REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION (CRL.) NO. D.8788 OF 2013

Gurvail Singh @ Gala …Petitioner

Versus

State of Punjab …Respondent

O R D E R

1. This Writ Petition is filed for direction to convert the sentence of the petitioner from 30 years in jail without remission to a sentence of life imprisonment; and further to declare that this Court is not competent to fix a particular number of years (with or without remission) when it commutes the death sentence to life imprisonment while upholding the conviction of the accused under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as `the IPC').

2. Facts and circumstances giving rise to this petition are that:

A. The petitioner alongwith co-accused was charged for killing 4 persons on the intervening night of 20/21.8.2000 and tried for the

offences punishable under Sections 302 read with 34 IPC. The trial court vide judgment and order dated 27.1.2005/5.2.2005 convicted and awarded death sentence to him alongwith co-accused Jaj Singh.

B. The High Court vide its judgment and order dated 22.9.2006 dismissed the Criminal Appeal filed by the petitioner and affirmed the death sentence reference made by the trial court so far as the petitioner and the co-accused are concerned.

C. Aggrieved, the petitioner challenged the said judgment and order dated 22.9.2006 by filing the criminal appeal and this Court vide judgment and order dated 7.2.2013 affirmed the conviction. However, the death sentence was converted into life imprisonment with a direction that the petitioner shall serve 30 years in jail without remission. The aforesaid decision is reported in **Gurvail Singh @ Gala & Anr. v. State of Punjab**, (2013) 2 SCC 713.

D. Aggrieved, the petitioner preferred a review petition, which was also dismissed.

Hence, the writ petition.

3. Shri Rishi Malhotra, learned counsel appearing on behalf of the petitioner, has submitted that this Court lacks the power to issue directions that convicts shall serve a particular minimum sentence with or without remission when death sentence is commuted to life imprisonment. Such an argument is being advanced in view of the judgment of this Court in **Sangeet & Anr. v. State of Haryana**, (2013) 2 SCC 452, wherein a two Judge Bench of this Court while dealing with the issue considered the earlier judgments and observed:

> *"55. A reading of some recent decisions delivered by this Court seems to suggest that the remission power of the appropriate Government has effectively been nullified by awarding sentences of 20 years, 25 years and in some cases without any remission. Is this permissible? Can this Court (or any Court for that matter) restrain the appropriate Government from granting remission of a sentence to a convict? What this Court has done in* ***Swamy Shraddananda (2)*** *@ Murali Manohar Mishra* ***v. State of Karnataka,*** *(2008) 13 SCC 767 and several other cases, by giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effectively injunct the appropriate Government from exercising its power of remission for the specified period.* ***In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible.*** *The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason."* (Emphasis added)

4. The issue involved herein has been raised before this Court time and again. Two Judge as well as three Judge Bench have several times explained the powers of this Court in this regard and it has consistently been held that the Court cannot interfere with the clemency powers enshrined under Articles 72 and 161 of the Constitution of India or any Rule framed thereunder except in exceptional circumstances. So far as the remissions etc. are concerned, these are executive powers of the State under which, the Court may issue such directions if required in the facts and circumstances of a particular case.

5. The issue raised in this petition was elaborately dealt with by a three Judge Bench in **Swamy Shraddananda** (supra) wherein it was held as under:

> *"91. The legal position as enunciated in* ***Pandit Kishori Lal v. King Emperor*** *AIR 1945 PC 64,* ***Gopal Vinayak Godse v. State of Maharashtra*** *AIR 1961 SC 600,* ***Maru Ram v. Union of India*** *(1981) 1 SCC 107,* ***State of M.P. v. Ratan Singh*** *(1976) 3 SCC 470, and* ***Shri Bhagwan v. State of Rajasthan*** *(2001) 6 SCC 296, and the unsound way in which remission is actually allowed in cases of life imprisonment make out a very strong case to make a special category for the very few cases* ***where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond the application of remission.***

92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, ***the Court may strongly feel that a sentence of life imprisonment that subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate.*** *What then the Court should do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the court, i.e.,* ***the vast hiatus between 14 years' imprisonment and death. It needs to be emphasized that the Court would take recourse to the expanded option primarily because in the facts of the case****, the sentence of 14 years imprisonment would amount to no punishment at all."* (Emphasis added)

6. The issue was again reconsidered in **State of U.P. v. Sanjay Kumar,** (2012) 8 SCC 537, and rejecting a similar contention the Court observed:

"24. ....The aforesaid judgments make it crystal clear that ***this Court has merely found out the via media****, where considering the facts and circumstances of a particular case, by way of which it has come to the*

conclusion that it was not the 'rarest of rare cases', warranting death penalty, but a sentence of 14 years or 20 years, as referred to in the guidelines laid down by the States would be totally inadequate. ***Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it always meant as the whole natural life****. This Court has always clarified that the punishment so awarded would be subject to any order passed in exercise of the clemency powers of the President of India or Governor of State, as the case may be. Pardons, reprieves and remissions are granted in exercise of prerogative power. There is no scope of judicial review of such orders except on very limited grounds for example non-application of mind while passing the order; non-consideration of relevant material; or if the order suffers from arbitrariness. The power to grant pardons and to commute sentences is coupled with a duty to exercise the same fairly and reasonably. Administration of justice cannot be perverted by executive or political pressure. of course, adoption of uniform standards may not be possible while exercising the power of pardon. Thus,* ***such orders do not interfere with the sovereign power of the State.*** *More so, not being in contravention of any statutory or constitutional provision, the orders, even if treated to have been passed under Article 142 of the Constitution do not deserve to be labelled as unwarranted.* ***The aforesaid orders have been passed considering the gravity of the offences in those cases*** *that the accused would not be entitled to be considered for premature release under the guidelines issued for that purpose i.e. under Jail Manual etc. or even under Section 433-A Code of Criminal Procedure."*

(Emphasis added)

7. In spite of that, a two Judge Bench of this Court raised certain doubts about the competence of this Court to pass such orders in

Sangeet (supra). If the two Judge Bench was of the opinion that earlier judgments, even of a larger Bench were not justified, the Bench ought to have referred the matter to the larger Bench. But without doing so, the aforesaid observations have been made.

8. It may be pertinent to mention that the case of the petitioner Gurvail Singh @ Gala has been decided by none other than the Hon'ble Judge presiding over the Bench, which decided the case of **Sangeet** (supra). However, different view has been taken from that of the case of **Sangeet** (supra) which had been decided earlier and reference of the said case has also been made in the case of the petitioner.

9. Be that as it may, this very question was raised again before this Court in **Sahib Hussain** @ Sahib Jan **v. State of Rajasthan**, 2013 (6) SCALE 219. This Court reconsidered the whole issue examining all the judgments including **Sangeet** (supra) and ultimately held as under:

> *"29.....In this case (**Sangeet**) though the Division bench raised a doubt about the decision of a three-Judge Bench in **Swamy Sharaddananda** (supra), yet the same has not been referred to a larger Bench. In **Swamy Sharaddananda** (Supra), after taking note of remissions by various State Governments without adequate reasons or even on flimsy grounds, in order to set right the same, a three-Judge Bench analysed all the relevant aspects*

including the earlier decisions and discussed them in the following paragraphs.

*30. It is clear that in **Swamy Shraddananda** (supra), this Court noted the observations made by this Court in **Jagmohan Singh v. State of U.P**., (1973)1 SCC 20 and 5 years after the judgment in **Jagmohan's** case, Section 433-A was inserted in the Code imposing a restriction on the power of remission or commutation in certain cases. After the introduction of Section 433-A another Constitution Bench of this Court in **Bachan Singh v. State of Punjab**, (1980) 2 SCC 684, with reference to power with regard to Section 433-A which restricts the power of remission and commutation conferred on the appropriate Government, noted various provisions of Prisons Act, Jail Manual etc. and concluded that reasonable and proper course would be to expand the option between 14 years imprisonment and death. The larger Bench has also emphasized that "the Court would take recourse to the extended option primarily because in the facts of the case the sentence of 14 years imprisonment would amount to no punishment at all." In the light of the detailed discussion by the larger Bench, we are of the view that the observations made in **Sangeet's** case (supra) **are not warranted. Even otherwise, the above principles, as enunciated in Swami Shraddananda (supra) are applicable only when death sentence is commuted to life imprisonment** and not in all cases where the Court imposes sentence for life."*

(Emphasis added)

10. Thus, it is evident that the issue raised in this petition has been considered by another Bench and after reconsidering all the relevant judgments on the issue the Court found that the observations made in **Sangeet** (supra) were unwarranted, i.e. no such observations should have been made. This Court issued orders to deprive a convict from

the benefit of remissions only in cases where the death sentence has been commuted to life imprisonment and it does not apply in all the cases wherein the person has been sentenced to life imprisonment.

11. The case at hand is squarely covered by the aforesaid judgment in **Sahib Hussain** (Supra). No further discussion is required. The petition is misconceived, and does not present any special feature warranting any interference. Thus, it is accordingly, dismissed.

…….....J.
(DR. B.S. CHAUHAN)

….....J.
(S.A. BOBDE)

NEW DELHI;
August 26, 2013