

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

W R I T P E T I T I O N (CRL.) NO(s). 1 3 5 O F 2 0 0 3

ANI L SHA R M A

Petitioner(s)

VE R S U S

STA T E O F HAR Y A N A & AN R.

Respondent(s)

(With appln(s) for stay, modification of Court's Order and office report) (FOR
FI N A L DIS P O S A L)

WI TH W. P(C R L .) NO. 2 0 0 of 2 0 0 3

(With appln.(s) for stay and office report) (FOR FI N A L DIS P O S A L)

W. P(C R L .) NO. 2 6 7 of 2 0 0 3

(With appln.(s) for exemption from filing O.T., directions, intervention, bringing on
record addl. documents and office report) (FOR FI N A L DIS P O S A L)

CR L. AP P E A L NO. 4 0 6 of 2 0 0 4

(With appln.(s) for stay, deletion of the name of respondent, directions,
modification of court's order and office report)

CR L. AP P E A L NO. 4 0 8 of 2 0 0 4

(With appln.(s) for deletion of the name of respondent and bail, release of the
petitioner and office report)

CR L. AP P E A L NO. 4 1 5 of 2 0 0 4

(With appln.(s) for directions, deletion of the name of the respondent, exemption
from filing c/c of the impugned judgment and office report)

CR L. AP P E A L NO. 4 1 2 of 2 0 0 4

(With appln.(s) for stay and office report)

CR L. AP P E A L NO. 4 1 3 of 2 0 0 4

(With appln.(s) for stay)

CR L. AP P E A L NO. 4 1 4 of 2 0 0 4

(With appln.(s) for stay, exemption from filing c/c of the impugned judgment,
exemption from surrendering)

CR L. AP P E A L NO. 4 1 0 of 2 0 0 4

(With appln.(s) for stay and office report)

CR L. AP P E A L NO. 4 1 1 of 2 0 0 4

(With appln.(s) for exemption from filng c/c of the impugned judgment, deletion of
the name of respondent, stay, bringing LR s on record and office report)

CR L. AP P E A L NO. 4 0 7 of 2 0 0 4

(With appln.(s) for stay, deletion of the name of respondent and office report)

W. P(C R L .) NO. 5- 6 of 2 0 0 5

(With appln.(s) for interim relief and office report) and

CR L. AP P E A L NO. 9 8 2 of 2 0 0 6 (W i t h office report)

CR L.A P P E A L NO.1 4 9 2 / 2 0 0 7 (WIT H O F F I C E R E P O R T)

Date: 2 9 / 0 1 / 2 0 0 8 These Petitions/ appeals were called on for hearing
today.

CORAM : HON'BLE MR. JUS T I C E H.K. S E M A
HON'BLE MR. JUS T I C E MAR K A N D E Y KA T J U

-2 -

For Petitioner(s) Mr. Anil Shar m a
W P (Crl.) 1 3 5 / 0 3 In Per son.

W P (Crl) 2 0 0 / 0 3 Dr. Ra mes h K. Harita sh, Adv.
Mr. Sanjay Hadala, Adv.
Dr. K ail a s h Chand, Adv.

W P (Crl) 2 6 7 / 0 3 Mr. Krishn a n Venugopal, Adv.
Mr. Sidharth Singh, Adv.
Mr. Abeer, Adv.
Mr. Radh a k a nt Tripathy, Adv.
Mr. P a r a m a n a n d P a ndey, Adv.
Mr. Radh a k ri s h n a Ku m a r , Adv.
Mr. Naresh Ku m a r , Adv.

in CrI.A.4 1 3 / 0 4	Mrs. Rachna Gupta, Adv.
In CrI.A.4 1 4 / 0 4	Mr. Imtiaz Ahmed, Adv. Mrs. Naghma Imtiaz, Adv. Mr. V.N. Raghupathy, Adv.
State of Meghalaya & in CrI.A.4 1 0 / 0 4	Mr. Ranjan Mukherjee, Adv.
CrI.A.4 1 1 / 0 4	Mr. M. P. Shorawala, Adv.
CrI.A.4 0 7 / 0 4	Ms. Kiran Suri, Adv.
W P (CrI.) 5- 6/ 0 5	Dr. (Mrs.) Vipin Gupta, Adv.
CrI.A.No. 9 8 2 / 0 6	Gp. Capt, Karan Singh Bhati, Adv.
In CrI.A.4 0 6 , 4 0 8 & 4 1 5 of 2 0 0 4	Mr. Badri Prasad Singh, Adv. Mr. S.K. Sabharwal, Adv.
in CrI.A.1 4 9 2 / 0 7	Mr. Mithilesh Kumar Singh, (A.C.)
For Respondent(s) for UOI	Mr. G.E. Vahanvati, SG. Mr. Devadatt Kamat, Adv. Ms. Sushma Suri, Adv.
State of Bihar & Tripura	Mr. Gopal Singh, Adv. Mr. Rituraj Biswas, Adv.
State of Haryana	Mr.T.V.George, Adv Mr. Vikram S. Mawari, Adv.
	Mrs. Santosh Singh, Adv Mr. Ravi Prakash Mehrotra, Adv.
State of A.P.	Mr. Anoop G. Choudhari, Sr.Adv. Mrs. June Choudhari, Sr.Adv. Mr. Devendra Kumar Singh, Adv. Mrs. D.B. Reddy, Adv.
: 3:	
State of Karnataka	Mr. Sanjay R. Hegde, Adv. Mr. Amit Kumar Chawla, Adv.
State of W. B .	Mr. Tara Chand Sharma, Adv. Ms. Neelam Sharma, Adv. Mr. Kishan Datta, Adv. Mr. Rajeev Sharma, Adv.
for Uttarakhand	Mr. Jatinder K. Bhatia, Adv.
State of H. P.	Mr. Naresh K. Sharma, Adv. Mr. J.S. Attri, AAG Mr. Subramonium Prasad, Adv.
CrI.A.4 0 6 / 0 4	Ms. Niranjana Singh, Adv.
for Maharashtra	Mr. Chinmay Khaladkar, Adv. Mr. Ravindra Keshav Rao Adsure, Adv.
Tamil Nadu & Pondicherry	Mr. V.G. Pragasam, Adv. Mr. S. Joseph Aristotle, Adv. Mr. S. Praburamasubramanian, Adv. Mr. Ranjan Mukherjee, Adv.

Mr. Ansar Ahmad Chaudhary, Adv.

Mr. P.V. Dinesh, Adv.

Ms. Naresh Bakshi, Adv.

State of J&K Mr. Anis Suhrwardy, Adv.

State of Jharkhand Mr. B. B. Singh, Adv.

State of Orissa Mr. Janarajan Das, Adv.
Mr. Swetaketu Mishra, Adv.

for Chhattisgarh Mr. Atul Jha, Adv.
Mr. Dhar Mendra Kumar Sinha, Adv.

St of Arunachal Pradesh Mr. Anil Shrivastav, Adv.
Mr. Ritu Raj, Adv.

State of Manipur Mr. Khawairakpa Nobin Singh, Adv.
Mr. David Rao, Adv.
Mr. Tarun Jamal, Adv.
Mr. S. Biswajit Meitei, Adv.
Mr. Vijay Prakash, Adv.
Mr. Tarun Jamal, Adv.

State of Sikkim Mr. A. Mariarputha m, Adv.
Ms. Aruna Mathur, Adv.
for M/s. Arputha m, Aruna & Co, Adv.

:4 :

State of Goa Ms. A. Subhashini, Adv.

Mrs. Anil Katiyar, Adv.

Mr. Gopal Prasad, Adv.

State of Assam Mr. Riku Sarma, Adv.
for M/s. Corporate Law Group, Adv.

UT of Chandigarh Mr. Ashoka K. Thakur, Adv.
Mr. M. P. Jha, Adv.
Mr. Ram Ekbalo Roy, Adv.

All U.Ts. & NCT Delhi Mr. S. Wasim A. Qadri, Adv.
Mr. Z. Ahmed Khan, Adv.
Mr. Vikas Sharma, Adv.
Ms. Shweta Garg, Adv.
Mr. D.S. Mahra, Adv.

State of M. P. Mr. C.D. Singh, Adv.
Mr. Merusagar Samantaray, Adv.
Mr. Sunny Chowdhary, Adv.
Mr. Vairagya Vardhan, Adv.
Ms. Prerna Kumari, Adv.

State of Nagaland Ms. Sumita Hazarika, Adv.

W P (Cr1) 267 / 03 for Nagaland Mr. Himinder Lal, Adv.

Mr. Praveen Chaturvedi, Adv.

State of Mizoram Mr. K.N. Madhusoodhanan, Adv.
Mr. R. Sathish, Adv.

Mr. P. K. Jain, Adv.

Dr. S.K. Verma, Adv.

State of Punjab Mr. Ajay Pal, Adv.
 Mr. Nikhil Jain, Adv.
 Mr. Rohit Walecha, Adv.

State of U.P. Mr. Ratna Kar Dash, Sr. Adv.
 Mr. Rajiv Dubey, Adv.
 Mr. Kamendra Mishra, Adv.
 Mr. C.P. Pandey, Adv.
 Mr. Javed Mahmud Rao, Adv.

Mr. Pramad Swarup, Adv.

for Rajasthan Mr. Aruneshwar Gupta, AAG
 Mr. Naveen Kumar Singh, Adv.
 Mr. Shashwat Gupta, Adv.

Mr. Harbans Lal Bajaj, Adv.
 :5 :

Mr. Anuvrat Sharma, Adv.

Mr. Ravi Prakash Mehrotra, Adv.

for Gujarat Mrs. Hemantika Wahi, Adv.
 Ms. Pinky Behera, Adv.
 Ms. Jesal, Adv.
 Ms. Shivangi, Adv.
 Ms. Sangeeta Singh, Adv.

for intervenor Mr. R.N. Kush, Adv.
 Mr. Jetendra Singh, Adv.
 Mr. Harkesh Chand Aggarwal, Adv.
 Mr. S.K. Sabharwal, Adv.

UPON hearing counsel the Court made the following
 ORDER

Writ Petition (Crl.) Nos. 135, 200 and 267 of 2003, 5-6 of
 2005, Criminal Appeals Nos. 406, 407, 408, 410, 411, 412, 413, 4
 14
 and 415 of 2004, 982 of 2006 and 1492 of 2007 are dismissed in
 terms of the signed order. Application for impleadment
 is
 dismissed.

(Pawan Kumar) (S. Thaper) (Anand Sin
 gh)
 Court Master Court Master Court Mas
 ter

(signed orders are placed on the file)
 IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 135 OF 2003

ANIL SHARMA

... APPELLANT

VERSUS

STATE OF HARYANA & ANR.

...

RES POND E N T S

W I T H
WRIT PETI T I O N (CRL.)NO. 2 0 0 / 2 0 0 3 (SOCI E T Y FO R HUMAN
RIG H T S & CIVI L LI B E R T I E S VS. STA T E OF
HA R Y A N A)
W R I T P E T I T I O N (CRL.)NO. 2 6 7 / 2 0 0 3 (M.K. BA L A K R I S H N A N VS.
UNION OF INDI A
& ORS.)

OR D E R

W R I T P E T I T I O N (CRL.)NO. 1 3 5 / 2 0 0 3
In this petition under Article 3 2 of the Constitution the
petitioner prays for quashing of Annexures P- 1, P- 2 and
P- 3.
Annexure P- 1 is a publication in India Today. No particular has been
disclosed by the petitioner. Annexure P- 2 is the publication
in
Hindustan Times. No material particular has been disclo
sed.
Annexure P- 3 is list of accused granted remission by the Government.
Charge under Section 3 0 2 I PC in respect of accused/ K u l w a n t Singh
has been shown to have withdrawn on 0 3 . 1 2 . 2 0 0 1 . In the list -
Annexure P- 3 besides Kulwant Singh none of the accused has been
convicted/charged under Section 3 0 2 I PC. Therefore, the contention
of the learned counsel appearing for the petitioner that the accused
who has been convicted under Section 3 0 2 I PC. has been arbitra rily
released prematurely is not substantiated. This petition being abuse of
the process of the Court is accordingly dismissed.

W R I T P E T I T I O N (CRL.)NO. 2 0 0 / 2 0 0 3
In view of our order passed in WRIT PETITIO
N
(CRL.)NO. 1 3 5 / 2 0 0 3 this petition is dismissed.

...2/-

:2 :

W R I T P E T I T I O N (CRL.)NO. 2 6 7 / 2 0 0 3
In this writ petition petitioner prays for the following reliefs

:

- a. Issue notice on the Union of India and States and
Uts. of the Union.
- b. Issue writ in the nature of writ of manda m u s /
order or direction to the respondents for releasing life
convicts after 1 4 years term in jail generally and to
release all life convicts particularly detailed in Annexures
P- 2 to P- 4.
- c. Constitute an expert Committee to deal with the
case of life convicts languishing in jail even after 1 4 years
term.
- d. In the alternative, issue an appropriate writ,
order or direction to the Respondent Union of India, the
States and the Union Territories to frame uniform rules
and guidelines for exercise of powers under Articles 7 2
and 1 6 1 of the Constitution keeping large reservoir of
power to deal with exceptional situations as observed in
the Maru Ra m case but subject to recording of reasons;
- e. Issue an appropriate writ, order or direction to
the Respondent Union of India, the States and the Union
Territories to treat the mandatory minimu m period of 1 4
years to be served by certain life convicts under Section
4 3 3- A as only one of the guidelines under Articles 7 2 and
1 6 1 of the Constitution.

...3/-

:3 :

f. Issue an appropriate writ, order or direction that all

the cases of life convicts must mandatorily and automatically be reviewed by a board after a specified period (which in the case of convicts covered under Section 433A of the Cr.P.C. is at the end of 13 years in prison) on an individual basis under the above guidelines to consider whether the convict should be released or not;

g. Direct the Respondents to educate the prisoners on their right to be considered for premature release and provide adequate legal aid for the same.

h. Issue any order or direction as this Hon'ble Court finds fit and proper in the circumstances of the case.

Mr. K. Venugopal, learned counsel appearing for the petitioner at the outset fairly submits that he is not pressing prayer Nos. a and b. On a reading of the prayers from c to h, we are afraid that in exercise of power under Article 32 of the Constitution such prayer could be acceded. The prayer, inter alia, seeks direction to amend a law which power this court does not have. At the same time, the learned counsel for the petitioner has also brought to our notice that in the case of Andhra Pradesh as many as 1500 hardcore prisoners have been prematurely released. It is no doubt true that power under Articles 72 and 161, or under Section 433-A can not be exercised arbitrarily, as pointed out by this Court in Maru Ram vs. Union of India and others, (1981) 1 SCC 107. However, there is another difficulty to give effective relief. The alleged prematurely released 1500 hardcore prisoners are not before us. Therefore, it is difficult to give effective relief in exercise of our power under Article 32 of the Constitution.

...4/-

:4 :

We, however, clarify that if there are instances that the power has been exercised arbitrarily by the State Government it is open to the petitioner to challenge such arbitrary exercise of power before the High Court under Article 226 of the Constitution after impleading the prisoners released prematurely as respondents.

Subject to the aforesaid observation, we see no merit in this petition. The writ petition is dismissed accordingly.

Application for impleadment is dismissed.

.....J .
(H.K. S E M A)

.....J .
(MA R K A N D E Y KA T J U)

N E W D E L H I ,
J A N U A R Y 2 9 , 2 0 0 8 .

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 406 OF 2004

SHAMIM AHMED & ORS.
NT (S)

...APPELLA

O R D E R

This appeal is directed against the judgment and order dated 27th

September, 2001 passed by the Division Bench of the High Court of Allahabad.

By the aforesaid order the High Court has set aside the Government Order dated

11th

January, 2000 and 25th

January, 2000 granting remission to the appe

llants

purportedly in exercise of power under Article 161 of the Constitution.

Para (i)

of the aforesaid Order provides premature release of the category of prisoners as

under:

(i) Prisoners who had undergone 20 years of sentence with remission by 26.1.2000;

(ii) Male prisoners of 60 years or above, who had been sentenced to imprisonment for life and had undergone 3 years of sentence (without remission) by 26.1.2000;

(iii) Lady prisoners of 50 years or above who had been sentenced to imprisonment for life and had undergone 3 years of sentence (without remission) by 26.1.2000;

(iv) Male prisoners of 60 years or above who had been sentenced to a fixed term of imprisonment and undergone 1/3 of the sentence imposed upon them or 2 years whichever ever is less;

(v) Lady prisoners of 50 years or above who had been sentenced to a fixed term of imprisonment and had undergone 1/3 of the sentence imposed upon them or 2 years whichever ever is less.

The High Court has quashed the aforesaid order on the ground that the power has been exercised arbitrarily and in violation of the statutory provisions of Section 433A of the Code of Criminal Procedure.

After hearing the learned counsel for the appellants and going through the judgment of the High Court, we entirely agree with the view taken by the Division Bench of the High Court. A perusal of Clause (ii) of the Government Order discloses the male prisoners of 60 years or above, who had been sentenced to imprisonment for life and had undergone 3 years of sentence

(without remission) by 26.1.2000 and clause (iii) discloses the lady prisoners of 50 years or above who had been sentenced to imprisonment for life and had undergone 3 years of sentence (without remission) by 26.1.2000.

Validity of Section 433A of the Code of Criminal Procedure has been challenged before a Constitution Bench of this Court in Maru Ram Vs. Union of India & Others [1981 (1) SCC 107] in which this Court had upheld the validity of Section 433A. This Court also pointed out that even the power under Article 72 and 161 of the Constitution should not be exercised arbitrarily. Counsel for the appellants contended that the order of remand has been passed by the State Government in exercise of power under Article 161 of the Constitution which is quite different from the power under Section 433A of the Code of Criminal Procedure. While reading the order of the Government it appears that even assuming the Government has exercised power under Article 161 of the Constitution, it appears to be quite arbitrary and the High Court was justified in setting aside the aforesaid order.

In the result, there are no merits in this appeal and the same is dismissed.

We clarify that if any appellants have completed 14 years of actual imprisonment, he or they may approach the State Government/concerned authority for appropriate orders and the concerned authority shall dispose of the petition expeditiously.

The application for deletion of the name of respondents is dismissed.

.....J .
(H.K. S E M A)

..... J
(M A R K A N D E Y K A T J U)

New Delhi,
January 29, 2008

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 408 OF 2004

MUNNA

...APPELLANT(S)

VER SUS

STATE OF U.P. & ORS.
T (S)

...RESPONDENT

CRIMINAL APPEAL NOS. 407, 410-415 OF 2004
CRIMINAL APPEAL NO. 982 OF 2006
CRIMINAL APPEAL NO. 1492 OF 2007

ORDER

In view of the Order passed in Criminal Appeal No. 406 of 2004,
these appeals are dismissed with the directions stated therein.

.....J .
(H.K. SEMA)

..... J
(MARKANDEYKATJU)

New Delhi,
January 29, 2008

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NOS. 5-6 OF 2005

MAN SARAM & AN R.
(S)

...APPELLANT

VER SUS

STATE OF U.P. & ORS.
T (S)

...RESPONDENT

ORDER

Heard learned counsel for the parties.

The Writ Petitions are dismissed.

.....J .
(H.K. SEMA)

..... J
(MARKANDEYKATJU)

New Delhi,

Janu a ry 2 9, 2 0 0 8