[1] on 24.05.2001 for the murder of three persons – two of which were police personnel (*dafadars*) and the third being a *chowkidar*, who were all on duty during a village *mela* – by indiscriminate firing, while they were waiting to be served food. The petitioner was accused to be one among those who had shot at the deceased victims, in a premediated and planned manner. The trial court sentenced the petitioner and three other co-accused persons to undergo rigorous imprisonment for life; while three other accused

[1] By the Sessions Court, Madhepura in Sessions Case No. 123/2000 and Sessions Case No. 194/2000.

were acquitted on all charges. A co-accused (Baudha Mandal), who was the first to fire at the victims, was killed during the pendency of investigation/trial in a police encounter. The petitioner's conviction and sentence (along with that of three other co-accused convicts), was affirmed by the High Court on 01.09.2005.[2] Owing to a lack of means and awareness, the petitioner could not approach this court to challenge the same, and his conviction by the High Court, attained finality.

3. Pursuant to an order of this court, after notice was issued, the respondentstate has filed an affidavit indicating the computation of his period of sentence undergone, the status of his plea for remission to be granted, as well as the remission policies (as amended from time to time) of the state government. This affidavit confirms that the petitioner long completed 14 years of actual imprisonment (on 19.07.2013), and in fact has, as on 26.07.2023, completed over 24 years of actual imprisonment. Accounting for the remission earned (of over 4 years and 8 months of remission, i.e., a total 1694 days), he has served 28 years, 8 months and 21 days. It is pertinent to mention that he completed 20 years of actual imprisonment on 19.07.2019, and if computed with remission earned as per prevailing rules, then on 05.11.2014 itself.

4. After the completion of the mandatory 14 years actual imprisonment, and 20 years of custody with remission, the petitioner's case (application dated 14.04.2021) was considered by the Remission Board on 19.05.2021. In accordance with the prescribed rules, prior to this meeting, the opinion of the Presiding Officer of the convicting court, probation officer and Superintendent of Police, was also sought. The Board rejected the petitioner's application for premature release – despite a favourable report by the Probation Officer and Superintendent of Police – noting the adverse report by the Presiding Judge.

5. After this rejection, a writ petition was filed before the High Court, seeking relief similar to what is sought in the present petition. It was however dismissed for non-prosecution. Later, in terms of prevailing rules[3], the petitioner's proposal was again put up before the Remission Board in its meeting dated 20.04.2023. This time, the proposal was rejected in light of adverse/negative opinions received from the Superintendent of Police, Purnea and the Presiding Officer of the convicting court, and noting Rule 529(iv)(b) of the remission policy contained in the Bihar Jail Manual (as amended by Notification dated 10.12.2002 and notified on 28.12.2002). The relevant rule is extracted below:

"(iv) Ineligibility for premature release

The following category of convicted prisoners undergoing life sentence may not be considered eligible for premature release. –

a) Prisoners convicted of the heinous offences such as rape, dacoity, terrorist crimes, etc.

b) Prisoners who have been convicted for organized murder in a premeditated manner and in an organized manner.

c) Professional murders who have been found guilty of murder by hiring.

d) Convicted prisoners, who commit murder while involving in smuggling operations or who are guilty of murder of public servants on duty"

(emphasis supplied)

[2] By the Patna High Court in Criminal Appeal No. 327/2001 (which was disposed along with Criminal Appeal No 309/2001, filed by three co-accused persons).

[3] Rule 6(d) of the Notification No. 3106 dated 10.12.2002 which stipulates that rejection of proposal for premature release shall not be a bar for reconsideration.

6. These are the facts, leading to the present writ petition.

Analysis and conclusion

7. Section 432(1) of the Code of Criminal Procedure, 1973 (hereafter 'CrPC') empowers the appropriate government to suspend or remit sentences and applies only in the case of *additional* remission, over and above what is earned as per the jail manual or statutory rules.[4] Section 432(2) prescribes the procedure whereby the appropriate government may seek the opinion of the Presiding Judge of the court before, or by which the applicant had been convicted, on whether the applications should be allowed or rejected, along with reasoning. Section 432(2) of the CrPC is extracted for ready reference:

"**432. *Power to suspend or remit sentences***.—(1)***

(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."

8. This statutory power to grant remission is limited by Section 433A (which was incorporated in the CrPC subsequently[5]) when it comes to those convicted for an offence where death is one of the punishments:

"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 punishments provided by law, 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."*

9. Sentencing is a *judicial* exercise of power. The act thereafter of *executing* the sentence awarded, however, is a purely executive function – which includes the grant of remission, commutation, pardon, reprieves, or suspension of sentence.[6] This executive power is traceable to Article 72 and 161 of the Constitution of India, by which the President of India, and Governor of the State, respectively, are empowered to grant pardons and to suspend, remit or commute sentences in certain cases. Whilst the statutory (under Section 432 CrPC) and constitutional (under Articles 72 and 161 of the Constitution) powers are distinct- the former limited power, is still an imprint of the latter (much wider power), and must be understood as such and placed in this context. This framework of executive power and how it is to be exercised, is lucidly explained, in the judgment of *State of Haryana v. Jagdish*[7]:

"27. *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 fulfilment 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*

[4] *Sangeet v. State of Haryana* [2012] 13 SCR 85.

[5] By Act 45 of 1978, sec. 32 (w.e.f. 18.12.1978).

[6] See *Gopal Vinayak Godse v. State of Maharashtra* [1961] 3 SCR 440; *Maru Ram v. Union of India* [1981] 1 SCR 1196; *Sarat Chandra Rabha v. Khagendranath Nath* [1961] 2 SCR 133; *Kehar Singh v. Union of India* [1988] Supp. 3 SCR 1102.

[7] [2010] 3 SCR 716 [hereafter referred to as '***Jagdish'***]

be 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 CrPC 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."

10. That this executive power which is inherently discretionary in nature, has to be exercised fairly, reasonably, and not arbitrarily, has been held by this court in numerous cases.[8] Absence to do so, would - like is the case for other executive action - compel the court to exercise its judicial review, and in appropriate cases remit the matter for reconsideration.[9] The procedure laid out in Section 432(2), has been held to be mandatory by a five-judge bench of this court, in *Union of India v. V. Sriharan*[10]. The court also observed how the said procedure operated as a safeguard, much like the ones provided under Article 72 and 161 of the Constitution:

"141. […] Therefore, when in the course of exercise of larger constitutional powers of similar kind under Articles 72 and 161 of the Constitution it has been opined by this Court to be exercised with great care and caution, the one exercisable under a statute, namely, under Section 432(1)CrPC which is lesser in degree should necessarily be held to be exercisable in tune with the adjunct provision contained in the same section. Viewed in that respect, we find that the procedure to be followed whenever any application for remission is moved, the safeguard provided under Section 432(2)CrPC should be the sine qua non for the ultimate power to be exercised under Section 432(1)CrPC.

142. By following the said procedure prescribed under Section 432(2), the action of the appropriate Government is bound to survive and stand the scrutiny of all concerned, including the judicial forum. It must be remembered, barring minor offences, in cases involving heinous crimes like, murder, kidnapping, rape, robbery, dacoity, etc. and such other offences of such magnitude, the verdict of the trial court is invariably dealt with and considered by the High Court and in many cases by the Supreme Court. Thus, having regard to the nature of opinion to be rendered by the Presiding Officer of the court concerned will throw much light on the nature of crime committed, the record of the convict himself, his background and other relevant factors which will enable the appropriate Government to take the right decision as to whether or not suspension or remission of sentence should be granted. It must also be borne in mind that while for the exercise of the constitutional power under Articles 72 and 161, the Executive Head will have the benefit of act and advice of the Council of Ministers, for the exercise of power under Section 432(1)CrPC, the appropriate Government will get the valuable opinion of the judicial forum, which will definitely throw much light on the issue relating to grant of suspension or remission."

The court then proceeded to approve the following reasoning in *Sangeet v. State of Haryana*[11] on this point (*Sangeet* SCR pp. 119-120):

"63. It appears to us that an exercise of power by the appropriate Government under sub-section (1) of Section 432CrPC cannot be suo motu for the simple reason that this sub-section is only an enabling provision. The appropriate Government is enabled to "override" a judicially pronounced sentence, subject to the fulfilment of certain conditions. Those conditions are found either in the Jail Manual or in statutory rules. Sub-section (1) of Section 432CrPC cannot be read to enable the appropriate Government to "further override" the judicial pronouncement over and above what is permitted by the Jail Manual or the statutory rules. The process of granting "additional"

---

[8] *State of Haryana v. Mohinder Singh* [2000] 1 SCR 698; *Sangeet v. State of Haryana* [2012] 13 SCR 85; *Union of India v. V. Sriharan* [2015] 14 SCR 613; *Rajan v. The Home Secretary, Home Department of Tamil Nadu* [2019] 6 SCR 1035; *Ram Chander v. State of Chhattisgarh* [2022] 4 SCR 1103.

[9] See *Rajan* and *Ram Chander* (ibid).

[10] [2015] 14 SCR 613 [hereafter referred to as '***Sriharan***'].

[11] [2012] 13 SCR 85 [hereafter referred to as '***Sangeet***']

remission under this section is set into motion in a case only through an application for remission by the convict or on his behalf. On such an application being made, the appropriate Government is required to approach the Presiding Judge of the court before or by which the conviction was made or confirmed to opine (with reasons) whether the application should be granted or refused. Thereafter, the appropriate Government may take a decision on the remission application and pass orders granting remission subject to some conditions, or refusing remission. Apart from anything else, this statutory procedure seems quite reasonable inasmuch as there is an application of mind to the issue of grant of remission. It also eliminates "discretionary" or en masse release of convicts on "festive" occasions since each release requires a case-by-case basis scrutiny."

(emphasis supplied)

11. This court, in various judgments, has outlined the parameters to be considered, when considering grant of remission. In *Jagdish* (supra) this court held:

"38. At the time of considering the case of premature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances."

(emphasis supplied)

This was based on an earlier judgment (though not expressly cited in *Jagdish*) - *Laxman Naskar v. State of W.B*[12] which prescribed five guiding factors.

12. In *Sriharan* (supra), the court went on to discuss specifically, the role of the report submitted by the presiding officer, and held that the "*ultimate order of suspension or remission should be guided by the opinion to be rendered by the Presiding Officer of the court concerned.*"[13] This in turn, was relied upon, and explained recently, in *Ram Chander v. State of Chhattisgarh*[14] as follows:

"20. In Sriharan [Union of India v. V. Sriharan, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695] , the Court observed that the opinion of the Presiding Judge shines a light on the nature of the crime that has been committed, the record of the convict, their background and other relevant factors. Crucially, the Court observed that the opinion of the Presiding Judge would enable the Government to take the "right" decision as to whether or not the sentence should be remitted. Hence, it cannot be said that the opinion of the Presiding Judge is only a relevant factor, which does not have any determinative effect on the application for remission. The purpose of the procedural safeguard under Section 432(2)CrPC would stand defeated if the opinion of the Presiding Judge becomes just another factor that may be taken into consideration by the Government while deciding the application for remission. It is possible then that the procedure under Section 432(2) would become a mere formality.

21. However, this is not to say that the appropriate Government should mechanically follow the opinion of the Presiding Judge. If the opinion of the Presiding Judge does not comply with the requirements of Section 432(2) or if the Judge does not consider the relevant factors for grant of remission that have been laid down in Laxman Naskar v. Union of India [Laxman Naskar v. Union of India, (2000) 2 SCC 595 : 2000 SCC (Cri) 509], the Government may request the Presiding Judge to consider the matter afresh.

---

[12] (2000) 2 SCC 595 [para 6] [hereafter referred to as *'**Laxman Naskar**'*]. These factors were reiterated in *Laxman Naskar v. State of W.B.* (2000) 7 SCC 626 [para 6] as well.

[13] Para 143.

[14] [2022] 4 SCR 1103 [hereafter referred to as *'**Ram Chander**'*]

22. In the present case, there is nothing to indicate that the Presiding Judge took into account the factors which have been laid down in Laxman Naskar v. Union of India [Laxman Naskar v. Union of India, (2000) 2 SCC 595 : 2000 SCC (Cri) 509] . These factors include assessing:

(i) whether the offence affects the society at large;

(ii) the probability of the crime being repeated;

(iii) the potential of the convict to commit crimes in future;

(iv) if any fruitful purpose is being served by keeping the convict in prison; and

(v) the socio-economic condition of the convict's family.

In Laxman Naskar v. State of W.B. [Laxman Naskar v. State of W.B., (2000) 7 SCC 626: 2000 SCC (Cri) 1431] and State of Haryana v. Jagdish [State of Haryana v. Jagdish, (2010) 4 SCC 216 : (2010) 2 SCC (Cri) 806], this Court has reiterated that these factors will be considered while deciding the application of a convict for premature release.

23. In his opinion dated 21-7-2021 the Special Judge, Durg referred to the crime for which the petitioner was convicted and simply stated that in view of the facts and circumstances of the case it would not be appropriate to grant remission. The opinion is in the teeth of the provisions of Section 432(2)CrPC which require that the Presiding Judge's opinion must be accompanied by reasons. Halsbury's Laws of India (Administrative Law) notes that the requirement to give reasons is satisfied if the authority concerned has provided relevant reasons. Mechanical reasons are not considered adequate. The following extract is useful for our consideration:

*"**[005.066] Adequacy of reasons** Sufficiency of reasons, in a particular case, depends on the facts of each case. It is not necessary for the authority to write out a judgment as a court of law does. However, at least, an outline of process of reasoning must be given. It may satisfy the requirement of giving reasons if relevant reasons have been given for the order, though the authority has not set out all the reasons or some of the reasons which had been argued before the court have not been expressly considered by the authority. A mere repetition of the statutory language in the order will not make the order a reasoned one.*

Mechanical and stereotype reasons are not regarded as adequate. A speaking order is one that speaks of the mind of the adjudicatory body which passed the order. A reason such as 'the entire examination of the year 1982 is cancelled', cannot be regarded as adequate because the statement does explain as to why the examination has been cancelled; it only lays down the punishment without stating the causes therefor." [Halsbury's Laws of India (Administrative Law) (Lexis Nexis, Online Edition).]

24. Thus, an opinion accompanied by inadequate reasoning would not satisfy the requirements of Section 432(2)CrPC. Further, it will not serve the purpose for which the exercise under Section 432(2) is to be undertaken, which is to enable the executive to make an informed decision taking into consideration all the relevant factors."

13. Noting that the presiding judge's opinion did not consider the five parameters laid out in *Laxman Naskar* (supra), a coordinate bench of this court in *Ram Chander* (supra) directed the presiding officer of the concerned court, to consider the matter afresh and in light of these factors, so that the appropriate government could in turn reconsider the petitioner's application for premature release. A similar fate awaited the writ petitioner in *Jaswant Singh v. State of Chhattisgarh*[15] (wherein both writ petitions arose from the same facts and commission of offence).

14. In the present case, the Remission Board rejected the petitioner's application for premature release twice. A brief glance at all the reports submitted by the authorities to

[15] *Jaswant Singh v. State of Chhattisgarh*, 2023 SCC OnLine SC 35

the Remission Board before each of its two meetings where it considered the petitioner's case, is telling:

Considered in Remission Board meeting dated 19.05.2021	Considered in Remission Board meeting dated 20.04.2023
Jail Superintendent report dated 27.04.2021: *"conduct of prisoner is satisfactory. Recommended for premature release from jail."*	**Jail Superintendent report dated 15.09.2022:** *"Recommended for premature release."*
Probation Officer's report dated 05.04.2021: *"can be considered to release the prisoner prematurely in accordance with Rules"*	**Probation Officer's report dated 08.06.2022:** *"Keeping in view at the residential resources and means for livelihood for the convicts, the social and economic status of the household, the no- objection and acceptance of the people of the family and the society, the need for rehabilitation and the possibility of living as a normal citizen a clear recommendation is made regarding the timely release of the above convicted prisoner."*
Police Superintendent's report dated 11.01.2021: *"…DPO has reported that on release of prisoner, there does not seem to be any possibility of any law-and-order problem will arise"*	**Police Superintendent's report dated 22.07.2022:** Noting the input received from the concerned DPO - *"…The local people have got the information regarding his premature release. The local people speak in the crossroads about the adverse effect of his release due to his premature release, an atmosphere of unrest and fear will arise in the society and criminal incidents may also increase NCR (Sanha) No. 211 dated 10.07.2022 is marked in this regard. In this context, the premature release of the said prisoner does not seem appropriate"*
Remarks of the Presiding Judge dated 15.12.2018: *"…I perused the judgment and supplementary case record of above noted sessions case, from which it appears that it is a triple murder case in which two dafadars were killed under a calculated move and in plan manner and both Dafadar and Chaukidar were sincere in duty and dedicated to their work and they used to jointly move from duty, as a result of which the criminals were under constant fear psychosis and the criminals including the convicts murdered these two officials. Considering the manner of occurrence and seriousness of the case, in my opinion the application remission and commutation of sentence filed on behalf of the convict petitioner should be refused."*	**Remarks of the Presiding Judge dated 02.07.2022**: Noting the report submitted earlier by the then presiding officer on 15.12.2018, stated *"….Further having gone through the case record, I also find that the manner of the occurrence in alleged offence done by the Rajo@Rajua@Rajendra mandal along with other co-accused person was so harsh and professional under such facts and circumstances, I also agreed with the opinion of the then P.O of this court. Therefore prayer for remission and commutation of sentence in favor of Rajo@Rajua@Rajendra Mandal may be refused."*

	Screening Committee/ Inspector General: Took note of the adverse reports of Police Superintendent and Presiding Judge and noted that *"2. In the Notification No. 3106 dated 10.012.2002 of the Home (Special) Department Bihar, it is provided in clause (iv) (b) that the prisoners who are convicted for organizing murders in a systematic manner shall not be eligible for premature release.* *3. In that light, the proposal for untimely release from prison can be rejected."*

Taking note of the reports before it at the time, the Remission Board concluded as follows:

Remission Board meeting dated 19.05.2021	**Remission Board meeting dated 20.04.2023**
"Favourable report by Probation Officer/ Superintendent of Police, but adverse report by Presiding Judge"	Taking note of the adverse reports by the Police Superintendent, Presiding Judge, and conclusion of the Screening Committee/Inspector General regarding clause (iv)(b) – *"3. After due consideration, the proposal for premature release from prison is rejected."*

15. The record clearly indicates that the reason for rejection of the petitioner's application, is the adverse report submitted by the presiding judge in the first round, which was perfunctorily relied upon and reiterated in the report submitted by the then presiding judge in the second round as well. Both the reports submitted by the presiding judges (at the relevant time), demonstrate a casual opinion, based solely on the judicial record which presumably consisted of the finding of guilt, by the trial court and High Court. This offers only a *dated* insight on the petitioner, one that has limited opportunity to consider the progress the convict has made in the course of serving his sentence. Yet, the Remission Board has privileged the presiding judge's opinion over the other authorities – like the Probation Officer, and Jail authorities, who are in a far better position to comment on his post-conviction reformation – offering a cautionary tale.

16. In this court's considered view, overemphasis on the presiding judge's opinion and complete disregard of comments of other authorities, while arriving at its conclusion, would render the appropriate government's decision on a remission application, unsustainable. The discretion that the executive is empowered with in *executing* a sentence, would be denuded of its content, if the presiding judge's view – which is formed in all likelihood, largely (if not solely) on the basis of the *judicial* record – is mechanically followed by the concerned authority. Such an approach has the potential to strikes at the heart, and subvert the concept of remission – *as a reward and incentive encouraging actions and behaviour geared towards reformation* – in a modern legal system.

17. All this is not to say that the presiding judge's view is *only* one of the factors that has no real weight; but instead that if the presiding judge's report is only reflective of the facts and circumstances that led to the conclusion of the convict's guilt, and is merely a reiteration of those circumstances available to the judge at the time of sentencing (some 14 or more years earlier, as the case may be), then the appropriate government should attach weight to this finding, *accordingly*. Such a report, cannot be relied on as carrying

predominance, if it focusses on the crime, with little or no attention to the *criminal.* The appropriate government, should take a holistic view of all the opinions received (in terms of the relevant rules), including the *judicial view* of the presiding judge of the concerned court, keeping in mind the purpose and objective, of remission.

18. The views of the presiding judge, are based on the record, which exists, containing all facts resulting in conviction, including the nature of the crime, its seriousness, the accused's role, and the material available *at that stage* regarding their antecedents. However, post-conviction conduct, particularly, resulting in the prisoner's earned remissions, their age and health, work done, length of actual incarceration, etc., rarely fall within the said judge's domain. Another factor to bear in mind, is that the presiding judge would not be the same presiding judge who had occasion to observe the convict (at a much earlier point in time) and thus form an opinion. The presiding judge, at this stage, would only look into the record leading to conviction. This judicial involvement in executive decision making is therefore, largely limited to the input it provides *regarding the nature of the crime, its seriousness, etc.* Undoubtedly, even at the stage of sentencing, the judge *ideally* is to exercise discretion after looking at a wide range of factors relating to the *criminal* and not just the *crime*; but as noticed in numerous precedents[16] that have dealt with sentencing in the commission of heinous crimes, this is unfortunately, often not the reality. Guidance has been offered by this court[17] on how to mitigate this in recent years, but in this court's considered view, it is pragmatic to acknowledge that it will require time for our criminal justice system to incorporate, and uniformly reach such standards. In fact, earlier cases of conviction (such as the present one - in 2001), have an even lesser probability of a judicial record which reflects consideration of such multi-dimensional factors at the sentencing stage; the lack of which should not serve as an obstacle to the convict seeking release (*after* serving almost two decades, or more), erasing the reformative journey they may have undertaken as a result of their long incarceration.

19. It has been repeatedly emphasized that the aim, and ultimate goal of imprisonment, even in the most serious crime, is reformative, after the offender undergoes a sufficiently long spell of punishment through imprisonment. Even while upholding Section 433A, in *Maru Ram v. Union of India*[18]*,* this court underlined the relevance of post-conviction conduct, stating whether the convict,

"Had his in-prison good behavior been rewarded by reasonable remissions linked to improved social responsibility, nurtured by familial contacts and liberal parole, cultured by predictable, premature release, the purpose of habilitation would have been served, If law--S. 433-A in this case--rudely refuses to consider the subsequent conduct of the prisoner and forces all convicts, good, bad and indifferent, to serve a fixed and arbitrary minimum it is an angry flat untouched by the proven criteria of reform."

20. Another aspect of note in this case, is the report submitted by the Superintendent of Police in the second round (which is diametrically different from that which was submitted in the first round), was adverse. Without casting aspersions on the veracity of it, or questioning it on merits, it is appropriate to flag another concern in such a context. In each case, the appropriate government has to be cognizant of the latent (not always) prejudices of the crime, that the police as well as the investigating agency, may be citing

---

[16] *Sangeet* (supra); *Swamy Shraddananda (2) @ Mural Manohar Mishra v. State of Karnataka* [2008] 11 SCR 93; *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* [2009] 9 SCR 90; *Chhannu Lal Verma v. State of Chattisgarh* [2018] 14 SCR 355; *Rajendra Pralhadrao Wasnik v. State of Maharashtra* [2018] 14 SCR 585; and *Manoj v. State of Madhya Pradesh* [2022] 9 SCR 452.

[17] *Ibid.*

[18] [1981] 1 SCR 1196

– especially in a case such as the present one, where the slain victims were police personnel themselves, i.e., members of the police force. These biases may inform the report, and cannot be given determinative value. Doing so will potentially deflect the appropriate government from the facts relevant for consideration for premature release, and instead, focus almost entirely upon facts which evoke a retributive response.

21. Apart from the other considerations (on the nature of the crime, whether it affected the society at large, the chance of its recurrence, etc.), the appropriate government should while considering the potential of the convict to commit crimes in the future, whether there remains any fruitful purpose of continued incarceration, and the socio-economic conditions, review: the convict's age, state of heath, familial relationships and possibility of reintegration, extent of earned remission, and the post-conviction conduct including, but not limited to – whether the convict has attained any educational qualification whilst in custody, volunteer services offered, job/work done, jail conduct, whether they were engaged in any socially aimed or productive activity, and the overall development as a human being. The Board thus should not entirely rely either on the presiding judge, or the report prepared by the police. In this court's considered view, it would also serve the ends of justice if the appropriate government had the benefit of a report contemporaneously prepared by a qualified psychologist after interacting/interviewing the convict that has applied for premature release. The Bihar Prison Manual, 2012 enables a convict to earn remissions, which are limited to one third of the total sentence imposed. Special remission for good conduct, in addition, is granted by the rules.[19] If a stereotypical approach in denying the benefit of remission, which ultimately results in premature release, is repeatedly adopted, the entire idea of limiting incarceration for long periods (sometimes spanning a third or more of a convict's lifetime and in others, result in an indefinite sentence), would be defeated. This could result in a sense of despair and frustration among inmates, who might consider themselves reformed– but continue to be condemned in prison.

22. The majority view in *Sriharan* (supra) and the minority view, had underlined the need to *balance* societal interests with the rights of the convict (that in a given case, the sentence should not be unduly harsh, or excessive). The court acknowledged that it lies within the executive's domain to grant, or refuse premature release; however, such power would be guided, and the discretion informed by reason, stemming from appropriate rules. The minority view (of Lalit and Sapre JJ) had cautioned the court from making sentencing rigid:

*"*73. […] *Any order putting the punishment beyond remission will prohibit exercise of statutory power designed to achieve same purpose Under Section 432/433 Code of Criminal Procedure In our view Courts cannot and ought not deny to a prisoner the benefit to be considered for remission of sentence. By doing so, the prisoner would be condemned to live in the prison till the last breath without there being even a ray of hope to come out. This stark reality will not be conducive to reformation of the person and will in fact push him into a dark hole without there being semblance of the light at the end of the tunnel."*

This concern suffuses the reasoning in *Ram Chander* (supra).

23. This court, on earlier occasion, had grappled with the situation of different remission policies/rules prevailing at different points of the convict's sentence – i.e., when the policy on the date of conviction, and on the date of consideration for premature release, are different. It has been held that the policy prevailing on the date of the conviction[20], would

[19] See Rules 405 and 413 of the Bihar Prison Manual, 2012.

[20] See *State of Haryana v. Raj Kumar,* (2021) 9 SCC 292 [para 16].

be applicable. However, in *Jagdish* (supra) it was also recognised that if a more liberal policy exists on the date of consideration, the benefit should be provided:

"43. […] 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."

24. Applying these principles in the case at hand, on the date of conviction (24.05.2001), it is the pre-2002 policy[21] that was applicable. The relevant extract is as follows:

"[…] the State Government has decided that to give remission to the accused who has been sentenced to life imprisonment and subsequently to release him from prison, life imprisonment should be considered as imprisonment for 20 years and the following procedure should be adopted in the matter of releasing the prisoners sentenced for life imprisonment –

1. Under Section 429 of the Code of Criminal Procedure, 1973 Act No. 2 of 1974, the prisoner who gets life imprisonment will not get the benefit of presumptive report (ambiguous) i.e. in the case in which he has been sentenced to life imprisonment, the period spent in jail during the period of enquiry, investigation and disposal of the case and before the date of conviction may be deducted from the imprisonment of 20 years.

2. Upon conviction, if any person has been sentenced to imprisonment for life for an offense for which one of the punishments is death or if the death sentence has been commuted to life imprisonment under Section 433 of the Code of Criminal Procedure, 1973, and where such sentence of imprisonment for life has been awarded on or after 18.12.1978, such prisoner shall be released from prison only if-

a. He has spent a period of 14 years in prison from the date of conviction.

b. The total of the period of remission and imprisonment is 20 years.

[….]"

It is pertinent to point out that in the old pre-2002 policy, there is no mention of any ineligibility criteria, much less one that is analogous to Rule 529(iv)(b) of the 2002 policy, which was cited by the Remission Board in its rejection of the petitioner's application on 20.04.2023.

25. In light of these findings and the precedents discussed above, it would be appropriate if the Remission Board reconsidered the petitioner's application for remission afresh, considering the reports of the police and other authorities, the post-prison record of the petitioner, the remissions earned (including that which is earned for good conduct) his age, health condition, family circumstances, and his potential for social engagement, in a positive manner. The concerned presiding judge is hereby directed to provide an opinion on the petitioner's application for premature release, by examining the judicial record, and provide adequate reasoning, taking into account the factors laid down in *Laxman Naskar* (supra), within one month from the date of this judgment. With the benefit of this new report, the Remission Board may reconsider the application – without entirely or solely relying on it, but treating it as valuable (maybe weighty) advice that is based on the judicial record. Given the long period of incarceration already suffered by the writ

[21] No. A/P.M-03/91-550 dated 21.01.1984.

petitioner and his age, the Remission Board should endeavour to consider the application at the earliest and render its decision, preferably within three months from the date of this judgment. A copy of this judgment shall be marked by the Registry of this Court, to the Home Secretary, Government of Bihar, who is the chairperson of the Remission Board, as well as the concerned Presiding Judge, through the Registrar, High Court of Judicature at Patna High Court.

Before parting, this court would like to place on record its deep appreciation for the valuable assistance provided by Mr. Randhir Kumar Ojha, appearing on behalf of the petitioner and Mr. Azmat Hayat Amanullah, appearing on behalf of the State.

26. The writ petition is allowed in the above terms. Pending applications, if any, are disposed of.