2025:KER:31224

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

WA NO. 1245 OF 2024

AGAINST THE JUDGMENT DATED 14.08.2024 IN WP(Crl.) NO.90 OF 2024 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

PRASANNA
AGED 59 YEARS, W/O.RAJAN, VELLAMATHUKUDI HOUSE, KEEZHILLAM (P.O), PERUMBAVOOR, ERNAKULAM (DIST)., PIN - 683541

BY ADV K.DEEPA (PAYYANUR)

RESPONDENTS/RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

2 THE ADDL. CHIEF SECRETARY TO HOME DEPARTMENT
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM., PIN - 695001

3 THE DIRECTOR GENERAL OF POLICE (PRISONS)
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM.,
PIN - 695001

4 THE SUPERINTENDENT OF PRISON
OPEN PRISON & CORRECTION HOME NETTUKALTHERI,

THIRUVANANTHAPURAM (DIST)., PIN - 695572

**5 THE CHAIRMAN
JAIL ADVISORY COMMITTEE, OPEN PRISON &
CORRECTION HOME NETTUKALTHERI,
THIRUVANANTHAPURAM (DIST)., PIN - 695572**

**BY ADVS.
SHRI.P.NARAYANAN, SPL. G.P.
SHRI.JACOB P.ALEX, AMICUS CURIAE**

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19.03.2025, ALONG WITH WA.2137/2024, THE COURT ON 11.04.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

WA NO. 2137 OF 2024

AGAINST THE JUDGMENT DATED 03.12.2024 IN WP(Crl.)

NO.79 OF 2024 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER IN THE WRIT PETITION:

BINDU PRAKASAN
AGED 47 YEARS, W/O PRAKASAN,
PARAMBIL HOUSE, BROTHERS ROAD, KANDANNASSERY
P.O., THRISSUR, PIN - 680102

BY ADVS.
GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
MANU SRINATH
LIJO JOHN THAMPY
NIVEDITA MUCHILOTE
RIYAS M.B.

RESPONDENTS/RESPONDENTS IN THE WRIT PETITION:

1 **STATE OF KERALA**
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

2 DIRECTOR GENERAL
PRISON AND CORRECTIONAL SERVICE DEPARTMENT,
GOVERNMENT OF KERALA, POOJAPPURA,
THIRUVANANTHAPURAM, PIN - 695012

3 JAIL ADVISORY BOARD
OPEN PRISON AND CORRECTIONAL HOME, CHEEMENI,
KASARAGOD, KERALA, PIN - 671313

4 DISTRICT PROBATION OFFICER
THRISSUR, KALYAN NAGAR, AYYANTHOLE, THRISSUR,
KERALA, PIN - 680003

5 DISTRICT POLICE CHIEF
THRISSUR CITY, RAMAVARMAPURAM RD, PALLIMOOLA,
MANNUMKAD, RAMAVARMAPURAM, THRISSUR, KERALA,
PIN - 680631

6 SUPERINTENDENT
OPEN PRISON AND CORRECTIONAL HOME, CHEEMENI,
KASARAGOD, KERALA, PIN – 671313

BY ADVS.
SHRI.P.NARAYANAN, SPL. G.P.
SHRI.JACOB P.ALEX, AMICUS CURIAE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19.03.2025, ALONG WITH WA.1245/2024, THE COURT ON 11.04.2025 DELIVERED THE FOLLOWING:

C.R.

P.B.SURESH KUMAR & JOBIN SEBASTIAN, JJ.

Writ Appeal Nos.1245 and 2137 of 2024

Dated this the 11th day of April, 2025

J U D G M E N T

P.B.Suresh Kumar, J.

The questions that arise for consideration in these matters are common and as such, they are disposed of by this common judgement. For a proper adjudication of the questions, a clear articulation of the facts involved in the matters is essential.

W.A.No.1245 of 2024

2. The appellant is the petitioner in the writ petition from which the appeal arises. Her husband is undergoing imprisonment for life pursuant to his conviction under Section 302 of the Indian Penal Code (IPC) for having committed the murder of one Geetha, with whom he was

having an illicit relationship. The convict has undergone 22 years, 3 months and 19 days of imprisonment as on 10.06.2024 and has also earned a remission of 6 years, 3 months and 22 days. The period of sentence of the convict inclusive of remission would workout to be approximately 29 years. Although the case of the convict is being recommended by the Advisory Committee constituted under Section 77(1) of the Kerala Prisons and Correctional Services (Management) Act, 2010 (the Act) for premature release from the year 2017 onwards, the same is not being accepted by the Government. The appellant, in the circumstances, preferred W.P.(Crl.) No.320 of 2023 before this Court voicing the grievance and the writ petition was disposed of as per Ext.P3 judgment directing the Government to consider the case of the convict for premature release in the light of the latest recommendation of the Advisory Committee. Pursuant to the said direction, the Government issued Ext.P4 order holding that the case of the convict being a case involving the brutal murder of a widow who requires special care in the society, his premature release

would facilitate offences against women and that therefore, the case of the convict cannot be considered for premature release. The present writ petition is instituted challenging Ext.P4 order.

3. A counter affidavit was filed in the writ petition on behalf of the State Government contending, among others, that punitive measures imposed on persons convicted for offences against women are found not sufficient to deter and curb such offences; that stopping crimes against women is essential to ensure their safety and security; that criminal activities against women restrict their freedom and hinders their active participation in the society; that granting release to those involved in offences against women may facilitate offences against women and that they are, therefore, not extended the benefit of premature release.

4. The learned Single Judge dismissed the writ petition holding that the power conferred on the Government to grant remission is discretionary, and having regard to the facts of the case, the impugned order does not warrant

interference. The appellant is aggrieved by the decision of the learned Single Judge.

W.A. No.2137 of 2024

5. The appellant is the petitioner in the writ petition from which the appeal arises. Her husband is undergoing imprisonment for life pursuant to his conviction under Sections 302 and 307 IPC for having committed the murder of his mother and attempted to commit the murder of his father. The convict has undergone 20 years, 9 months and 27 days of imprisonment as on 30.06.2024 and he has earned a remission of 5 years, 10 months and 10 days. The period of sentence of the convict inclusive of remission would workout to be approximately 26 years. The case of the convict was recommended twice by the Advisory Committee constituted under Section 77(1) of the Act for premature release. The recommendations were, however, not accepted by the Government. The appellant, in the circumstances, preferred a writ petition before the Apex Court, and the same was disposed of by the Apex Court in terms of Ext.P5 order

directing the appellant to make a representation before the Government and directing the Government to consider the same. Pursuant to Ext.P5 order, the appellant preferred a representation and the same was rejected by the Government in terms of Ext.P7 order holding that inasmuch as the conviction was for the murder of his mother, the case cannot be considered for premature release. Ext.P7 order was challenged by the appellant before this Court in W.P(Crl) No.973 of 2022. During the pendency of the writ petition, the Advisory Committee recommended the case of the convict again for premature release on 02.05.2023. In the light of the said development, W.P(Crl) No.973 of 2022 was disposed of in terms of Ext.P12 judgment directing the Government to consider the said recommendation of the Advisory Committee untrammelled by Ext.P7 decision earlier taken in the matter. Pursuant to Ext.P12 judgment, the Government issued Ext.P14 order rejecting the recommendation of the Advisory Committee holding that the consistent stand of the Government in matters of this nature is that persons involved in the murder of women

and children shall not be granted premature release. The present writ petition is instituted challenging Ext.P14 order.

6. A counter affidavit was filed in the writ petition on behalf of the State Government. The stand taken by the Government in the counter affidavit is consistent with the stand taken by the Government in the counter affidavit filed in W.P.(Crl) No.90 of 2024 from which W.A.No.1245 of 2024 arose.

7. The learned Single Judge dismissed the writ petition following the decision of the learned Single Judge impugned in writ appeal No.1245 of 2024 and holding that the policy of the Government referred to in Ext.P14 is one evolved in terms of Section 77 of the Act and the Kerala Prisons and Correctional Services (Management) Rules, 2014 (the 2014 Rules) and that therefore, the decision is in order. The appellant is aggrieved by the decision of the learned Single Judge.

8. In the year 2020, Government proposed to grant premature release to all those prisoners who have completed 14 years of imprisonment and whose proposals for

premature release were rejected by the Advisory Committee. A committee was constituted thereupon for the said purpose to examine their cases for premature release. The said committee formulated a few general guidelines for determining the eligibility of the prisoners and recommended to the Government for premature release of 67 prisoners on the basis of the formulated guidelines. The prisoners were classified in four categories in terms of the said guidelines as (i) Category of prisoners who are not eligible for premature release (ii) Category of prisoners who are eligible for premature release after 25 years of imprisonment including remission (iii) Category of prisoners who are eligible for premature release after 20 years of imprisonment including remission and (iv) Category of prisoners who are eligible for premature release after 14 years of imprisonment excluding remission. The Government accepted the recommendations made by the committee after excluding (i) persons involved in most cruel murder, (ii) persons who committed murder of women and children, persons who committed murder with rape and (iii)

among the prisoners who are undergoing treatment for mental illness, prisoners whose relatives are reluctant to receive them, as per G.O.(Ms) No.116/2022/HOME dated 14.06.2022. The said Government Order is part of the records in W.A.No.1245 of 2024. The relevant part of G.O.(Ms) No.116/2022/HOME dated 14.06.2022 dealing with the exclusions made by the Government from the categories, reads thus:

> "6. Accordingly, the Government have examined in detail the recommendations of the Committee headed by the Additional Chief Secretary(Home&Vigilance) Department vide minutes read as 5th paper above and decided to approve the proposal, excluding the following category of prisoners :-
>
> 1. Persons involved in most cruel murder.
>
> 2. Persons who committed murder of women and children, persons who committed murder with rape.
>
> 3. Among the prisoners who are undergoing treatment for mental illness, the prisoners whose relatives are reluctant to receive them."

9. It is seen that a doubt arose in the course of the hearing as to whether the guidelines prescribed in G.O.(Ms) No.116/2022/HOME dated 14.06.2022 and the exclusions made therein represent the policy of the Government on premature release of prisoners, and consequently, in terms of the interim

order passed on 28.11.2024, this Court directed the respondents to file an affidavit placing on record as to how and under which document the eligibility of the prisoners for premature release is assessed. Pursuant to the said order, an affidavit has been filed on behalf of the Government in W.A.No.1245 of 2024 stating that the said Government Order cannot be treated as the policy of the Government for, the same was formulated solely for the purpose of releasing those prisoners who have completed 14 years of imprisonment and whose proposals for premature release were rejected by the Advisory Committee. It is also stated in the affidavit that the Government is identifying prisoners eligible for premature release in accordance with the provisions contained in Chapter 36 of the 2014 Rules.

10. Heard Adv.Deepa K.Payyanur for the appellant in W.A.No.1245 of 2024 and Adv.Manu Srinath for the appellant in W.A.No.2137 of 2024. Special Government Pleader Sri.P.Narayanan addressed arguments on behalf of the State. We also had the benefit of hearing Sri.Jacob P.Alex, who was

appointed as *amicus curiae* in the matters.

11. The learned counsel for the appellants contended in unison that classification of prisoners for premature release based on the gender of the victim, and the denial of the benefit of such release solely due to the severity of the offence committed, are arbitrary and discriminatory. According to the learned counsel, a blanket exclusion of certain offences from the scope of grant of premature release is not permissible in law. They relied on the decision of the Apex Court in **Joseph v. State of Kerala**, 2023 SCC OnLine SC 1211, in support of this argument. It was submitted by the learned counsel that inasmuch as the Government extended the benefit of premature release to similarly placed prisoners, the prisoners involved in the cases on hand are also entitled to be released prematurely. In addition, the learned counsel for the appellant in W.A. No. 2137 of 2024 argued that in the light of Section 77 of the Act, the benefit of premature release is one to be extended to well-behaved long-term convicted prisoners, regardless of the nature of the offence they committed.

According to the learned counsel, in the absence of any case for the Government that the prisoners involved in the cases on hand are not well-behaved long-term convicted prisoners, they are certainly entitled to the benefit of premature release.

12. *Per contra,* the learned Special Government Pleader argued that the exclusion of prisoners involved in certain categories of offences, especially those involved in the offences against women and children, in the matter of extending the benefit of premature release, is perfectly in order and does not violate the fundamental rights guaranteed to the prisoners. The learned Special Government Pleader relied on the decisions of the Apex Court in **State of Haryana v. Jai Singh**, (2003) 9 SCC 114 and **Sanaboina Satyanarayana v. Govt. of A.P.**, (2003) 10 SCC 78, in support of this argument. It was pointed out by the learned Special Government Pleader that even in **Joseph,** the Apex Court clarified that grouping of type of convicts based on the offences they were found to have committed, as a starting point, is permissible.

13. The learned *amicus curiae* brought to our

attention, the statutory provisions which have a bearing on the questions involved. The learned *amicus curiae* has also made available a compilation of various decisions of the Apex Court dealing with the subject and explained their interplay on the facts of the present cases. According to the learned *amicus curiae*, in the light of the decision of the Apex Court in Joseph, the State cannot be heard to contend that exclusion of convicts from the zone of consideration for premature release on the ground that they were involved in offences against women, is not arbitrary. According to the learned *amicus curiae*, inasmuch as the convicts involved in the cases were not imposed with a punishment of a longer term of imprisonment by the convicting courts, they are entitled to be considered for premature release in terms of the relevant statute. It was also the submission of the learned *amicus curiae* that the issue relating to premature release is one to be considered based on the provisions of the Act and the 2014 Rules and the relevant considerations namely, reformation, post-conviction changes in behaviour, remorse, good behaviour in jail etc. were not taken

note of while passing the impugned orders. It was also pointed out by the learned *amicus curiae* that one of the most important objects of punishment is reintegration of the convict back to society and the said object has been defeated in terms of the impugned orders.

14. We have examined the arguments advanced by the learned counsel for the parties as also the learned *amicus curiae*.

15. The orders impugned in the writ petitions were issued at a time when the Code of Criminal Procedure, 1974 (the Code) was in force. Section 432 of the Code confers power on the State Government to remit the whole or any part of the punishment to which a person has been sentenced for an offence. Section 433A of the Code, however, restricts the power conferred on the State Government under Section 432 by providing that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, such a person shall not be released from prison unless he had served

at least 14 years of imprisonment.

16. The Travancore-Cochin Prisons Act, 1950 (Act XVIII of 1950) and Prisons Act, 1894 (Central Act IX of 1894) were the statutes in force at the time of formation of the State. Both the statutes were enacted only to regulate the management of prisons. The Kerala Prisons Rules, 1958 (the 1958 Rules) framed invoking the power conferred by the said statutes provided for constitution of an Advisory Board to investigate and report on the sentences of prisoners. The 1958 Rules also empowered the Advisory Board to submit recommendations for their release in terms of the same. It is also provided in 1958 Rules that the case of prisoners whose aggregate sentence is more than 20 years shall be submitted for special orders of the Government as to their premature release on completion of 14 years of sentence including remission in each case. The said Rule reads thus:

> “545A. '14-Year-Rule'.—The cases of * prisoners whose aggregate sentence is more than 20 years shall be submitted together with the records specified under Rule 545 for special orders of Government as to their premature release or completion of 14 years of sentence including remission in each case.

> ** “Provided that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 of the Code of Criminal Procedure, 1973 such persons shall not be considered for release from prison unless he has served at least fourteen years of imprisonment.”

The 1958 Rules also contained a provision to the effect that the sentence of prisoners sentenced to life imprisonment shall be deemed to be a sentence of imprisonment for twenty years. Rule 299 dealing with the said aspect reads thus:

> **“299. Definitions in these rules.** - […]
>
> (c) The sentence of all prisoners sentenced to imprisonment for life or to more than twenty years imprisonment in the aggregate or to imprisonment for terms exceeding in the aggregate twenty years shall for the purpose of these rules, be deemed to be sentence of imprisonment for twenty years.”

17. “Prisons” being a State Subject under Entry 4 of List II of the Seventh Schedule to the Constitution, the statutes referred to in the preceding paragraph were replaced with the Act by the State Government, with effect from 14.05.2010. Unlike the repealed enactments, the Act was intended not only to regulate the management of prisons, but

also to provide for the safe custody, correction, reformation, welfare and rehabilitation of prisoners. The Preamble of the Act reads thus:

> "WHEREAS, it is expedient to provide for the safe custody, correction, reformation, welfare and rehabilitation of prisoners and management of prisons and correctional services in the State and for matters connected therewith or incidental thereto."

Section 77 of the Act provides for premature release. Section 77 reads thus:

> "**77.Premature release**: (1) Well behaved, long term convicted prisoners may be prematurely released with the objective of their reformation and rehabilitation, by the Government, either *suo motu* or on the recommendations of an Advisory Committee as may be prescribed.
>
> (2) The Advisory Committee constituted as per sub-section (1) shall have the powers and duties, as may be prescribed. "

Chapter 36 of the 2014 Rules deals with the "Advisory Committee" provided for under Section 77 of the Act for premature release of prisoners and related matters. Rules in Chapter 36 lay down the procedure to be followed for making recommendations for premature release of prisoners. Rules 465(2), 466(3) and 466(4) of the 2014 Rules read thus:

“465(2) വിടുതലിനായി പരിഗണിക്കുമ്പോൾ കുറ്റകൃത്യത്തിന് ഇരയായവരിൽ നിന്നുള്ള വിടുതലിനെ സംബന്ധിച്ച പ്രതികരണവും കാഴ്ചപ്പാടും കണക്കിലെടുക്കേണ്ടതാണ്. ഈ ആവശ്യത്തിലേക്കായി കുറ്റകൃത്യത്തിന് ഇരയായവരുടെ ബന്ധുക്കൾ, അയൽവാസികൾ, തദ്ദേശ സ്വയംഭരണ സ്ഥാപനങ്ങളിലെ ജനപ്രതിനിധികൾ മുതലായവരെ ബന്ധപ്പെട്ട് അന്വേഷണം നടത്തേണ്ടതാണ്. ഇത്തരം അന്വേഷണം തടവുകാരുടെ ബന്ധുക്കളിൽ നിന്നുകൂടി നടത്തേണ്ടതാണ്. കുറ്റകൃത്യത്തിന് ഇരയായവരുടെ പ്രതികരണം വിലയിരുത്തുന്നതിനായി പോലീസ് ഉദ്യോഗസ്ഥനും പ്രൊബേഷൻ ഓഫീസറും നൽകുന്ന രഹസ്യാന്വേഷണ റിപ്പോർട്ടുകളും ഉപയോഗിക്കേണ്ടതാണ്. കുറ്റകൃത്യത്തിന് ഇരയായവരിൽനിന്നുള്ള പ്രതികരണം ജില്ലാ പ്രൊബേഷൻ ഓഫീസറിൽ നിന്നും ശേഖരിച്ച് പ്രസ്തുത റിപ്പോർട്ടിന്മേലുള്ള തന്റെ അഭിപ്രായം സഹിതം ബന്ധപ്പെട്ട കറക്ഷണൽ സ്ഥാപനത്തിലെ സൂപ്രണ്ട് സമിതി മുമ്പാകെ ഹാജരാക്കേണ്ടതാണ്.”

466(3) ഓരോ തടവുകാരന്റെയും കാലാവധി തീരുന്നതിന് മുമ്പുള്ള വിടുതലിനായുള്ള ശുപാർശ പരിഗണിക്കുമ്പോൾ തടവുകാരന്റെയും സമൂഹത്തിന്റെ ആകെയുമുള്ള ക്ഷേമത്തിനും സർക്കാരോ കോടതികളോ ശിക്ഷാ ഇളവിനെ സംബന്ധിച്ച് നൽകിയിട്ടുള്ള പൊതു തത്ത്വങ്ങൾക്കും കീഴ് വഴക്കങ്ങൾക്കും പരമ പ്രാധാന്യം കൽപ്പിക്കേണ്ടതാണ്. അനുമാനങ്ങളുടെ അടിസ്ഥാനത്തിലുള്ളതും സാങ്കൽപ്പികവുമായ കാരണങ്ങളാൽ പോലീസിൽ നിന്നുള്ള ശുപാർശ അനുകൂലമല്ല എന്ന കാരണത്താൽ മാത്രം ഒരു തടവുകാരന്റെ അകാലവിടുതലിനായുള്ള ശുപാർശ സമിതി തള്ളിക്കളയുവാൻ പാടുള്ളതല്ല. തടവുകാരൻ കുറ്റകൃത്യം നടത്തിയപ്പോഴുള്ള സാഹചര്യങ്ങളും വിടുതലായി കഴിഞ്ഞാൽ വീണ്ടും അത്തരത്തിലുള്ളതോ മറ്റുതരത്തിലുള്ളതോ കുറ്റകൃത്യത്തിലേർപ്പെടാനുള്ള പ്രവണതയും കണക്കിലെടുത്തുവേണം വിടുതലിനായി ശുപാർശ സമർപ്പിക്കേണ്ടത്.

466(4) ഒന്നോ അതിലധികമോ പ്രാവശ്യം സമിതി അകാലവിടുതലിനുള്ള ശുപാർശ നിരാകരിച്ചു എന്നത് വീണ്ടും പരിഗണിക്കുന്നതിന് തടസമാകുന്നതല്ല. ഇത്തരത്തിൽ നിരസിച്ച ഒരു ശിക്ഷാപ്രതിയുടെ കേസ് ഒരു വർഷം കഴിഞ്ഞുമാത്രമേ പുനഃപരിശോധിക്കുവാൻ പാടുള്ളൂ. പുനഃപരിശോധനയ്ക്ക് ജയിൽ സൂപ്രണ്ടിന്റെ പുതിയ റിപ്പോർട്ട് ആവശ്യമാണ്. ഇത്തരത്തിലുള്ള പുനഃപരിശോധന കാലാവധി തീരുന്നതിന് മുമ്പുള്ള വിടുതലിനുള്ള ശുപാർശ നിരസിച്ചതിന് ശേഷമുള്ള തടവുകാരന്റെ ജയിലിലെ സ്വഭാവത്തിന്റെ അടിസ്ഥാനത്തിലാകണം, അല്ലാതെ മുമ്പ് നിരസിക്കുന്നതിന് അവലംബമാക്കിയ റിപ്പോർട്ടുകളുടെ അടിസ്ഥാനത്തിലാവരുത് .

As evident from the extracted Rules, even though the scheme of the Act is that well-behaved long-term convicted prisoners should be considered for premature release with the object of their reformation and rehabilitation, the Rules obligate the Advisory Committee to consider the views of the victims as

also the views of the relatives of the prisoners, while making recommendations. Similarly, the Rules also obligates the Advisory Committee to consider the welfare of the society as also the prisoner while making recommendations for premature release of the prisoners. Likewise, the Rules obligates the Advisory Committee to give utmost regard to the various principles laid down by the courts in the matter of considering the issues relating to premature release of prisoners. There is also a provision in the 2014 Rules analogous to Rule 216 of 1958 Rules namely, Rule 377 which provides that if the period of imprisonment of life convicts and those other convicts whose aggregate sentence exceeds 20 years, their period of imprisonment shall be deemed to be 20 years. Rule 377 of 2014 Rules reads thus:

> "377. ശിക്ഷാകാലാവധി നിജപ്പെടുത്തൽ. (1) ജീവപര്യന്തം ശിക്ഷ വിധിക്കപ്പെട്ടതോ ഒന്നിലധികം ശിക്ഷകളുടെ ആകെ കാലയളവ് ഇരുപതുവർഷത്തിലധികമായിരിക്കുകയോ ശിക്ഷയുടെ വിവിധ വകുപ്പുകളനുസരിച്ചുള്ള കാലയളവ് ഇരുപത് വർഷത്തിലധികമായിരിക്കുകയോ ചെയ്താൽ, ഈ അദ്ധ്യായത്തിൻ്റെ ആവശ്യങ്ങൾക്കായി പ്രസ്തുത ശിക്ഷ 20 വർഷമായി കണക്കാക്കുന്നതാണ്.
>
> (2) ശിക്ഷായിളവ് കണക്കാക്കുന്നതിന് മേൽനോട്ടം വഹിക്കുന്നത് ആക്ടിൻ്റെ 72-)o വകുപ്പ് (1)-)o ഉപവകുപ്പ് പ്രകാരം രൂപീകരിച്ച ഇളവു ചെയ്യൽ സമിതിയായിരിക്കും."

As clarified in sub-rule (2) of Rule 377, for releasing a prisoner

based on the said Rule, the recommendation of the Remission Committee constituted under Section 72 of the Act is required.

18. It is trite that in the matter of deciding the eligibility for premature release of prisoners, the Policy/Rules that are in force as on the date of conviction are to be applied. This principle finds reiteration in several judgments of the Apex Court including **State of Haryana v. Jagdish**, (2010) 4 SCC 216 and **State of Haryana v. Raj Kumar**, (2021) 9 SCC 292. The State Government has no case that it had a policy for extending the benefit of remission to prisoners at the time when the prisoners involved in these cases were convicted. In other words, since the 1958 Rules was in force at the time of conviction of the prisoners, it was obligatory on the part of the State Government to consider their case for premature release in terms of the provisions contained in the 1958 Rules. Inasmuch as both the prisoners were not directed to undergo imprisonment for a period exceeding 20 years by the concerned convicting courts and since they have already completed 20 years of actual imprisonment, according to us,

their cases ought to have been considered by the State Government favourably, for, the scheme of 1958 Rules is that the sentence of prisoners undergoing life imprisonment shall be limited to 20 years. This position was clarified by the Apex Court in **Joseph**. Paragraph 38 of the said judgment dealing with that aspect reads thus:

> **"38.** In the petitioner's case, the 1958 Rules are clear - a life sentence, is *deemed* to be 20 years of incarceration. After this, the prisoner is entitled to premature release. The guidelines issued by the NHRC pointed out to us by the counsel for the petitioner, are also relevant to consider - that of mandating release, after serving 25 years as sentence (even in heinous crimes). At this juncture, redirecting the petitioner who has already undergone over 26 years of incarceration (and over 35 years of punishment with remission), before us to undergo, yet again, consideration before the Advisory Board, and thereafter, the state government for premature release - would be a cruel outcome, like being granted only a salve to fight a raging fire, in the name of procedure. The grand vision of the rule of law and the idea of fairness is then swept away, at the altar of procedure - which this court has repeatedly held to be a "*handmaiden of justice".* (Underline supplied)

19. Be that as it may, as noted, the stand of the State Government in these matters is that it does not have a remission policy and that the benefit of premature release is extended to prisoners in terms of the provisions of the Act and 2014 Rules. Let us now consider the entitlement of the prisoners involved in these cases for premature release in

terms of the Act and 2014 Rules. As noted, Section 77 of the Act provides for premature release of long-term convicted prisoners who are well behaved with the objective of their reformation and rehabilitation, either *suo motu* or on the recommendation of the Advisory Committee. In the light of the said statutory provision, in the absence of any other policy for the State Government for extending the benefit of premature release, it could be inferred that the policy of the State Government is that well-behaved long-term convicted prisoners shall be extended the benefit of premature release with the objective of their reformation and rehabilitation. The case of the appellant in W.A.No.1245 of 2024 is that the convict has undergone 22 years, 3 months and 19 days of imprisonment as on 10.06.2024 and that he has also earned a remission of 6 years, 3 months and 22 days. Similarly, the case of the appellant in W.A.No.2137 of 2024 is that the convict has undergone 20 years, 9 months and 27 days imprisonment as on 30.06.2024 and that he has also earned a remission of 5 years, 10 months and 10 days. In the light of

Rule 377 of the 2014 Rules, inasmuch as the prisoners involved in the cases on hand have completed more than 20 years of actual imprisonment, they are entitled to be treated as long term convicted prisoners. Rule 376 of 2014 Rules prescribes that prisoners shall be granted remission for keeping peace and good behaviour in jail. The fact that the prisoners have earned remission for a period exceeding five years, demonstrates their good behaviour in the jails. The prisoner involved in W.A.No.1245 of 2024 has been recommended by the Advisory Committee under Section 77(1) of the Act for premature release on several occasions since 2017 and the prisoner involved in W.A.No.2137 of 2024 has been recommended by the Advisory Committee under Section 77(1) of the Act for premature release twice. No doubt, the recommendations of the Advisory Committee does not create any obligation on the part of the Government to release prisoners prematurely. The Government has the discretion to accept or reject the recommendations of the Advisory Committee. In the cases on hand, as revealed from the orders

impugned in the writ petitions, the Government has not rejected the recommendations of the Advisory Committee on the ground that the prisoners are not entitled to premature release in terms of Section 77 of the Act. Instead, the recommendations were rejected having regard to the gender of the victim and the severity of the offence committed by the prisoners. No doubt, premature release is a matter over which the State Government has discretion and the convict is having only a right to be considered for premature release. But, the discretion has to be exercised in a fair, just and reasonable manner [See **Laxman Naskar v. Union of India**, (2000) 2 SCC 595]. The pointed question, therefore, is whether the Government is justified in rejecting the recommendations made by the Advisory Committee for the reasons mentioned in the orders impugned in the writ petitions, especially when it does not have a remission policy and also its stand that the entitlement for remission is determined based on the Act and the 2014 Rules.

20. The reason stated in Ext.P4 order which is

impugned in the writ petition, from which W.A.No.1245 of 2024 arises is that the offence committed by the prisoner is extremely cruel inasmuch as he committed the murder of a widow who requires special care of the society and the reason stated in Ext.P14 order which is impugned in the writ petition, from which W.A.No.2137 of 2024 arises is that persons involved in the murder of women are not entitled to premature release. In fact, the reasons aforesaid were the reasons stated by the Government in G.O.(Ms) No.116/2022/HOME dated 14.06.2022 to deny the benefit of premature release to a batch of similarly placed prisoners. The case of Joseph decided by the Apex Court is also an identical one, as the prisoner involved in that case was also denied the benefit of premature release on the ground that persons involved in the murder of women are not entitled to premature release. Having regard to G.O.(Ms) No.116/2022/HOME dated 14.06.2022, it was held by the Apex Court in Joseph that a blanket exclusion of certain offences from the scope of grant of remission is not only arbitrary, but turns the ideals of reformation that run through our criminal

justice system, on its head. Paragraph 32 of the said judgment reads thus:

> **"32.** To issue a policy directive, or guidelines, over and above the Act and Rules framed (where the latter forms part and parcel of the former), and undermine what they encapsulate, cannot be countenanced. Blanket exclusion of certain offences, from the scope of grant of remission, especially by way of an executive policy, is not only arbitrary, but turns the ideals of reformation that run through our criminal justice system, on its head. Numerous judgments of this court, have elaborated on the penological goal of reformation and rehabilitation, being the cornerstone of our criminal justice system, rather than retribution. The impact of applying such an executive instruction/guideline to guide the executive's discretion would be that routinely, any progress made by a long-term convict would be rendered naught, leaving them feeling hopeless, and condemned to an indefinite period of incarceration. While the sentencing courts may, in light of this court's majority judgment in *Sriharan* (supra), now impose term sentences (in excess of 14 or 20 years) for crimes that are specially heinous, but not reaching the level of 'rarest of rare' (warranting the death penalty), the state government cannot - *especially* by way of executive instruction, take on such a role, for crimes as it deems fit."

As seen from the extracted passage, the view that is taken in **Joseph** is that the blanket exclusion of certain offences from the scope of grant of remission will have the effect of imposing, on the accused, a longer term of sentence which the Government cannot do, but only the Court can do. It was also held by the Apex Court in the said case that typecasting convicts based on the crime committed in the distant past

would result in a real danger of overlooking the reformative potential of each individual convict and such typecasting would result in violation of Article 14 of the Constitution. Paragraph 37 of the judgment in **Joseph** reads thus:

> "37. Classifying - to use a better word, typecasting convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real danger of overlooking the reformative potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed, as a starting point, may be justified. However, the prison laws in India - read with Articles 72 and 161 - encapsulate a strong underlying reformative purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, based entirely on the nature of crime committed in the distant past, would be to crush the life force out of such individual, altogether. Thus, for instance, a 19 or 20 year old individual convicted for a crime, which finds place in the list which bars premature release, altogether, would mean that such person would never see freedom, and would die within the prison walls. There is a peculiarity of continuing to imprison one who committed a crime years earlier who might well have changed totally since that time. This is the condition of many people serving very long sentences. They may have killed someone (or done something much less serious, such as commit a narcotic drug related offences or be serving a life sentence for other non-violent crimes) as young individuals and remain incarcerated 20 or more years later. Regardless of the morality of continued punishment, one may question its rationality. The question is, what is achieved by continuing to punish a person who recognises the wrongness of what they have done, who no longer identifies with it, and who bears little resemblance to the person they were years earlier? It is tempting to say that they are no longer the same person. Yet, the insistence of guidelines, obdurately, to not look beyond the red lines drawn by it and continue in denial to consider the real impact of prison good behavior, and other relevant factors (to ensure that such individual has been rid of the likelihood of causing

> harm to society) results in violation of Article 14 of the Constitution. Excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies society's resolve to be harsh and unforgiving. The idea of rewarding, a prisoner for good conduct is entirely negated."
>
> Underline supplied

As seen from the extracted passage, it was observed therein that if a prisoner who has completed 20 or 25 years of imprisonment, is excluded from consideration for premature release based entirely on the nature of crime committed by him in the distant past, the same would certainly crush the life force out of such individual, altogether. It was also observed by the Apex Court in the said case that excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies resolve of the society to be harsh and unforgiving and that the same would negate the idea of rewarding a prisoner for good conduct. In essence, the view taken by the Apex Court in Joseph is that the persons involved in offences against women and children are not entitled to premature release at all, is against the scheme of the Act and

that long-term convicted prisoners cannot be denied the benefit of remission, having regard to the nature of crime committed by them in the distant past.

21. Let us now consider the arguments advanced by the learned Special Government Pleader. True, in **Joseph**, it was observed by the Apex Court that grouping types of convicts based on the offences they were found to have committed, as a starting point, may be justified. But, in the light of the propositions laid down in the said case as contained in paragraphs 32 and 37 of the judgment, the said observation cannot be understood as one permitting grouping of convicts based on the offences they were found to have committed in such a manner as to exclude certain offences from the scope of grant of remission as done by the State Government. True, in **Jai Singh**, the Apex Court held that it is permissible to exclude convicts based on the nature of the offence committed by them in the matter of extending the benefit of remission, having regard to the effect of such offences on the society. Similarly, it was held by the Apex Court in **Sanaboina**

Satyanarayana that classification to keep away convicts of crime against women from the benefits of remission cannot be said to be unreasonable. It would be incorrect if we hold that the decisions referred to above are not in conflict with the decision in **Joseph**. There exists some conflict, even though the decision in **Joseph** is one rendered in the context of a prisoner who is deemed to have completed the entire term of his imprisonment in terms of the provisions of the Act and the Rules made thereunder dealing with the management of prisons and related matters, which is enacted invoking the power under Entry 4 of List II of the Seventh Schedule to the Constitution.

22. What should a High Court do when faced with two judgments of the Supreme Court which cannot be apparently reconciled with respect to its ratios is a vexed question. One line of decision is that if there is a conflict in two Supreme Court decisions, the decision which is later in point of time would be binding on the High Courts. The second line of decisions is that in case there is a conflict between the

judgments of the Supreme Court consisting of equal authorities, incidents of time is not a relevant factor and the High Court must follow the judgment which appears it to lay down elaborately and accurately. A Full Bench of the Punjab and Haryana High Court in **Indo Swiss Time Limited v. Umrao**, 1981 SCC OnLine P&H 45 followed the second line of decisions. The same is the view taken by the Bombay High Court also in **Special Land Acquisition Officer (I) v. Municipal Corporation of Greater Bombay**, 1987 SCC OnLine Bom 177. According to us, the decision in **Joseph** is not only the decision rendered at a later point of time, but also one which identifies the core of the issues arising for consideration in matters of this nature and answers the same elaborately and accurately. Needless to say, we accept the decision of the Apex Court in **Joseph** as the binding precedent. We are inclined to hold that long-term convicted prisoners, especially those who deemed to have completed the entire term of imprisonment in terms of the provisions contained in the Act and 2014 Rules, other than those who were sentenced by the convicting courts for

imprisonment for a period exceeding 20 years, cannot be denied the benefit of remission having regard to the nature of the offence committed by them in the distant past.

23. We take this view for yet another reason also. Granting early release to prisoners is a matter related to their fundamental human rights. The National Human Rights Commission has received a number of representations pointing out that the State Governments are applying differing standards in the matter of premature release of prisoners undergoing life imprisonment. After considering the response received from a number of States/Union Territories, the Commission fixed guidelines and the same were communicated to all the State Governments/Union Territories on 26.09.2003. The Apex Court has made a reference to these guidelines also in Joseph. In the said communication, even though it is provided that there can be a classification among the life convicts having regard to the magnitude, brutality and gravity of the offence for which the convict was sentenced to imprisonment, the period of incarceration inclusive of

remission even in worst of the worst situation should not exceed 25 years.

24. On an evaluation of the totality of the facts and circumstances of the cases on hand, especially the finding rendered by us that the prisoners involved in these cases were entitled to be released prematurely on completion of imprisonment for a period of 20 years in terms of the 1958 Rules, we are of the view that these are apt cases where this Court should direct the Government to release the prisoners with immediate effect, as done by the Apex Court in **Joseph**. However, inasmuch as the grant of remission is a prerogative of the Government, although the power conferred on the Government for the said purpose is a power coupled with duty to be exercised after taking into account all the relevant factors, we set aside the impugned judgments as also the orders of the Government impugned in the writ petitions and dispose of the writ appeals directing the Government to consider afresh, the last among the recommendations made by the Advisory Committee for the premature release of the

prisoners involved in these cases, within a period of one month, in the light of the findings and observations made by the Apex Court in **Joseph,** as referred to by us in this judgment, untrammelled by the nature of the offences for which they were convicted.

25. In **Rashidul Jafar v. State of U.P.**, (2024) 6 SCC 561, the Apex Court observed that many of the life convicts in our country who have suffered long years of incarceration have few or no resources at all and lack of literacy, education and social support structure, impede their right to access to legal remedies. Having regard to the decision of the Apex Court in **Rashidul Jafar** and other relevant matters, the Apex Court, in *Suo Motu* Writ Petition (Crl.) No.4 of 2021 titled **In Re: Policy Strategy for Grant of Bail**, issued certain general directions to ensure that the appropriate Government considers the case of all prisoners for extending the benefit of premature release, in cases where they are entitled to such release, as and when they become eligible for the same, irrespective of the fact as to whether they make specific applications for grant of premature

release, and directed the District Legal Services Authorities to monitor implementation of the direction aforesaid.

26. It has come to the notice of this Court while considering these matters that a large number of prisoners who deemed to have completed their entire term of imprisonment in terms of Rule 377 of 2014 Rules, are languishing in jails in the State, despite recommendations in their favour made by the Advisory Committee under Section 77 of the Act as in the case of the prisoners involved in these matters and the directions issued by the Apex Court in **In Re: Policy Strategy for Grant of Bail**. In the circumstances, having regard to the spirit of the decisions of the Apex Court in **Rashidul Jafar** and **In Re: Policy Strategy for Grant of Bail**, we deem it appropriate to direct the Government *suo motu*, in public interest, to consider the cases of those prisoners who deemed to have completed the term of imprisonment in terms of Rule 377 of 2014 Rules and in whose favour there were recommendations by the Advisory Committee for premature release, as directed in the case of prisoners involved in these

matters, within two months from the date of receipt of a copy of this judgment. It shall be the endeavour of the State Legal Services Authority to implement the directions issued in this judgment. A copy of this judgment shall be forwarded to the Kerala State Legal Services Authority. It is made clear that those prisoners who were sentenced for imprisonment for any specified period by the concerned convicting courts, without remission, will not be entitled to the benefit of this judgment, before completing the period of imprisonment specified by the convicting courts.

Before parting, we also place on record our boundless appreciation for the able assistance given by the learned *amicus curiae* Sri.Jacob P.Alex, for rendering this judgment.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

JOBIN SEBASTIAN, JUDGE.

YKB