REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 321 OF 2018

Rajan .....Petitioner(s)

:Versus:

The Home Secretary, Home Department
of Tamil Nadu and Ors. ....Respondent(s)

J U D G M E N T

A.M. Khanwilkar, J.

1. This writ petition under Article 32 of the Constitution of India has been preferred *inter alia* seeking premature release of the petitioner as he has already undergone over 30 years of actual imprisonment. With remission, the total sentence undergone is above 36 years.

2. The petitioner claims that he is a refugee from Sri Lanka. He was named as an accused in relation to an offence committed on 27th July, 1988, registered as FIR in Crime No.104/88 at Thanipadi Police Station. The prosecution case was that the petitioner, along with co-accused, committed dacoity at the house of one Pitchaikara Grounder and while he was trying to escape in a Maruti Van, the police and common public erected a barricade, upon which the petitioner fired from a machine gun killing three persons and injuring four. The petitioner was charged for offences punishable under Sections 120(B), 395, 353, 506(2), 302(3 counts), 307 (4 counts) of IPC, Section 302 r/w 419 of IPC, Section 307 r/w 149 of IPC and Section 3 read with Sections 25(1A), 27(3) and 28 of the Indian Arms Act. After a full-fledged trial by the District and Sessions Judge, Thiruvannnamalai, for the aforementioned offences, vide judgment and order dated 25th January, 2007, the petitioner came to be convicted for offences punishable under Sections 395, 302 (3 counts), 307 (4 counts) of IPC and Section 3 read with Sections 25(1A) and 27(3) of

the Indian Arms Act and sentenced to undergo 7 years' rigorous imprisonment for offence punishable under Section 395 of IPC, life imprisonment for offence punishable under Section 307 (4 counts) of IPC for each count as also awarded capital sentence for offence punishable under Section 302 (3 counts) and further 5 years' imprisonment for offences punishable under Section 3 read with Section 25 (1A) of the Indian Arms Act. The sentences awarded to the petitioner were directed to run concurrently.

3. The petitioner had assailed the said decision before the High Court of Judicature at Madras, by way of Criminal Appeal No. 653 of 2007, which was heard along with Death Reference Case No.3/2007. The High Court, by its judgment and order dated 26th February, 2008, affirmed the judgment and order of conviction and sentence awarded by the Trial Court for the concerned offences but converted the death sentence into life imprisonment on each of the 3 counts. The High Court judgment has attained finality.

4. Since the petitioner had undergone actual sentence for a sufficiently long period of time, he applied for premature release. That representation was considered by the Advisory Board held on 20th January, 2010, but came to be rejected for the reasons recorded in the opinion of the Advisory Board. The same was duly considered by the competent authority of the State Government and the proposal for premature release came to be rejected vide order dated 14th June, 2010, bearing GO(D) 6033. It appears that the petitioner, after a gap of around 8 years, once again made another representation on 5th February, 2018, for his premature release, which reads thus:

"**Annexure P/6**
Date:05.02.2018

MOST URGENT

To
1. The Home Secretary,
Home Department of Tamil Nadu,
Secretariat, St. George Fort,
Chennai.

2. The Additional Director General of Police
and The Inspector General of Prisons,
Wannels Road, Egmore,
Chennai-600008.

3. The Deputy Inspector General of Prisons,
Vellore Range, Vellore.

4. The Superintendent of Prison,
Vellore Central Prison,
Vellore.

From
Rajan,
Convict No.____,
Presently lodged at
Vellore Central Prison,
Vellore.

Sir,

Sub: Re. the inclusion of my name in the list called for the premature release of life convict prisoners on the occasion of Birth Centenary of Bharat Ratna, Puratchi Thalaivar Dr.M.G. Ramachandran, as per G.O. Ms. No.64, Home (Pri IV) Dept., Dt. 01.02.2018.

Ref.: 1. Lr. of the Office of Inspector General of Prisons, No.4369/PS1/2018-1, Dt.02.02.2018.
2. State of Punjab Vs. Dalbir Singh – 2012 (3) SCC 346

I am a life convict lodged in Vellore Central Prison for the past 30 years. I was convicted and sentenced by the Trial Court on 25.01.2007 and awarded Death Sentence under section 302 IPC and 27 (3) of Arms Act. Subsequently on 26.02.2008, my sentence was commuted to Life imprisonment but upholding the conviction rendered by the Trial Court.

It is pertinent to note that the Hon'ble Supreme Court in State of Punjab Vs. Dalbir Singh – 2012 (3) SCC 346 struck down Section 27 (3) of Arms Act as unconstitutional and declared void. Hence my conviction now survive alone on Section 302 IPC.

Since I have been under incarceration for about 30 years, my name may be included in the list called for by the IG Prison for premature release. Please find the enclosed the Supreme Court judgment for your kind perusal.

Thanking You,

Yours Faithfully,
Rajan

Encl.
1. High Court judgment dt. 26.02.2008.
2. 2012 (3) SCC 346"

5. As the petitioner did not get any response to the said representation, he filed the present writ petition for the following reliefs:

"**PRAYER**

WHEREFORE, the petitioner most humbly pray that this Hon'ble Court be pleased to:

a) Pass an appropriate Writ or order directing the release of the petitioner from prison forthwith, and/or

b) Declare that the sentence of life imprisonment imposed upon the petitioner under section 27(3) of the Arms Act is null and void; and/or,

c) Alternatively direct the respondents to remit the remaining sentence and release the petitioner by considering his representation dated 05.02.2018 while this present Petition is pending before this Hon'ble Court.

d) Pass any such other order or Orders as may be deemed fit and proper."

6. In support of the aforesaid reliefs, the petitioner has relied upon the recent unreported decision of this Court in Writ Petition (Criminal) No.61 of 2016, in the case of ***Ram***

Sewak Vs. The State of Uttar Pradesh, decided on 11th October, 2018, to contend that he has already undergone 30 years of actual imprisonment and with remission, the total sentence undergone by him would be more than 36 years, which is much more than the period undergone by the petitioner in the unreported decision (wherein it was only 29 years of imprisonment). Additionally, it is submitted that this Court, in the case of ***State of Punjab Vs. Dalbir Singh***,[1] has already struck down Section 27(3) of the Indian Arms Act as unconstitutional, and as a consequence thereof, the conviction and sentence awarded to the petitioner for the said offence cannot be reckoned any more. It is the case of the petitioner that he is presently undergoing sentence of life imprisonment only in respect of offences punishable under Sections 302 and 307 of IPC which were tried at one trial. As regards the conviction and sentence in relation to the remaining offences under Section 3 read with Section 25(1A) of the Arms Act and Section 395 of IPC, the petitioner has already undergone the

1 (2012) 3 SCC 346

same long back as the sentences for those offences were directed to run concurrently.

7. The grievance of the petitioner is that the competent authority of the State has failed to process the representation made by the petitioner on 5th February, 2018, for inexplicable reasons, which it was obliged to decide at the earliest opportunity as per the mandate of law.

8. This writ petition has been resisted by the respondents. An affidavit of Dr. Niranjan Mardi, Additional Chief Secretary to Government, Home Department, Secretariat, Chennai, has been filed to oppose the present writ petition. According to the respondents, the petitioner was involved in a very serious offence and has been convicted and sentenced to undergo life imprisonment on multiple counts. The case of the petitioner was duly considered by the Advisory Board on 20th January, 2010 and also by the State Government, which eventually rejected the proposal vide order dated 30th June, 2010. A preliminary objection has been taken by the State that the

Central Government is a necessary party, as the request for premature release is in relation to offences under the Arms Act. That request will have to be decided by the State only in consultation with the Central Government. The respondents have then adverted to the recent circulars issued by the State on 1st February, 2018 and 3rd May, 2018 framing guidelines with regard to the premature release of prisoners. According to the respondents, the petitioner is not eligible for premature release. It is also asserted that the petitioner had indulged in serious offences of dacoity and firing indiscriminately by use of AK-47 machine gun and hence, no indulgence should be shown to the petitioner because he has been convicted for offences under Section 302 (on 3 counts) and Section 307 (on 4 counts), respectively and sentenced to life imprisonment.

9. We have heard Mr. Rakesh Dwivedi, learned senior counsel appearing for the petitioner and Mr. M. Yogesh Kanna, learned counsel for the respondents.

10. Reverting to the prayer clause (b), we have no difficulty in accepting the stand of the petitioner that Section 27(3) of the Arms Act having been declared *ultra vires* in terms of the judgment of this Court in ***State of Punjab*** (supra), the conviction and sentence awarded to the petitioner in relation to the said offence cannot be reckoned in law. Even so, the petitioner is faced with the conviction and sentence awarded for other serious offences under Section 395 for 7 years' rigorous imprisonment, as also under Section 3 read with Sections 25(1A) and 27(3) of the Indian Arms Act with sentence of rigorous imprisonment for 5 years for the said offences. However, in view of the exposition of the Constitution Bench in ***Muthuramalingam and Ors. Vs. State represented by Inspector of Police***[2], we must immediately accept the stand of the petitioner that the sentences in respect of offences under Section 395 IPC and Section 3/25(1A) of the Arms Act also cannot be reckoned for considering the proposal for premature release of the petitioner. For, he has already

2 (2016) 8 SCC 313

undergone the sentence periods awarded for the said offences which were to run concurrently.

11. Indeed, the counsel for the respondents made a fervent effort to persuade us that the said sentences will also have to be taken into account for considering the proposal for premature release and in that case, consultation with the Central Government would be inevitable. We are not impressed by this submission. For, on a plain reading of the order passed by the Trial Court along with the modified sentence order passed by the High Court, it is indisputable that the sentences for offences punishable under Section 395 IPC and Section 3 read with Section 25(1A) of the Arms Act, were to run concurrently. The petitioner has already undergone the sentence awarded in relation to the said offences on expiry of 7 years and 5 years, respectively. This position is reinforced from the exposition of the Constitution Bench in ***Muthuramalingam*** (supra). It may be useful to reproduce paragraph 23 and the conclusion in paragraphs 34 & 35 of the said decision, which read thus:

"23. Parliament, it manifests from the provisions of Section 427(2) CrPC, was fully cognizant of the anomaly that would arise if a prisoner condemned to undergo life imprisonment is directed to do so twice over. It has, therefore, carved out an exception to the general rule to clearly recognise that in the case of life sentences for two distinct offences separately tried and held proved the sentences cannot be directed to run consecutively. The provisions of Section 427(2) CrPC apart, in *Ranjit Singh case*[3], this Court has in terms held that since life sentence implies imprisonment for the remainder of the life of the convict, consecutive life sentences cannot be awarded as humans have only one life. That logic, in our view, must extend to Section 31 CrPC also no matter Section 31 does not in terms make a provision analogous to Section 427(2) of the Code. **The provision must, in our opinion, be so interpreted as to prevent any anomaly or irrationality. So interpreted Section 31(1) CrPC must mean that sentences awarded by the court for several offences committed by the prisoner shall run consecutively (unless the court directs otherwise) except where such sentences include imprisonment for life which can and must run concurrently. We are also inclined to hold that if more than one life sentences are awarded to the prisoner, the same would get superimposed over each other. This will imply that in case the prisoner is granted the benefit of any remission or commutation qua one such sentence, the benefit of such remission would not ipso facto extend to the other.**

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34. In conclusion our answer to the question is in the negative. We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. **Such sentences would, however, be superimposed over each other so that any remission or commutation granted by the competent authority in one**

3 (1991) 4 SCC 304

does not ipso facto result in remission of the sentence awarded to the prisoner for the other.

35. We may, while parting, deal with yet another dimension of this case argued before us, namely, whether the court can direct life sentence and term sentences to run consecutively. **That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The trial court's direction affirmed by the High Court is that the said term sentences shall run consecutively.** It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 CrPC. **The court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31 CrPC. The converse however may not be true for if the court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence.** Whether or not the direction of the court below calls for any modification or alteration is a matter with which we are not concerned. The regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs."

(emphasis supplied)

12. This decision is also an authority on the proposition that remission or commutation granted by the competent authority for any one of the offences does not *ipso facto* result in release

of the prisoners for other offences for which he has been convicted and sentenced at one trial.

13. The Constitution Bench in the case of ***Union of India Vs. V. Sriharan alias Murugan and Ors.***[4], went on to examine seven questions. Emphasis was placed by the counsel for the petitioner on the exposition in reference to question No. (vii) regarding the sweep of expression "consultation". In the present case, no doubt the petitioner has been convicted and sentenced for offences punishable under the Arms Act as a result of which the requirement of "consultation" may have triggered. However, the conviction and sentence in reference to the offence under Section 27(3) of the Arms Act, having been declared *ultra vires* and unconstitutional; and the sentence awarded to the petitioner in reference to offence under Section 3 read with Section 25(1A) of the Arms Act having already been completed by the petitioner as it was to run concurrently with life imprisonment, even these offences cannot be reckoned for considering the representation made by the

4 (2016) 7 SCC 1

petitioner. Resultantly, there would be no need to consult the Central Government and, for the same reason, the presence of Central Government in this petition is not essential.

14. We may usefully advert to the dictum in a separate judgment by Justice Uday U. Lalit, albeit concurring with the leading opinion by Justice Kalifulla, on issue No. (vii), as noted in paragraph 215, as follows:

> "215. In the instant case as per the order passed by this Court in *State* v. *Nalini*[5], the respondent convicts were acquitted of the offences punishable under Sections 3(3), 3(4) and 5 of the TADA Act. **Their conviction under various Central laws like the Explosive Substances Act, the Passport Act, the Foreigners Act and the Wireless Telegraphy Act were all for lesser terms which sentences, as on the date, stand undergone. Consequently, there is no reason or occasion to seek any remission in or commutation of sentences on those counts. The only sentence remaining is one under Section 302 IPC which is life imprisonment.** It was submitted by Mr. Rakesh Dwivedi, learned Senior Advocate that Section 302 IPC falls in Chapter XVI of IPC relating to offences affecting the human body. In his submission, Sections 299 to 377 IPC involve matters directly related to "public order" which are covered by List II Entry 1. It being in the exclusive executive domain of the State Government, the State Government would be the appropriate Government. It was further submitted that assuming Section 302 read with Section 120-B IPC are relatable to Entry 1 of List III being part of the Indian Penal Code itself, then the issue may arise whether the Central Government or the State Government shall be the appropriate Government and resort

5 (1999) 5 SCC 253

> has to be taken to provisions of Articles 73 and 162 of the Constitution to resolve the issue."

It is, thus, amply clear that the representation of the petitioner will have to be considered only in reference to the sentence of life imprisonment concerning offences under Sections 302 and 307 of IPC, respectively.

15. In the present case, the petitioner has been convicted on 3 counts for offence under Section 302 IPC and on 4 counts for offence under Section 307 IPC, and in relation to which he has been given life imprisonment on each count. In that view of the matter, keeping in mind the exposition in ***Muthuramalingam*** (supra) and ***Sriharan*** (supra), the petitioner may succeed in being released prematurely only if the competent authority passes an order of remission concerning all the seven life sentences awarded to him on each count. But that would be a matter to be considered by the competent authority.

16. The petitioner would, however, rely on the unreported decision of this Court in ***Ram Sewak*** (supra), to contend that this Court may direct the authorities to release the petitioner forthwith and that there is no point in directing further consideration by the State as the petitioner had already undergone over 30 years of sentence and with remission, over 36 years. The order passed by this Court in ***Ram Sewak*** (supra), is obviously in the facts of that case. As a matter of fact, it is well settled by now that grant or non-grant of remission is the prerogative to be exercised by the competent authority and it is not for the Court to supplant that procedure. Indeed, grant of premature release is not a matter of privilege but is the power coupled with duty conferred on the appropriate Government in terms of Sections 432 and 433 of Cr.P.C., to be exercised by the competent authority after taking into account all the relevant factors, such as it would not undermine the nature of crime committed and the impact of the remission that may be the concern of the society as well as the concern of the State Government.

17. The petitioner would then rely on a three-Judge Bench decision of this Court in ***State of Tamil Nadu and Ors. Vs. P. Veera Bhaarathi***[6]. Notably, in this case, the respondent was convicted for offence under Section 302 of IPC and sentenced to rigorous imprisonment for life and also convicted under Sections 376 and 396 of IPC and sentenced to rigorous imprisonment for 7 years. Since both the sentences were to run concurrently, the respondent therein had claimed that he was entitled to be released prematurely having already undergone the actual sentence for over 16 years by invoking Rule 341 of the Tamil Nadu Prison Rules, 1983. In the present case, however, the petitioner has been convicted for offence under Section 302 (3 counts) and Section 307 (4 counts) and has been sentenced to life imprisonment on each count. The question as to whether the petitioner should be granted remission and premature release in respect of all the counts at one stroke, is a matter to be considered by the appropriate Government in exercise of power under Sections

6 2019 (2) SCALE 225 (Criminal Appeal No.120 of 2019 decided on 22nd January, 2019)

432 and 433 of Cr.P.C. We do not wish to dilate on that aspect.

18. Thus understood, we cannot countenance the relief claimed by the petitioner to direct the respondents to release the petitioner forthwith or to direct the respondents to remit the remaining sentence and release the petitioner. The petitioner, at best, is entitled to the relief of having directions issued to the respondents to consider his representation dated 5th February, 2018, expeditiously, on its own merits and in accordance with law. We may not be understood to have expressed any opinion either way on the merits of the claim of the petitioner. The fact that the petitioner's request for premature release was already considered once and rejected by the Advisory Board of the State Government, in our opinion, ought not to come in the way of the petitioner for consideration of his fresh representation made on 5th February, 2018. We say so because the opinion of the Advisory Board merely refers to the negative recommendation of the Probation Officer, Madurai and the District Collector, Madurai.

The additional reason stated by the State Government seems to be as follows:

> "4) The proceedings of the Advisory Board held on 20.01.2010 is as follows:-
>
> i. The case is heard and examined the relevant records. The accused is a Srilankan National and lodged at Special Camp at Chengalpet before the commission of this grave offence.
>
> ii. The Probation Officer, Madurai and the District Collector, Madurai have not recommended the premature release.
>
> iii. Also this prisoner has not repented for his act,
>
> iv. The plea for premature release is 'Not-Recommended'.
>
> 5) The Government after careful examination accept the recommendation of the Advisory Board, Vellore and the premature release of the life convict No.23736, Rajan S/o Robin, confined in Central Prison, Vellore is hereby rejected."

With the passage of time, however, the situation may have undergone a change and, particularly, because now the claim of the petitioner for premature release will have to be considered only in reference to the sentence of life imprisonment awarded to him for offences under Section 302 (3 counts) and Section 307 (4 counts) of IPC, respectively.

19. The argument of the respondents that the stipulation in the order dated 1st February, 2018, issued by the Home Department would make the petitioner ineligible because he was also tried for offence of dacoity punishable under Section 395, need not detain us, considering the fact that the sentence awarded for the said offence has already been completed by the petitioner and thus cannot be reckoned for the purposes of deciding the representation for remission of life sentence and for premature release in reference to the offences punishable under Sections 302 and 307, respectively. In other words, the remission sought by the petitioner is presently limited to offences punishable under Sections 302 and 307 respectively, for which he has been sentenced to life imprisonment on more than one count.

20. We, therefore, dispose of this petition with a direction to the competent authority to process the representation made by the petitioner dated 5th February, 2018 (Annexure-P6) and take it to its logical end expeditiously and preferably within four months, in accordance with law, without being influenced

by the rejection of the earlier representation vide order dated 14th June, 2010, by the State Government. We also hold that consultation with the Central Government would not be necessary and the State Government, being the appropriate Government, must exercise power conferred upon it in terms of Sections 432 and 433 of Cr.P.C. All questions to be considered by the appropriate Government are left open.

21. The writ petition is disposed of accordingly. All pending applications are also disposed of.

.....J.
(A.M. Khanwilkar)

.....J.
(Ajay Rastogi)

New Delhi;
April 25, 2019.