

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No.529/2021

(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)

SONADHAR

Petitioner(s)

VERSUS

THE STATE OF CHHATTISGARH

Respondent(s)

(MR. NEERAJ KUMAR JAIN, SR. ADVOCATE (A.C.),
MR. GAURAV AGRAWAL, ADVOCATE FOR NATIONAL LEGAL SERVICES
AUTHORITY, MR. DEVANSH A. MOHTA, ADVOCATE (A.C.),
MR. ABHIMANYU TEWARI, ADVOCATE FOR STATE OF ARUNACHAL PRADESH,
DR. JOSEPH ARISTOTLE S., ADVOCATE FOR STATE OF TAMIL NADU,
MR. CHANCHAL K. GANGULI, Advocate for STATE OF WEST BENGAL,
MRS. NIRANJANA SINGH Advocate for State of Bihar,
MR. MILIND KUMAR, ADVOCATE FOR STATE OF RAJASTHAN,
MR. NIKHIL GOEL, ADVOCATE FOR HIGH COURT OF GUJRAT,
MR. SARVESH SINGH BAGHEL, ADVOCATE FOR STATE OF UTTAR PRADESH
[FOR FURTHER DIRECTIONS])
IA NO.149236/2021- FOR IMPLEADMENT
IA DIARY NO.10916/2022- FOR BAIL

Date : 09-02-2022 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

Mr. Neeraj Kumar Jain, Sr. Adv./AC
Mr. Devansh A. Mohta, Adv./AC

For Petitioner(s)

NALSA

Mr. Gaurav Agrawal, Adv.
Mr. Devansh A. Mohta, Adv.

Ms. Liz Mathew, AOR/AC

For Respondent(s)

**Ms. Garima Prasad, Sr. Adv./AAG
Mr. Sarvesh Singh Baghel, AOR
Mr. Sudhir Naagar, Adv.**

**Mr. Sumeer Sodhi, AOR
Mr. Gaurav, Adv.**

Ms. Mridula Ray Bharadwaj, AOR

**Mr. Mahfooz A. Nazki, AOR
Mr. Polanki Gowtham, Adv.
Mr. Shaik Mohamad Haneef, Adv.
Mr. T. Vijaya Bhaskar Reddy, Adv.
Mr. K.V. Girish Chowdary, Adv.
Ms. Rajeswari Mukherjee, Adv.**

**Dr. Joseph Aristotle S., AOR
Ms. Nupur Sharma, Adv.
Mr. Sanjeev Kumar Mahara, Adv.**

**Mr. Saket Singh, Adv.
Ms. Niranjana Singh, AOR**

Mr. Samir Ali Khan, Adv.

Mr. Nikhil Goel, AOR

**Mr. Abhimanyu Tiwari, AOR
Ms. Eliza Bar, Adv.**

**Mr. Vishal Meghwal, Adv.
Mr. Milind Kumar, AOR**

**Mr. Rahul Chitnis, Adv.
Mr. Sachin Patil, AOR
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.
Ms. Shwetal Shepal, Adv.**

**Mr. Bharat Singh, AAG
Mr. Pashupati Nath Razdan, AOR**

Mr. Chanchal Kumar Ganguli, AOR

Mr. Soumitra G. Chaudhuri, Adv.

Mr. Yogesh Kanna, AOR

Mrs. K. Enatoli Sema, Adv.

Mr. Amit Kumar Singh, Adv.

Ms. Chubalemla Chang, Adv.

UPON hearing the counsel the Court made the following

O R D E R

PREMATURE RELEASE OF LIFE CONVICTS

A note has been submitted to us on the issue of premature release of life convicts. Ms. Liz Mathew has drawn our attention to the said note State-wise:

STATE OF UTTAR PRADESH (U.P.)

Uttar Pradesh was taken up as one of the states for carrying out a pilot project. The data shows that for the year 2021, 1372 applications were received for premature release of the convicts and 633 applications were allowed by the State Government, while 739 applications were rejected. 588 life convicts have been prematurely released while 45 applications were returned for queries. We are cautious of the extent of pending cases on different aspects in Uttar Pradesh, but we express some concern about 739 applications being rejected, which is a large number and express an apprehension on whether the policy of 28.7.2021, which has added a condition of minimum 60

years before release, was an impediment. Ms. Garima Prashad, learned AAG submits that it was not pointed out to the Court in W.P. (Cr1) No.398 of 2021 that in view of reservations expressed in different matters on this aspect, the bar of 60 years stands withdrawn. She also makes a submission that an endeavor has been made to streamline the process so that the needful be done within a period 90 days from the inception of clearance and seven occasions have been identified when prisoners would be released. These are Republic day (26th January), Women's day (8th March), World Health Day (7th April), Labour Day (1st May), Yoga Day (21st June), Independence Day (15th August) and Gandhi Jayanti (2nd October). In this behalf, we would like to observe that insofar as the first half of the year is concerned, there are five occasions identified for release of prisoners but in the second half only two occasions have been identified. We desire the State Government to identify at least three more significant days for release of prisoners in the second half of the year.

Another submission made by the learned AAG is that a pilot project may be undertaken at least for one jail to see that the time line of 90 days is adhered to and also find out the impediments. In this behalf, Ghaziabad Jail

is identified for the said purpose.

In the report, the matter of concern expressed is that more than 4,000 life convicts have already completed 14 years of actual custody in State of U.P. The data received from jail authorities indicate that convicts have applied for premature release by Nominal Roll or Form A (i.e. under UP Prisoners Release on Probation Act, 1938) and these applications have been forwarded to the District Magistrates, but are lying with the District Magistrate. For example, in the meeting held on 10.1.2022, only 2 applications of nominal Rolls were considered. In view thereof the following directions are prayed for:

“(a) The State of Uttar Pradesh may be directed that all pending applications through Nominal Roll and/or Form-A, pending before the District Magistrates be processed within next 4 months and forwarded to the Jail Headquarter as per the SOP approved by this Hon’ble Court; and

(b) The State of Uttar Pradesh may take a decision on the said nominal Rolls and/or Form-A application within a further period of 6 months and a report be submitted to this Hon’ble Court”

Learned AAG submits that in view of the ongoing election process, these time-lines may become difficult to follow.

We are however of the view that the best foot must be put forward for these purposes and the time-lines proposed

are much beyond the election period which should be over in about a month's time. We are thus inclined to pass the aforesaid directions but will take into consideration the exclusion of the election period.

STATE OF KARNATAKA

The progress in Karnataka is on track. The Government order dated 21.4.2020 was already existing and in pursuance to this Court's orders dated 07.7.2021 and 06.10.2021, a meeting was held by the stake holders and following orders are stated to have been passed:-

"(a) Jail Authority was required to take effective steps for the identification of the life convicts eligible for premature release as on 01.01.2022,

(b) Jail Authorities were required to hold advisory board meetings in the respective Central Prisons by 24.1.2022,

(c) Proceedings of such advisory board meetings were to be communicated to the KSLSA by DIG, Prisons & Correctional Services by 28.1.2022, and

(d) Jail authorities were required to inform whether the prisoners required legal aid in contesting the case or for challenging the rejection/ non consideration of their premature release."

An Advisory board meeting has thereafter been held and the information analysis shows that out of the 119 eligible persons, 89 prisoners were recommended while

cases of 21 prisoners were deferred and cases of 9 prisoners were rejected. The directions sought by the Committee qua Karnataka are as under:-

“(a) It may be directed that the applications pending with the Life Convicts Release Committee/ Karnataka State Government are processed and the process is completed as per the SOP approved by this Hon’ble Court, and

(B) State of Karnataka may be directed to conduct the exercise afresh for all prisoners (except for the ones considered in the instant round) who will be eligible in July 2022.”

We accept the suggestion and direct accordingly.

STATE OF CHATTISGARH

The progress in Chattisgarh is stated to be satisfactory where out of 256 cases, 145 eligible prisoners are stated to be released while 67 cases were rejected. We only express concern about the high rate of rejection and the Amicus may look into whether there are satisfactory reasons for the same.

STATE OF MADHYA PRADESH

On the face of it, the position looks satisfactory as out of 227 eligible persons, 218 prisoners were recommended and number of prisoners is stated to be 213. However, the Amicus submits that since this chart was submitted at the last

minute, they did not have enough time to analyse the data. We have informed the learned counsel appearing that the data must be submitted in time and necessary inputs as called for by the Amicus be now submitted within two weeks to verify whether this data reflects the correct position in terms of the Order dated 07.7.2021 and 06.10.2021.

STATE OF ANDHRA PRADESH

In Andhra Pradesh, it appears there is a practice of issuing Government orders yearly or biannually and the last order was issued on 16.8.2021. The data shows that 174 prisoners were recommended by jail authorities for release out of which 12 prisoners were released. Learned AAG submits that the process is ongoing on to release the others shortly and that there is no backlog of cases to be considered. We have impressed upon him that if a consistent policy is brought into being, there is no need for annual or biannual orders unless there is some change in that behalf. The only direction sought is by the Amicus is for pending recommendations to be considered expeditiously, something on which learned AAG has already assured us.

STATE OF MAHARASHTRA AND BIHAR

We must comment adversely on the State of Maharashtra and

State of Bihar in not giving the requisite assistance even though State of Bihar is stated to have sent the report at the nth minute with the result that the Amicus(s) had no time to analyse it. The change in the IG (Prisons) can hardly be the reason not to furnish the report in time. The State of Maharashtra has not even shown the courtesy of sending a report. The State of Maharashtra is directed to submit a compliance report within three months in relation to steps 1 & 2 of the SOP and any infraction will be viewed very seriously and even a day's delay will require ADG (Prisons), Maharashtra to be personally present in the Court proceedings.

The Amicus(s) have volunteered to analyse, if we identify, more States for the pilot projects. We identify five more States for the said purpose as State of West Bengal, State of Rajasthan, State of Tamil Nadu, State of Kerala and State of Orissa.

These states will give their report within a period of three months-

Some directions were passed in SLP(Cr1.) No.514 of 2021 but that matter having been disposed of, those directions have to be read in the present petition and we accordingly issue further directions in this behalf.

**APPEALS PENDING BEFORE HIGH COURT WHICH ARE BEING LOOKED AFTER
BY THE HIGH COURT LEGAL SERVICES COMMITTEE**

GUWAHATI HIGH COURT (AIZWAL BENCH)

Mr. Devansh A. Mohta, Learned Amicus Curiae while assisting us, points out that a list has been sent of 27 criminal appeals and 2 pending writ petitions but the list does not reflect information pertaining to the total period of detention and the nature of sentence i.e. life sentence or fixed term awarded. We call upon all the legal services authorities to send complete data for better analysis including the data already sent.

CHATTISGARH HIGH COURT

The Chattisgarh High Court Legal Services Committee prepared a list wherein there were 46 cases where period of detention is more than 8 years in life sentence cases and 55 cases of fixed term sentences where the accused have completed more than half the sentence. A second list has been sent of 554 pending criminal appeals which have been filed through the Chattisgarh High Court Legal Services Committee, where the process of filing bail application is underway.

MADHYA PRADESH HIGH COURT

The Madhya Pradesh State Legal Services Authority apparently held a virtual meeting on 04.12.2021 but the data is stated to be still pending. The State Legal Services Authority is directed to take a more active approach in this behalf.

DELHI HIGH COURT

The Delhi High Court Legal Services Committee appears to have carried out a commendable task as per the learned counsel.

Total 361 cases have been identified out of which 232 cases comprised of accused who were awarded "fixed term" sentences and the remaining 129 were "life sentence" cases. Bail applications were filed in 79 cases, where 57 accused were awarded "fixed sentence" and 22 accused are undergoing "life sentence". 11 fixed term accused were granted bail. It is pointed out that 34 of the 79 accused were denied bail where 19 of these cases were fixed term cases and 15 were life sentence cases. But, hearing of these appeals was expedited granting short dates of hearing and 4 appeals in cases under fixed terms sentences have been disposed. 34 out of the 79 bail applications are still pending consideration.

WILLINGNESS TO ACCEPT INFRACTIONS

Learned Amicus Curiae points out that in pursuance to the directions in (c) and (d) in the Order dated 06.10.2021 at that time passed in SLP (Cr1). No.514 of 2021, only Delhi High Court Legal Services Committee has done the pilot project. The result of the pilot project in 2 cases was that the convicts expressed their desire to plead guilty, provided they are released by the concerned Court after reducing the sentence but in those cases the High Court was not inclined to accept this. The seriousness of the offences may be the reason for the same.

Another aspect which has come out in the exploration of that process is that it was found that most of the convicts were not willing to plead guilty because the sentence imposed upon the convicts was the minimum sentence prescribed for the offence committed by the convicts under the relevant statute. In respect of 4 other cases explored as the sentence of imprisonment left to be undergone was 2-3 months, the convicts were not interested in filing bail applications or willing to accept their infractions.

The aforesaid may not have been a successful attempt but there is no reason why other State Legal Services Committee should not carry out such a project because Delhi has its own

peculiarities and the problem is possibly more aggravated in some of the larger States. The Chhattisgarh Legal Services Committee has however not given its report in pursuance to the aforesaid direction. We would expect them to assist in this behalf and we expand the States who are required to do this from Delhi and Chhattisgarh to initially include 5 States viz. State of West Bengal, State of Rajasthan, State of Tamil Nadu, State of Kerala and State of Orissa. Needless to say that State Legal Services Committee of States now identified and earlier identified, treating the Delhi High Court Legal Services Committee as a Model, should carry out a similar exercise on that model for bail after undergoing half sentence or eight years sentence.

JAIL PETITIONS

Mr. Gaurav Agrawal, learned counsel for NALSA points out that the ground work done takes us to the chart filed with the note on Jail Petitions which shows there are 19 cases where the accused have passed away or have been released after carrying out the sentence. Thus, we accept his suggestion that these matters should be listed by the Registry of the Supreme Court expeditiously before the Court for disposal/ Orders.

A Second category of cases are those accused who have undergone 14 years of actual custody or more, again numbering

19. In those matters, we are of the view that they should also be considered for listing before the court and for disposal or at least for consideration of grant of bail. These cases can also be directed to be considered for remission in accordance with the norms at the earliest.

We may also notice that there are accused who have undergone 10 years of custody or more in life sentence cases and the consideration for grant of bail for these cases may also be required to be considered. These are all aspects the Registrar(Judicial) should look into. The Registrar (Judicial) will also look into the category of cases which are in the after notice category and fresh matters. These are ones which the Supreme Court Legal Services Committee is assisting and the push which is normally given in privately represented cases through counsels would not be there. The Court itself may look into the listing of these matters.

We may note that a list of 13 cases is given where the accused have undergone less than 10 years /death sentence matters. There are also 55 cases which are stated to be pending at after notice stage and there are six fresh matters filed from the year 2018 to 2020 which are once again pending consideration and persons have gone through sentences varying from 7 years to 15 years. Certain other data is given but the report speaks for itself.

Another category of cases numbering 13 are matters where the accused have actually served out more than 14 years of sentence and these are jail petitions received which are given diary numbers. Some of them may have even filed applications for remission. These are relateable to State of Uttar Pradesh and State of West Bengal. At least these 13 cases to begin with, insofar as the issue of remission is concerned should be dealt within a period of two months from today to find out whether those accused really are interested in prosecuting their appeals further.

One of the other categories pointed out is matters relating to listing because documents have not been obtained from the High Court. These are relatable to the Allahabad High Court, Rajasthan High Court and Uttarakhand High Court. The Registrar General of the High Courts are called upon to ensure that those matters which have been pending for a considerable time and the number of the convicts who have undergone a large part of the sentence, the record be sent expeditiously to the Supreme Court of India not later than one month from the communication of this Order. In this behalf, the Supreme Court Legal Services Committee will send to each of the Registrar Generals a list of such cases dealing with that particular State.

A POSSIBLE ALTERNATE ROUTE

In the course of dealing with this matter, one of the aspects which was explored was whether for cases where the maximum sentence is 7 years or less, and the persons have either served out half the sentence or pending trial have already gone through half the sentence, can there be an exploratory method to see that these cases go out of the system so that judicial system is able to concentrate on more heinous cases. A Natural corollary of this would be that if the cases by the State are sought to be dropped, they should not face any adverse litigation on account of having initiated those cases to that extent the detenu would have to give them consent. We say so as plea bargaining has so far not been very successful as it carries the stigma of conviction.

This is a possibility worth exploring and the Amicus Curiae assisting us would interact with the relevant authority to explore this possibility. The interaction can also take place with the Law Ministry in this regard.

In the end, we have no words really to appreciate the assistance being provided by the Amicus Curiae Mr. Gaurav Agrawal and team consisting of Ms. Liz Mathew and Mr. Devansh

A. Mohta for a larger cause of the judicial system and the personal liberty of these persons who in some manner are still caught up in the pipeline without knowing their fate.

List on 20th July, 2022.

(RASHMI DHYANI)
COURT MASTER

(POONAM VAID)
COURT MASTER