

ITEM NO.3 REVISED Court 7 (Video Conferencing)

SECTION II-C

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

941296

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

(FOR ADMISSION AND I.R AND I.A. NO. 68721/2021-IMPLEADMENT AND I.A. NO. 68722/2021-EXEMPTION FROM FILING O.T.

IA No. 28195/2021 - EXEMPTION FROM FILING O.T.

IA No. 14743/2021 - EXEMPTION FROM FILING O.T.

IA No. 129912/2020 - EXEMPTION FROM FILING O.T.

IA No. 14741/2021 - PERMISSION TO

DOCUMENTS/FACTS/ANNEXURES) FILE ADDITIONAL

SLP [CRL] NO.514/2021

[TAKEN ON BOARD]

to be true Copy
Registrar (Judl.)

07-07-2021
Supreme Court of India

Date : 07-07-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE HEMANT GUPTA

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

MR. M. YOGESH KANNA, ADVOCATE FOR STATE OF TAMIL
NADU

Mr. Chanchal K. Ganguli, Advocate for STATE OF WEST
BENGAL

For Petitioner(s) Ms. Liz Mathew, AOR

For Respondent(s) Mr. Sumeer Sodhi, AOR
Chhattisgarh Mr. Hussain Ali, Adv.

Tamil Nadu Dr. Joseph Aristotle S., Adv.
Mr. Saaketh Kasibhatia, Adv.

West Bengal	Mr. Soumitra G. Chaudhuri, Adv. Mr. Chanchal Kumar Ganguli, Adv.
Arunachal Pradesh	Mr. Abhimanyu Tewari, AOR Ms. Eliza Bar, Adv.
Impleadment	Mr. Pradeep Kumar Yadav, Adv. Mr. Vishal Thakre, Adv. Mr. Abhay Singh Yadav, Adv. Mr. Rudra Pratap Yadav, Adv. Ms. Shikha Yadav, Adv. Mr. Sanjeev Malhotra, AOR

UPON hearing the counsel the Court made the following
O R D E R

I.A. NO. 68721/2021-IMPLEADMENT

Dismissed as withdrawn.

Applications for exemption from filing official translation and for permission to file documents/facts/annexures are allowed.

Learned Amicus Curiae has drawn our attention to the judgment delivered by this Court in *Brijesh Kumar v. State of Uttar Pradesh, through its Secretary - [SLP(Cr1.) No.773/2020]* dated 22.03.2021 issuing certain directions in respect of the same problem. Learned Amicus rightly submits that no purpose would be served by duplication of directions but certain facilitating directions are also required to ultimately come up with the SOP after working it for some time so that the SOP can get a judicial imprimatur.

In view of the submission made by Mr. Gaurav Agrawal, learned Amicus Curiae and agreed to by the other counsels, the following further directions are passed:

- i) In all pending jail petitions with the Registry, the

details should be given to the learned Amicus Curiae/Member Secretary, NALSA/Mr. Gaurav Agrawal to process the cases further;

- ii) The NALSA/SCLSC will make necessary arrangements to facilitate the counsels in obtaining requisite materials/translations of the record;
- iii) In respect of future appointments of Amicus Curiae from the panel maintained by the Registry/as directed a copy of the letter should be marked to the NALSA for a similar assistance in the fresh matters in terms of point (ii) aforesaid.

We now proceed with the next aspect as set out in our order dated 01.03.2021 dealing with the aspect of how the remission applications have to be dealt with. In this behalf, Mr. Gaurav Agrawal has drawn our attention to a report submitted in this behalf dated 16.04.2021. He has emphasized that it may be difficult to have a uniform policy in view of there being different criteria involved in different States. In that behalf the four vital aspects are set out as under:

- (i) Timely identification of the eligible convicts;
- (ii) Making applications by the eligible convicts with the help of District Legal Services Authority;
- (iii) Timelines for the application procedure and decision on the premature release applications;
- (iv) If the premature release applications are rejected by the State Government, then legal aid will be provided to the said convict to decide whether the said rejection should be challenged in a Court or not.

The report thereafter has made suggestions *qua* all these four steps as under:

"Step -I: Identification of life convicts for premature release: Every four months, in January, May and September, the Jail Superintendent of the District/Central Jail shall make a list of all eligible life convicts who are entitled for premature release in the next six months. The list will be made as per the eligibility criteria laid down in the State policies. The Jail Superintendent shall send a copy of the list to the concerned DLSA. The DLSA shall assist in applications to be made by such eligible life convicts. The DLSA shall also organize legal awareness programmes in jails through its Jail Legal Services Clinics with the aim of informing the inmates about premature release policy and procedures.

Step- II. Collection of documents: The Jail Superintendent shall collect all the documents/reports which are required to be collected under the State policies. This process of collection of documents will be completed within a maximum period of three months so that the file is completed for forwarding the same to the higher authorities (IG/SLC/SRB/Advisory Board) in accordance with the State Policies. The Jail Superintendent shall forward

the same to the concerned authorities within the stipulated time, even in cases wherein the collection of documents required are incomplete. In such cases, the higher authorities to whom such file is forwarded, shall collect the remaining documents and shall not return the file to the Jail Superintendent citing incomplete documentation as a reason.

In case the higher authority is IG (Prisons) or any other police officer of higher rank, to whom the proposal is forwarded by the Jail Superintendent, such officer shall collect any remaining documents and shall forward the proposal to the SLC/SRB/State Government within a period of one month from the date of receipt of proposal. Assistance of the concerned DLSA may be sought for the collection of such remaining documents.

Step.III- Recommendation by Advisory Board/Sentence Review Board: Different States have different mechanisms for deciding the premature release applications. For example, in Rajasthan, there is an Advisory Committee at each Central Jail. In Haryana and Delhi, the premature release applications are sent directly to the State Level Committee for its recommendations. (SLC in Haryana and SRB in Delhi). The time taken by these boards while giving its

recommendations results in unnecessary delays. Hence, it is suggested the Advisory Board/SRB/Jail Headquarters may make its recommendation to the State Government within three months of the receipt of the documents. Further, it is suggested that the Review Boards may meet once in every quarter to ensure timely decisions of premature release applications.

Step IV: Orders by the State Government: The order passed by the State Government should be uploaded on the websites and, if any application for premature release is rejected, the reasons of the same should be communicated to the Jail Superintended who shall communicate the same to the convict. If the application for premature release is rejected, the concerned DLSA shall consult/advise and provide legal assistance (if required) to the convict, if there is a possibility of legal challenge to the rejected of the premature release application."

One of the aspects we have emphasized is that there should be a better coordination between the DLSA and the jail authorities so that the entire burden does not fall on the jail authorities. The assistance of para-legals can also be obtained to facilitate better working of the system. In addition, after the review Boards have taken a call, some time frame has to be provided for the State Government to take a

decision. We consider it appropriate that the decision by the State Government be taken within a period of two months of the communication of the recommendation of the review Board.

In order to facilitate the process for next calendar year, a tentative timeline has been stipulated in the report as under:

"A tentative timeline and procedure in the case where the application procedure has been started on 1st January, 2022 is presented below:

Steps	Tentative Timeline	Procedure	Authority
Step I	1 st - 15 th January, 2022	Identification of Prisoners The jail Superintendent shall identify and prepare list of prisoners who are eligible to be considered for premature release 6 months prior to such prisoners becoming eligible (prisoners who are eligible as on 1 st June 2022). Assistance of concerned DLSA may be sought to carry out this activity. The Jail Superintendent shall carry out this task once every four months in January, May and September. The prisoner shall make his application upon being informed of his eligibility. The concerned DLSA if requested may assist such prisoner in making the application.	Jail Superintendent
Step 2	Upto 31 st March, 2022	Collection of documents Jail Superintendent shall gather all	Jail Superintendent

	(Period of 3 months)	<p>necessary documents as per the respective State policies within a period of 3 months.</p> <p>1) If any concerned authority fails to provide any necessary documents or any other requirement as per the state policy within a period of 30 days, the Jail Superintendent shall send a reminder on expiry of such period.</p> <p>2) If the Jail Superintendent does not receive the required documents, he shall send the application with the collected documents to the Higher Authority mentioned under the concerned State policy.</p>	
Step 3	1 st July 2022 (period of 3 months)	<p>Recommendations of Higher Authority</p> <p>1) The concerned Higher Authority (IG or any other police officer of higher rank) shall collect any remaining documents and forward the file to the concerned State/District Boards and Committees for their recommendations (in States wherein such Authorities are required to do so)</p>	<p>[IG (Prisons) or any other police of higher rank OR SLC/SRB Advisory Board]</p> <p>In line with the State Policy.</p>
Step 4	1 st October, 2022 (Period	<p><u>Decision of State Government</u></p> <p>The State Government may make its decision</p>	<p>State Government</p>

	of 3 months)	whether to release the prisoner or reject his premature release application within 3 months of receipt of the application	
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The aforesaid timeline should be duly adhered to and in fact the timeline in Step 4 already suggests that the application for premature release should be processed within the time stipulated therein but the same will be subject to the additional period of three months which we have provided aforesaid for the State Government to take a decision.

Mr. Gaurav Agrawal suggests that as a pilot project this may be implemented in the State of Uttar Pradesh, State of Bihar and the State of Chhattisgarh. This will facilitate gaining experience from the work of the same whether it can be applied across the board and if any modifications are required in that behalf. The pilot project will commence from 1st August, 2021.

Thus, a copy of this order be circulated to the Chief Secretaries of the three States for necessary orders and be also circulated to the other Chief Secretaries so that they have information about the pilot project which is being implemented. The Secretary, NALSA will coordinate this aspect with the three States.

Now coming to the other aspect of the order dated 01.03.2021 where we were informed that one Shri Amit Mishra (the then detinue) has prepared a software which the State of Haryana itself thought worth implementing, Mr. Gaurav Agrawal

states that he has verified this position personally and the software is likely to be utilized for the State of Haryana and should be workable in about two to three weeks' time. He further suggests that for the three States where the other experiment is being carried out as noticed above, endeavour would be made to suitably modify the software and the assistance of Shri Amit Mishra will be sought for the said purpose. We opine that for the assistance being given by Shri Amit Mishra, a suitable emolument may be paid to him by the NALSA.

List for further proceedings on 06.10.2021.

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Taken on Board.

Mr. Gaurav Agrawal, learned Amicus Curiae suggests that for the present, we may concentrate on the appeals pending against conviction. Mr. Devansh A. Mohta, learned counsel has drawn our attention to the suggestions made in tandem by Mr. Mohta, Ms. Liz Matthew and Mr. Gaurav Agrawal in pursuance to our order dated 01.02.2021 at page 7 to submit that there should be a list prepared in descending order of the period of detention and that this is in fact as per Rule 149 of the High Court of Chhattisgarh. We find no difficulty in preparation of such a list but then priority cannot be given only to the matters under the Narcotic Drugs and Psychotropic Substances Act as this is broadly a salutary principle which would apply across the board for convicts in pending appeals.

The further progress in this behalf may be indicated to us by Mr. Gaurav Agrawal, learned Amicus Curiae depending upon the responses from different High Courts/States.

List on 06.10.2021.

Asha Sundriyal
9/7/2021
[ASHA SUNDRIYAL]
ASTT. REGISTRAR-cum-PS

On leave
[POONAM VAID]
COURT MASTER (NSH)

✓
9.7.21