

2022 LiveLaw (SC) 788

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SANJAY KISHAN KAUL; J., ABHAY S. OKA; J.
SEPTEMBER 15, 2022

Petition(s) for Special Leave to Appeal (Crl.) No(s). 529/2021

SONADHAR versus THE STATE OF CHHATTISGARH

Post-conviction bail – All persons who have completed 10 years of sentence and appeal is not in proximity of hearing with no extenuating circumstances should be enlarged on bail.

(Arising out of impugned final judgment and order dated 19-10-2012 in CRA No. 118/2008 passed by the High Court of Chhatisgarh at Bilaspur)

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ORDER

SMW [CRL] No.4/2021

LIFE CONVICTS IN JAIL WHOSE APPEALS ARE PENDING BEFORE THE HIGH COURT

Mr. Gaurav Agrawal, learned Amicus Curiae has drawn our attention to the contents of the note dealing with the aforesaid aspect in the context of the orders passed by this Court including on 15.06.2022 whereby directions issued were *qua* six High Courts. Those six High Courts have filed affidavits and the endeavour as per this report is two fold in terms of the directions already passed i.e.:-

(1) convicts having undergone more than 10 years' imprisonment in life sentence cases, unless there are reasons to deny bail, should be granted bail;

(2) Identification of cases where the convicts have completed 14 years of custody in which event their case can be referred to the Government for considering premature release in a fixed time irrespective of the fact whether the appeal is pending or not.

Learned Amicus Curiae thereafter proceeded to analyze the data and suggestions from the six High Courts.

It appears that a comprehensive exercise was taken up by the Patna High Court in terms of the number of cases where the accused are in custody which is 5740 appeals, including Division Bench appeals and Single Judge appeals. It is suggested that the High Court may take the following steps:-

“Patna High Court:-

a) If the bail applications have already been filed, the same may be listed before the Hon'ble Court at the earliest.

b) The High Court Legal Services Committee may be tasked with moving appropriate bail applications in those cases which are filed through High Court Legal Services Committee.

c) In case the convict is represented through private lawyer, the High Court Legal Services Committee may contact the convict in jail and facilitate an interaction with the lawyer so that all necessary documents, including custody certificate are made available for the purposes of preferring an application for bail pending appeal.

d) List of all aforesaid criminal appeals may also be sent to the Law Secretary, Government of Bihar with a direction that the criminal antecedent of the convict, conduct in jail, may be ascertained and communicated to the Ld. Advocate dealing with the said appeals before the High Court so that the said aspect is considered by the High Court while dealing with the application for suspension of sentence.”

It is pointed out that in the State of Bihar, there are 363 convicts who have completed more than 14 years of custody. The norm for premature release is stated to be 14 years actual custody and 20 years with remission. There are also some convicts who may not be entitled to premature release. There are stated to be now 268 convicts whose cases are being considered for premature release. We consider appropriate to issue directions in terms of the aforesaid suggestions to the Patna High Court and on a *pari materia* basis to even the other High Courts. However, in order to carry out this exercise, the data would have to be compiled of such of the persons who have been in custody for more than 10 years and more than 14 years, with these persons being considered for grant of bail pending appeal, if there is no chance of hearing of the appeal in the near future, unless there are reasons for denial of bail. We can understand if any of the parties is delaying the appeal itself but short of that, we are of the view that all persons who have completed 10 years of sentence and appeal is not in proximity of hearing with no extenuating circumstances should be enlarged on bail.

We may note that the Odisha High Court has also carried out a comprehensive exercise identifying the exact number of cases of life sentence convicts and set out the details including the ones who would not be entitled to remission.

The Allahabad High Court where the pendency is the largest has also carried out an exercise showing 2853 appeals pending before the High Court where 3234 convicts are in jail for more than 10 years. Out of these, 385 convicts have undergone more than 14 years of custody. We have to keep in mind the objective of de-cluttering the jails where without hearing of the appeals, convicts are in custody.

The aforesaid exercise has to be undergone on an urgent basis so that a scenario should not prevail where the convict completes the minimum sentence for consideration for remission and their case is examined only for remission. That necessity has arisen only on account of the fact that the appeals are not being taken up for hearing.

As suggested by learned Amicus Curiae, four months' time is granted to carry out the said exercise. The report be given after compilation from different States.

List in the last week of January, 2023.

MA 764/2022 in CrI.A. No.491/2022

This separate application need not be continued and has now been subsumed in the directions which are now being made in the SMW [CRL] No.4/2021.

The application stands disposed of in terms of the signed order.

W.P.(CrI.) No.170/2022

The subject matter in issue is regarding fixed term sentences which have also been covered by directions passed in SMW [CRL] No.4/2021.

The Writ Petition accordingly stands disposed of in terms of the signed order.

SLP (CrI.) NO.529/2021

COMPLIANCE OF PREMATURE RELEASE DIRECTIONS BY STATES

The most aggravated problem is in the State of Uttar Pradesh where as of October, 2021, 4127 prisoners were eligible for premature release. However, orders have been passed in case of 26 persons who were released and 521 released under permanent policy. 2532 cases are pending for collection of documents/preparation of premature release applications. There seems to be some lack of coordination in this behalf as there are different kinds of incomplete documents. It is suggested and agreed to by Ms. Garima Prasad, learned AAG of the State of Uttar Pradesh that the State Government will nominate a senior officer as the Special Secretary who will act as a Nodal Officer to ensure that this task is completed well before the next date.

Other States where the problem may be less must ensure completion of the exercise within the same period of time.

Ms. Liz Mathew, learned Amicus seeks to flag an issue that there is lack of information post the recommendation of the advisory Board i.e. in how many cases States have acted upon it.

For illustration, on consideration of 332 cases, 106 cases were recommended in the State of Kerala but only 2 have been released.

Reference is also made to the case of West Bengal where 657 persons were eligible for premature release and recommendations were made for 578 cases, but only 173 were released in 2022. Learned Amicus submits that there is some anomaly in the manner of processing by the State Government as the requirement for obtaining the opinion of the concerned Judge is prior to the recommendation. Once the recommendation is made after due consideration, there is no need to again refer to the Court. This may be taken note by the State of West Bengal.

Needless to re-emphasize that all States will follow the schedule as set out.

Learned Amicus Curiae may explore the possibility of implementing the same process in other States and we authorize the Amicus/ State Legal Services for the said purpose. The manner of such implementation now extended at the request of learned Amicus to four other States which have carried out the preliminary exercise i.e. Jharkhand, Telengana, Gujarat and Assam.

One suggestion made by Mr. Devansh Mohta, learned Amicus Curiae is that while in terms of earlier orders, *inter alia*, dated 09.02.2022, we were looking to the aspects of a fixed term sentences of up to seven years, the same can be extended up to 10 years for collection of data and exploring the possibilities of alternative routes. We accept the suggestion and order accordingly.

On this aspect, an earlier date is sought than what has been given in connected matter i.e. in the last week of January, 2023. It is stated that the matter will take about half an hour.

The matter be listed in the third week of November, 2022 while listing other matters, keeping the time factor in this matter in mind.