IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 13245 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

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Approved for Reporting	Yes	No
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SORATHIYA HARESHBHAI RAMESHBHAI
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR BHARGAV BHATT with MR SUMIT B SIKARWAR(5991) for the Applicant(s) No. 1
MR IH SYED, SR. ADVOCATE with MR ASHISH M DAGLI(2203) for Respondent(s) No. 4
MS KRUTI M SHAH(2428) for the Respondent(s) No. 3
NOTICE SERVED for the Respondent(s) No. 2
MR HARDIK DAVE, PUBLIC PROSECUTOR with MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 22/08/2025

ORAL JUDGMENT

Law is the king of kings, far more powerful and right than they; nothing can be mightier than law, by whose aid, as by that of the highest monarch, even the weak may prevail over the strong.

-- Brihadaranyakopanishad (1-4.14)

[1.0] RULE. Learned APP Ms. Shruti Pathak waives service of notice of Rule on behalf of the respondent No.1 – State of Gujarat. Learned advocate Ms. Kruti Shah waives service of notice of Rule on behalf of respondent No.3 and learned

advocate Mr. Ashish Dagli waives service of notice of Rule on behalf of respondent No.4. Heard learned Counsel Mr. Bhargav Bhatt assisted by learned advocate Mr. S.B. Sikarwar for the petitioner, learned Public Prosecutor Mr. Hardik Dave assisted by learned APP Ms. Shruti Pathak appearing for respondent No.1 – State of Gujarat, learned advocate Ms. Kruti Shah appearing for respondent No.3 and learned Senior Advocate Mr. I.H. Syed assisted by learned advocate Mr. Ashish Dagli for respondent No.4.

PROLOGUE:

[2.0] By way of present petition under Article 226 of the Constitution of India read with section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS"), the petitioner, who is grandson of Popatbhai Sorathiya, the then sitting MLA (now deceased) has sought for the following reliefs:

> *"(a) Pass appropriate writ / order declaring that the direction issued by Shri T.S. Bishth, the then Additional Director General of Police, Jail and Administrative Reforms, State of Gujarat, Ahmedabad (Now Retired) to the Superintendent, Junagadh District Jail, Junagadh by letter dated 29.01.2018, being without authority, does not have any force of law and is a nullity;*
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> *(b) Pass appropriate writ / order or Direction, delcaring the premature release of Aniruddhsinh Mahipatsinh Jadeja, to be illegal and without any authority of law and to immediately arrest Aniruddhsinh Mahipatsinh Jadeja and confine him in the prison, to serve remaining period of sentence; AND/OR*
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> *(c) Pass appropriate writ / order or Direction to the State to initiate appropriate proceedings against Shri T.S. Bishth and other officer, who has been instrumental in illegal release of Aniruddhsinh Mahipatsinh Jadeja – Respondent No.4;"*

FACTUAL BACKGROUND:

[3.0] The brief facts of the present petition are as follows:

[3.1] During a flag unfurling ceremony at Sangramsinhji High School in Gondal, Popatbhai Sorathiya, the then sitting MLA and grandfather of the present petitioner was shot dead by respondent No.4 herein at around 9.30 a.m. on Independence Day during the Flag Hoisting Ceremony and was apprehended on the spot pursuant to which an FIR was registered, which culminated into Sessions Case No.23 of 1989 before the learned Special Judge, Rajkot appointed under TADA Act. In view of the fact that 45 witnesses including government servant turned hostile, the learned Special Court held that, there is no direct evidence adduced inculpating respondent No.4 in the crime and he was given the benefit of doubt and acquitted.

[3.2] Against said acquittal of respondent No.4, the State had preferred appeal under Section 19 of the TADA Act before the Hon'ble Supreme Court, which was partly allowed by the judgment dated 10.07.1997 and respondent No.4 was convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short "IPC") and awarded sentence of life imprisonment and also convicted for offence under Section 5 of TADA and sentenced to undergo RI for 3 years. However, respondent No.4 was absconding even after conviction by the Hon'ble Supreme Court and only on 28.04.2000 i.e. after almost about 3

years, respondent No.4 was taken in custody.

[3.3] The State Government soon thereafter on 25.10.2000 passed an order in exercise of powers under Section 268(1) of the CrPC directing that, respondent No.4 should not be removed from Sabarmati Central Jail. The request of respondent No.4 seeking parole was rejected by the State which was challenged by respondent No.4 before this Court and the learned Single Judge of coordinate Bench vide order 14.08.2001 was pleased to grant custody parole to respondent No.4 for 5 days only to attend the family by imposing strict conditions. However, said order was challenged by the State and the Division Bench set aside the parole order emphasizing the serious implications of granting parole to a convict of such a grave nature concerning public safety.

[3.4] Respondent No.4 thereafter filed Special Criminal Application No.503 of 2001 which upheld the State's order under Section 268 of the CrPC though respondent No.4 somehow managed to get himself shifted to Sub-Jail, Junagadh and thereafter by manipulating the executive State machinery to his advantage on the pretext of medical treatment and conducting and attending political rallies for assembly elections in the year 2017. The said issued was raised in petition being Special Criminal Application No.9552 of 2017 seeking enquiry as to how a TADA convict though in jail was addressing political rallies.

The cooridnate Bench found the matter quite serious one and it was noted that, a TADA convict was present in a public meeting held at Jetpur on 04.12.2017 and therefore, the coordinate Bench directed the learned PDJ, Rajkot to conduct a detailed enquiry and file report within three months considering the conduct of the concerned Medical Officer and jail staff.

[3.5] A report was submitted by the then learned PDJ, Rajkot considering the contents of report a copy of which was provided to the learned Public Prosecutor to bring to the notice of the Government. The then learned Public Prosecutor reported to the coordinate Bench that, the State had reviewed the inquiry report wherein some evidence was overlooked by the learned Judicial Officer and the State would reassess the report alongside other evidence from the jail authorities and make a decision in accordance with law and therefore, the coordinate Bench closed the proceedings while allowing the petitioner to seek appropriate remedy, if needed but till date no action been taken.

[3.6] Thereafter, the State Government issued a resolution dated 25.01.2017 in exercise of power under Article 161 of the Constitution granting remission to certain convicts, including those serving life sentences who had completed 12 years. The resolution contained conditions for grant of remission, as per the directives of the Hon’ble Supreme

Court in Criminal Appeal No.566 of 2010 and Criminal Appeal No.490-491 of 2011 and one of the condition was that the remission was one-time and cannot be extended further.

[3.7] Under the said policy, case of respondent No.4 was not considered at relevant point of time and benefit of remission was not granted. Thereafter, son of respondent No.4 submitted an application on 29.01.2018 to respondent No.3 requesting to grant remission for respondent No.4 and on the same day, vide the impugned communication at Annexure-A, respondent No.3 directed the respondent No.2 to grant remission to respondent No.4, citing reason that respondent No.4 has completed 18 years of sentence.

[3.8] Further, the said illegal release of respondent No.4 by respondent No.3 was challenged by one Kantilal Ramjibhai Solanki by way of SCR.A No.3499/2018 and by another person namely Sanjay Pandit by way of Writ Petition (PIL) No.182 of 2019 and SCR.A No.3499/2018 was dismissed for want of prosecution and Writ Petition (PIL) No.182/2019 came to be withdrawn, suggesting undue influence of respondent No.4. It is pertinent to note that aforesaid both persons were not kith and kins of the deceased.

[3.9] It is further the case that after release of respondent No.4 on 29.01.2018, three FIRs are registered against

respondent No.4 subsequently. Thereafter, petitioner filed a Writ Petition (Cri.) No.339 of 2024 before the Hon'ble Supreme Court challenging the premature release of respondent No.4, which was withdrawn with liberty to file fresh petition before this Court. Hence, present petition is filed.

SUBMISSIONS ON BEHALF OF THE PETITIONER

[4.0] Learned Advocate Mr. Bhargav Bhatt assisted by learned advocate Mr. S.B. Sikarwar appearing for the petitioner has reiterated the facts and manner in which the incident took place and further submitted that, respondent No.4 shot and killed the grandfather of the present petitioner, namely Popatbhai Sorathiya, the then sitting Member of Legislative Assembly on 15.08.1988 in the flag hoisting ceremony on Independency Day. In trail proceedings of Sessions Case No.23 of 1989, some government officers who were cited as witnesses turned hostile, which shows fear and dominance of respondent No.4 and respondent No.4 was acquitted in the year 1989. In July, 1997, in an appeal filed by the State before the Hon'ble Apex Court, respondent No.4 was convicted by the Apex Court and for the offence of murder, he was sentenced for life imprisonment and for the offence punishable under TADA, he was sentenced to undergo 3 years' RI. After the pronouncement of judgment, respondent No.4 was absconding and on 28.04.2000, respondent No.4 was arrested and taken into custody almost after three years

of conviction. Thereafter, the State has invoked powers under Section 268(1) of the Code of Criminal Procedure, 1973 (for short "CrPC") and ordered that respondent No.4 not to be removed from Sabarmati Central Jail.

[4.1] Further, on 14.08.2001, the learned Single Judge of this Court granted 5 days parole to respondent No.4. The said order was set aside by the Division Bench on 11.09.2001 in the proceedings of Letters Patent Appeal No.807 of 2001. On 22.11.2002, High Court has upheld the State's order passed under Section 268 of the CrPC restricting movement of respondent No.4 from Sabarmati Central Jail though respondent No.4, was shifted from Sabarmati Central Jail to Sub-Jail, Junagadh in suspicious circumstances. Thereafter, one petition being SCR.A No.9552/2017 was filed on 07.12.2017 during election by one of the candidate of election with allegation that respondent No.4 attended political rallies while in jail custody wherein the coordinate Bench observed that allegations against respondent No.4 were "shocking" and an order was passed directing enquiry by the then learned PDJ, Rajkot against responsible officers and Superintendent of Police, Junagadh, Rajkot Civil Hospital Officer, Jailor of Junagadh Jail were ordered to remain present before the Court on 19.12.2017 though State has not taken any action or not paid any heed to the said judicial observation / directions and protected the respondent No.4.

[4.2] Further he has submitted that, it clearly reveals that State Authority is acting *in tandem* and collusion with respondent No.4 or else respondent No.4 is having the power or political influence in getting favor from the respondent – State Government. As the State Government issued resolution under Article 161 of the Constitution granting remission to certain convicts including life imprisonment convicts, who completed 14 years of sentence, with certain conditions, without considering the said condition or without authority, respondent No.3 has passed an order on 29.01.2018 as respondent No.4's son applied for remission of his father. Though SCR.A No.9552/2017 was pending, without considering any observations made by the Court in the said proceedings, respondent No.3 without having any authority passed an order on the same day in writing on one simple letter to the Jail Superintendent, Junagadh to release respondent No.4 on the same day. The High Court was compelled to close the proceeding which was going on pursuant to the order passed by the High Court and inquiry was initiated by the learned PDJ, Rajkot and though report was submitted in the sealed cover on 14.12.2018 wherein clearly revealed from jail in pretext of treatment he came out of jail and attended political rallies and also share dias. However, as respondent No.4 was released and matter was closed and State has also not taken up the issue in its true letter and spirit and reached at logical end.

[4.3] Even, under the threat and influence of respondent No.4, SCR.A No.3499/2018 which was filed by one Kantilal Ramjibhai Solanki challenging the premature release of respondent No.4 and one another petition being Writ Petition (PIL) No.182 of 2019 filed by one Sanjay Pandit were respectively dismissed for non-prosecution and upon being withdrawn. Considering the high-handedness and dominance of respondent No.4, no one was ready to take up the issue as other proceedings were going on and even in said petition unholy attempts been made. The present petitioner was waiting for the outcome but under one or another pretext, respondent No.4 was able to manipulate and to create the atmosphere of fear and terror, on 20.08.2024, initially the petitioner approached the Hon'ble Supreme Court by way of Writ Petition (Cri.) No.339/2024 and challenged respondent No.4's premature release which came to be withdrawn with liberty to approach this Court and hence, present petition is filed.

[4.4] As respondent No.3 has exercised the power without any authority and/or without following the condition of circular dated 25.01.2017 at Annexure-I, which was implemented only for one year only at the eve of Republic Day on 26.01.2017 and that too following certain criteria though under the garb of said policy, son of respondent No.4 approached after one year to respondent No.3 on 29.01.2018 and on the same day, respondent No.3 has directed the respondent No.3 to release respondent No.4

without any power, authority or imposing any condition as stated under Section 432 of the CrPC. Said communication was not only arbitrary but *ab initio* void.

[4.5] He has further submitted that, the said order is not passed by the State and has been passed by respondent No.3 illegally in his personal capacity exercising his powers and without any authority and without following section 432(5) of the CrPC though he was incompetent to pass any such order. Further, circular dated 25.01.2017 (Annexure-I) was for extending special remission and was time bound i.e. limited only for one year though after one year, relying on said circular dated 25.01.2017, order was passed with ulterior motive. Not only that, no condition was imposed and even it was not considered that, earlier remission request was not considered or granted by the State under Section 432 of the CrPC, which was pending before the authority though without verifying anything or taking into consideration any material, with oblique motive, respondent No.3 has addressed a letter (Annexure-A) to respondent No.2 – Jail Superintendent, Junagadh and respondent No.3 having no such authority to erase any judicial observation or to by-pass any procedure prescribed under the law and Rules. The circular dated 25.01.2017 is passed exercising power under Article 161 of the Constitution of India with specific conditions of Section 432 of the CrPC however, it does not mean that respondent No.3 is competent and without following any

provision of section 432 of the CrPC, respondent No.3 has released the respondent No.4. To buttress his argument, learned advocate for the petitioner has relied on the decision of Hon'ble Supreme Court in the case of **Bilkis Yakub Rasool vs. Union of India** reported in **(2024) 5 SCC 481** and submitted that impugned order is nothing but nullity on two counts namely (1) order is without authority and (2) circular does not permit to consider the application with future effect as the said circular was for a particular time period and thereafter it was not in existence on 29.01.2018.

[4.6] Further, he has submitted that, even though there was a specific direction to exercise the power and jurisdiction based on the circular with condition to follow the earlier resolution dated 23.01.2014 which clearly mentions that IG Prison will send the proposal for a premature release of a prisoner after receiving the recommendation of the Jail Advisory Board Committee only and prescribed the check-list. Herein, without undertaking such exercise, straightway respondent No.3 has exercised the power on his own. Even if for the sake of argument it is accpeted that respondent No.3 has jumped to the conclusion that Superintendent of Police, Junagadh has not properly follow or considered the provisions of circular dated 25.01.2017, in that event also, remedy was available to the son of respondent No.4 or respondent No.4 himself to file appropriate proceeding to consider his case but he ought

not to have approached respondent No.3 as he was not an appellate authority or competent also.

[4.7] Further, even after release of respondent No.4, he has continued to engage in illegal activities like administering threats to people, creating atmosphere of terror and even thereafter, three offences are registered against respondent No.4 and in recent past in May, 2025 one more offence is registered and till date, respondent No.4 is absconding. In view of above, learned advocate for the petitioner has requested to allow the present petition.

[4.8] He has further submitted that as per Rule 15(1)(i) of the Rules of Business of Government of Gujarat and Circular dated 01.11.1996 issued by the GAD, under Article 161 of the Constitution, prior to passing any order the matter is required to be placed before the Hon'ble Chief Minister and thereafter upon advise of the Minister of Council, the Government has to issue circular and said subject falls in the domain and purview of the Home Department and such order could not have been passed by-passing the mandatory requirement which is already mentioned in the circular and that too in light of a specific embargo and conditions stated in the Circular dated 25.01.2017.

SUBMISSIONS ON BEHALF OF STATE:

[5.0] Learned Public Prosecutor Mr. Hardik Dave assisted by learned APP Ms. Shruti Pathak appearing for respondent

No.1 – State of Gujarat has submitted that the circular dated 25.01.2017 at Annexure-I to the petition was for special remission for a specific period of one year only wherein, future benefit was not permissible and ought not to be extended any further and said circular was also .

[6.0] Further, learned Public Prosecutor has submitted that there is no dispute that powers under Article 72 or 161 of the Constitution are constitutional powers and are different from powers under Sections 432 and 433 of the CrPC. Herein, there is no normalcy in exercise of powers but only the circular is issued based on the advise of the Council of Ministers and specific case details and criteria collecting the said data only matter was placed before the Governor and at the eve of Republic Day in 2017 by conducting one time exercise said circular was issued to extend the benefit which clearly mentioned that prior to exercising such power, provision to be followed the circulars specifically mentioned in the said circular which is nothing but embargo but respondent No.3 having no any authority except to communicate or forward the proposals to the Department. The said circular was issued only for 2017 which was not to be extended for future as it was a special remission and herein Advisory Board Committee report also is not sought for and straightway he has communicated the letter at Annexure-A.

[6.1] As earlier affidavit filed by the State Authority was silent

on this aspect, vide order dated 17.07.2025 this Court has passed an order and directed respondent Nos.1 and 2 to make clarification in this regard and pursuant to the same, further affidavit is also filed and submitted that matter was not referred to Jail Advisory Board Committee while making communication to the Jail Superintendent, Junagadh by respondent No.3 and without referring the matter to the Jail Advisory Board Committee or considering any circular or without any condition, respondent No.3 has made the impugned order / addressed the letter to the respondent No.2. Hence, learned Public Prosecutor requests to pass appropriate order.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.3:

[7.0] Learned advocate Ms. Kruti Shah appearing for respondent No.3 has opposed the present petition on the ground that respondent No.3 has performed his official duty as per his power, having nothing to do with the release of respondent No.4 and having no any personal interest in the issue and respondent No.3 having a blotless career and even otherwise now he is retired and till date the State has not initiated any action also in this regard and eight prisoners including respondent No.4 were released extending the benefit of said circular which is also confirmed and nothing remains to be decided further as earlier one note for speaking to minutes was filed being CR.MA No.1 of 2018 in SCR.A No.3499/2018 to arraign

respondent No.3 herein as respondent No.4, which was not acceded to by the coordinate Bench at earlier point of time and there was no reason to implead respondent No.3 in his personal capacity and pursuant to the order dated 17.07.2025, respondent No.3 has filed additional affidavit wherein, he has justified his stand stating that, following the guideline he has released respondent No.4. It was the duty and responsibility of the respondent No.2 to take into consideration the opinion of Jail Advisory Board Committee or to comply with conditions enumerated in the Circular and it was not the function of respondent No.3 and respondent No.3 has only made a recommendation to release respondent No.4 – prisoner and except this no role played by respondent No.3. Hence, she has requested to dismiss the present petition *qua* respondent No.3 with cost as the petitioner has joined respondent No.3 in his personal capacity with ulterior motive though he only performed his duty in his official capacity and without there being any malafide.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.4:

[8.0] Learned Senior Advocate Mr. I.H. Syed assisted by learned advocate Mr. Ashish M. Dagli for respondent No.4 has vehemently opposed the present petition and argued at length. The sum and substance of the argument on behalf of respondent No.4 is as under:

(i) Petitioner has filed the present petition with ulterior

motive to settle the political score and even the petitioner is not having any *locus* and he is not in any manner affected with the benefit of remission extended to respondent No.4. Even otherwise also, the respondent No.4 is entitled for remission.

(ii) Earlier on the same ground, one Kantilal Ramjibhai Solanki filed petition being SCR.A No.3499/2018 and one Sanjay Pandit filed Writ Petition (PIL) No.182 of 2019, which were respectively dismissed for non-prosecution and upon being withdrawn and hence, after release of respondent No.4 in the year 2018, there is no ground to entertain the present petition at belated stage.

(iii) Respondent No.4 was convicted and sentenced for life imprisonment by the Hon'ble Supreme Court and he has served sentence for 18 years and thereafter, his son approached respondent No.3 and respondent No.3 exercised his administrative power. Hence, question of any malafide or colorable exercise of power does not arise as respondent No.3 was competent and appropriate authority to consider the application filed by the son of respondent No.4.

(iv) Referred to Articles 72 and 161 of the Constitution of India and discussing the powers of Hon'ble The President and Hon'ble Governor, he has argued that

powers exercised under both the articles are constitutional powers but exercising the powers under Section 433 of the CrPC are statutory powers and both operate in distinct field. While exercising the power under Article 161 of the Constitution, there is no necessity to follow any statutory provisions or Rules as constitutional powers are higher than statutory powers. Hence, question does not arise to impose any type of condition while exercising the power under Article 161 of the Constitution. Herein, impugned order is passed based on Circular dated 25.01.2017.

(v) Herein, the petitioner has not challenged the circular dated 25.01.2017 passed under Article 161 of the Constitution. Hence, question does not arise to grant any relief as order is passed based on Article 161 of the Constitution of India and as respondent No.3 has acted and exercised his power based on the said circular, nothing remains to be reconsidered or powers under Article 161 of the Constitution of India, Hence, question does not arise to follow or to sought for any opinion of the Jail Advisory Board.

(vi) The circular dated 25.01.2017 provides special remission powers based on Article 161 of the Constitution on the occasion of Republic Day. Hence,

once the power exercised under Article 161 of the Constitution and criteria was fixed to extend the benefit of remission, respondent No.4 fell in that category and as the Jail Superintendent, Junagadh failed to consider the case, son of respondent No.4 approached respondent No.3, who had been pleased to pass suitable direction and passed an order and pursuant to the said circular, respondent No.4 was released and benefit of remission was given. Henec, there was nothing wrong as respondent No.4 had already undergone 18 years of sentence under the TADA wherein he was sentenced to undergo 3 years and “life imprisonment” does not mean the entire life as held by Hon’ble Supreme Court in number of judgments after the decision in the case of **Sangeet & Another vs. State of Haryana** reported in **(2013) 2 SCC 452,** wherein the Hon’ble Supreme Court interpreted the term “life imprisonment” but “life imprisonment” means 14 years and respondent No.4 has served more than 14 years i.e. 18 years. His jail conduct was also good. After his release, no untoward incident took place. Even, his jail conduct was good. At earlier point of time, to extend the benefit of remission, opinion of learned Additional Sessions Judge and respected citizens who are local residents including son of deceased namely Lalitbhai has also made a statement before the police and jail authority

that he has no objection if the benefit of remission is extended to respondent No.4. Hence, considering the aforesaid reports and also the jail conduct of respondent No.4, this is not a case to entertain the present petition as the petitioner is not having any *locus* and that too after release of respondent No.4 in the year 2018.

[8.1] Further, to buttress his arguments, learned Senior Advocate Mr. Syed has relied on and read over the decision of Hon'ble Supreme Court in the case of (1) **Maru Ram vs. Union of India** reported in **(1981)1 SCC 107 (Paras 60 and 94)**; (2) **Union of India vs. V. Sriharan @ Murugan & Ors.** reported in **(2016)7 SCC 1** and submitted that in the said decision the Hon'ble Apex Court has interpreted the term "life imprisonment" and entitlement of grant of remission and that appropriate government has a right to exercise the power of remission under Sections 432 and 433 of the CrPC and parallel power has been exercised by the constitutional authority under Articles 72 and 161 of the Constitution of India. Herein, powers under Articles 72 and 161 of the Constitution of India and both operate in distinct fields. Merely sentence of "life imprisonment" is imposed, does not mean that respondent No.4 is not entitled for getting the benefit of remission. He has also relied on and read over the decision of the Hon'ble Supreme Court in the case of **Pyare Lal vs. State of Haryana** reported in **(2020)8 SCC 680** and submitted that,

powers under Article 161 of the Constitution of India is on higher footing and overriding the requirements to exercise the powers by the government and such powers over-ride the requirement of section 433A of the CrPC and matter is now referred to the Larger Bench of appropriate strength and issue raised in the present petition is also similar and as matter is pending before the larger Bench for consideration. Hence, he has requested not to interfere with the order passed by respondent No.3 under Article 161 of the Constitution of India.

[8.2] Further, learned Senior Advocate Mr. Syed has submitted that, herein, question does not arise to follow resolution dated 23.01.2014 issued by the Government of Gujarat and submitted that, under Article 161 of the Constitution powers are given to respondent No.3 as word used “State Grants Remission” and he has properly exercised the jurisdiction and power and therefore, there is no need to follow the Government Resolution dated 23.01.2014 or report of Advisory Board Committee is also not required and therefore, he has requested to dismiss the present petition.

REJOINDER ON BEHALF OF THE PETITIONER:

[9.0] In rejoinder, learned advocate Mr. Bhargav Bhatt for the petitioner has submitted that the argument canvassed by learned Senior Advocate appearing for respondent No.4 is not only misconceived and against the settled principle of

law but also contrary to the record and even, learned Senior Advocate for respondent No.4 has not properly assisted the Court. Herein, question is, as to whether respondent No.3 had a power to exercise jurisdiction? If any power exercised by him then such exercise of power was legal or illegal, is the only question which is required to be decided by this Court.

[9.1] Under Chapter X of the Jail Manual, the Inspector General of Prisons has a limited role to monitor the staff control functions and any other matters and on administrative side also, he has to make communication to the government. Hence, the IG Prisons has to act as a medium or bridge of communication and if he has received any proposal then it was his duty to forward such proposal in turn to the government for the consideration.

[9.2] Further, the circular dated 25.01.2017 which is base of impugned letter at Annexure-A is issued under Article 161 of the Constitution but with certain embargo which are ignored and same was issued for one year only and it transpires from the communication that Jail Superintendent, Junagadh has not considered the request and based on the same, son of respondent No.4 straightway approached respondent No.3. In that event, appropriate remedy for son of respondent No.4 was only to file appropriate proceeding challenging the said decision or to make request to consider the case for

premature release rather than approaching respondent No.3. Not only that, circular dated 23.01.2014 is very clear wherein it is clearly stated that opinion of concerned convicting Court is required and said requirement was never dispensed with.

[9.3] Herein, Hon'ble Supreme Court has convicted the respondent No.4 – accused. Hence, question of premature release of respondent No.4 does not arise and therefore, argument canvassed by learned Senior Advocate for the respondent No.4 that earlier the positive opinion was filed in favor of respondent No.4 by all the authorities and if such an interpretation is arrived at then the same is nothing but fallacious and misleading as his proposal was not considered at the earlier point of time and no benefit of premature release was extended at the relevant point of time. Not only that, the prayer sought in the petition is also very clear and petitioner has amended the memo of petition and sought the relief to initiate action against respondent No.3 as he failed to communicate properly to his higher authority as his role was of a bridge between the government and respondent No.4 and his action straightway to address the impugned letter (Annexure-A) on the same day to respondent No.3 does not fall within the purview of term "bonafide" which is defined under Section 52 of the IPC. In such circumstances, judicial scrutiny and judicial review is permissible.

[9.4] Insofar as argument of learned Senior Advocate Mr. Syed for respondent No.4 that decision of Hon'ble Supreme Court in the case of ***Sangeet (Supra)*** is overruled but which is read in isolation with paragraphs 104 and 105 of the decision of Hon'ble Supreme Court rendered in the case of ***V. Sriharan (Supra)*** is concerned, learned advocate Mr. Bhatt for the petitioner has submitted that, whatever power exercised by respondent No.3 is against the settled principle of law and circular produced at Annexure-I is not passed and nowhere, it is stated that procedure under Sections 431 and 432 of the CrPC is not required to be followed.

[9.5] Further, he has submitted that, if power under Article 161 of the Constitution is exercised then there is no need to follow section 432 of the CrPC. Such interpretation is also nothing but a misnomer as circular dated 23.01.2014 is passed as per the dictum of Hon'ble Supreme Court wherein the case of **Laxman Naskar vs. Union of India** reported in **(2000) 2 SCC 595** is taken into consideration and stated that, while extending the benefit of remission has prescribed the procedure required to be followed however, as respondent No.4 is headstrong, no one could dare to challenge the said impugned letter (Annexure-A). He has further submitted that, conduct of respondent No.4 is also required to be considered, whether respondent No.4 is a law abiding citizen or not?

[9.6] Herein, during the pending proceedings *qua* subject matter, the coordinate Bench of this Court observed the conduct of respondent No.4 and that all the authorities have passed an order *in tandem* and facilitated respondent No.4 and swept the issue under the carpet. Not only that, due to the conduct and high-handedness on the part of respondent No.4, family of deceased had to leave the village by selling their movable and immovable properties under the fear and terror. In recent past also, one person had tried to challenge the order extending benefit of remission to respondent No.4. The said person was forced to commit suicide and in this regard also, recently in May, 2025 an offence is registered and specific allegation also made in the FIR and till date respondent No.4 is on run and his name is also mentioned in the FIR itself as he has challenged or raised a voice against the impugned remission order, which clearly reveals from the proceedings filed before this Court i.e. SCR.A No.3499/2018 (page Nos.35, 60, 62, 295, 299, 300, 302, 364, 423 and 460) and Writ Petition (PIL) No.182 of 2019 (page Nos.130, 143, 160, 161, 164, 166, 167 to 175 and 299), which reflects high-handedness and terror and conduct of respondent No.4.

[9.7] So far as delay caused in filing the present petition is concerned, learned advocate Mr. Bhatt appearing for the petitioner has submitted that considering the high-handedness and the fear which the petitioner was having

and as his father restricted him from raising any voice against respondent No.4, petitioner could not come to this Court in time and others have raised voice due to pressure and as other litigations were going on and had hope that government may challenge it or will do something. Hence, he was fence sitter and waiting for outcome. However, after the demise of his father and due to silence of government, present petitioner has gathered courage and raised the voice. Hence, delay caused in filing the petition is not a ground to not to entertain the petition as impugned order is *ab initio* void. Adopting the pressure tactics, respondent No.4 has continuously engaged in illegal activities and he has enjoyed the liberty at the cost of safety of public and it was the duty of the State though State has not challenged the said order at Annexure-A. Hence, the petitioner being the kith and kin of the deceased who was killed by respondent No.4, has filed the present petition and hence, delay only is not a ground to dismiss the petition and confirm such illegal act of respondent No.3. The Court has to consider the order (Annexure-A) and statutory function based on the order passed by respondent No.3. He has further submitted that now, neither respondent No.3 nor respondent No.4 can supplement any fresh reason by way of affidavit or otherwise to divert the issue and this is a fit case and matter requires judicial review of decision.

[9.8] As regards suspicion raised by learned Advocates appearing for respondent Nos.3 and 4 *qua* identity of the present petitioner, learned advocate Mr. Bhatt has submitted that petitioner is grandson of the deceased and he approached the Hon'ble Supreme Court and he has mentioned the said fact in the petition but inadvertently said petition memo is not the part of compilation of present petition however, upon instructions, he submits that petitioner is ready and willing to furnish the said material if either the Court or any party to the proceeding if respondents want to verify. However, if the respondent Nos.3 and 4 have any objection, then the petitioner is ready to place on record the material in this regard. Respondent No.4 anyhow wants to avoid the hearing of the present petition. Right from 2018, illegal release was challenged before this Court and all these attempts have gone into vain and never reached upto logical end and such litigation remain continued and such order has never attained finality or approval of Court. Even, earlier also, matter was listed before 3 different Benches and before this Court also, present matter is listed six times. The Court has to consider his conduct before this Court also and manner in which they have tried to prolong / argue the matter on one or another pretext, which is nothing but against the settled principle of law and even as per the decision of the Hon'ble Supreme Court in the case of **D.P. Chadha vs. Triyugi Narain Mishra & Ors** reported in

(2001) 2 SCC 221, such act is nothing but misconduct and deliberate attempt to mislead the Court and attempted practicing deception or fraud on the Court. Hence also, he has requested to pass suitable direction also in this regard.

ANALYSIS:

[10.0] Having heard learned Counsel appearing for the respective parties, perusing the record and affidavits in reply filed by respective parties, it is undisputed and admitted fact that respondent No.3 – IG Prisons has vide letter dated 29.01.2018 released respondent No.4, who was convicted for the offence punishable under Section 302 of the IPC for which he was convicted by the Hon'ble Supreme Court and sentenced for **life imprisonment** and for the offence under Section 5 of TADA, he was sentenced to undergo **3 years' RI**, vide impugned letter / communication produced at **Annexure-A** to the petition based on the application submitted by the son of respondent No.4, relying on government circular dated 25.01.2017 produced at Annexure-I to the petition.

[10.1] The circular dated 25.01.2017 provides to release the prisoners from the Prisons of the State on occasion of celebration of 68th Republic Day on 26.01.2017, subject to condition Nos.1 to 6 prescribed in the said circular (Annexure-I) and without following the said conditions, after expiry of the said circular, as it was for limited period of one year and without placing case of respondent No.4

before the Advisory Board Committee, respondent No.3 has exercised the power and passed the impugned order (Annexure-A).

[10.2] Considering the submission of learned Public Prosecutor appearing for the State, letter (Annexure-A) dated 29.01.2018 was issued by respondent No.3 was issued without authority and which is not issued by the State Government or appropriate authority or by order and in name of the Governor. Further, the learned Public Prosecutor has also admitted that respondent No.3 has issued the impugned letter dated 29.01.2018 **without any authority** and without following embargo mentioned in Circular dated 25.01.2017 (Annexure-I), which was implemented only for one year and without any future effect.

[10.3] Herein, the petitioner has challenged the order issued by the respondent No.3 to extend the benefit of '*pardon*' to respondent No.4 and ordered to release respondent No.4 vide letter dated 29.01.2018 (Annexure-A) based on the application dated 29.01.2018 submitted by the son of respondent No.4 in vernacular, translation of which reads as under:

APPLICATION SUBMITTED BY SON OF RESPONDENT NO.4

"Applicant: Shaktisinh Aniruddhsinh Jadeja
Village: Ribada, Taluka Gondal,
District: Rajkot.

Date: 29/01/2018 ***(Hand Written Date)***

To,
The Additional Director General of Police
Inspector General of Prisions,
Government of Gujarat,
Jail Bhavan,
Ahmedabad.

Subject: About release of convict-prisoner No. 35631 Shri Aniruddhsinh Mahipatsinh Jadeja from the prison

Respected Sir,

My father Shri Aniruddhsinh Mahipatsinh Jadeja is undergoing a sentence for last 18 years and 5 months at the Junagadh Jail. He has been awarded ***a life term*** *under Section 302 of I.P.C. and an imprisonment of three years under Section 5 of the TADA Act by the Hon'ble Supreme Court. He has been ordered to undergo both the sentences concurrently. As of now, he has completed an imprisonment of 18 years and 5 months.* ***After completing 12 years of sentence, he has made a representation before the Government for the State-Pardon****. His conduct during the imprisonment was good and disciplined. He has also received a certificate from the Senior Officers for his good conducts. As per the criteria of State-Pardon granted on 25/01/2017, he has completed a simple imprisonment of 12 years. Thus, as per the Circular of the State Government, he is eligible to be freed from jail. Therefore, it is humbly requested to release him from the prison on the basis of the above stated Circular of the Government.*

Yours Sincerely,

sd/- (illegible)
(Shaktisinh Aniruddhsinh Jadeja)"

Based on the said application, on the same day i.e. on **29.01.2018**, respondent No.3 has passed the impugned order dated 29.01.2018 (Annexure-A), translation of which reads as under:

ORDER PASSED BY RESPONDENT NO.3

*"**Through FAX***
O.W. No. JUDI/2/766/2018
Additional Director General of Police
Office of Prison Reforms,
Government of Gujarat,
'Jail Bhavan', Nr. Subhashbridge Circle,
Ahmedabad – 27.
Ph: 079-(P) 27560403, (G) 27550818, (F) 27557798

Date: 29/01/2018

To,
The Superintendent
Junagadh District Jail,
Junagadh.

*Subject: About granting **benefits of State Pardon**, accorded on 68th Republic Day on 26th January 2017, to the convict-prisoner No. 35631 Aniruddsinh Mahipatsinh Jadeja.*

Subject:

Reference: (1) Resolution No. JLK/822013/5009/J of the Home Department of State.

(2) Application dated 29/01/2018 of Shri Shaktisinh Aniruddsinh Jadeja.

With regard to the captioned subject, it is to state that, ***the State has granted pardons*** *vide the letter referred at Sr. No. (1). The son of the prisoner No. 35631 – Aniruddhsinh Mahipatsinh Jadeja has made representation before this office to grant benefits of State-Pardon to his father and release him from the prison* ***as he has already undergone a sentence for 18 years*** *and the imprisonment for 3 years under the TADA Act is to run concurrently.*

The then Superintendent, Junagadh District Jail has not taken the provisions of the sentence under the TADA Act into consideration, properly while interpreting the resolution at that time.

Therefore, considering the representation made by the applicant and the fact that not any other case is pending against the convict-prisoner, it is informed to give him the benefits of ***State-Pardon*** *and release him from the prison,* ***immediately****.*

Sd/- (illegible)
(T.S. Bishth)
Additional Director General of Police
Prison Reforms and Administration,
Government of Gujarat, Ahmedabad."

Thus, based on application dated 29.01.2018 submitted by the son of respondent No.4 relying upon circular dated 26.01.2017 (Annexure-I, Page 128), by which the State Government has been pleased to extend the benefit of pardon to the prisoners who have completed sentence of 12 years, subject to the conditions vide circular dated 26.01.2017 which reads as under:

ANNEXURE-I

"*Grant of Remission to the Prisoners in the Prisons of the State on the occasion of the celebration of 68th Republic Day on 26th January, 2017.*

Government of Gujarat
Home Department,
No.JLK/822013/5009/J
Sachivalaya, Gandhinagar,
Date :- 25th January, 2017

Resolution :-

On the occasion of the celebration of 68th Republic Day on 26th January, 2017 and in pursuance of Article 161 of the Constitution of India the Government of Gujarat hereby ***grants remission*** *in sentence to the extent set out herein below to the convicted persons undergoing imprisonment inflicted by the Courts of criminal jurisdiction of the State and who are confined in the jails and in the Prisons of the State.*

Categories of Prisoners for release:-

(a) In respect of prisoners convicted for life imprisonment and who have undergone 12 (twelve) years of actual imprisonment including set-off as on 26th January, 2017 or before, full remission of the remaining period is granted.

(b) xxxxxxxxx

(c) In respect of prisoners convicted for life imprisonment, who have not absconded from parole/furlough/interim bail etc. for more than three days, last ten years, and have undergone 12 years of actual imprisonment including set-off as on 26th January, 2017, ***full remission*** *of the remaining period is granted.*

(d) xxxxxxxxxxxxx

A. Conditions of Release*:*

(1) This order shall not be applicable to under trial prisoners.

(2) The following condition shall be attached to all release

If, following his release, any prisoner commits any cognizable offence involving grave injury to a person or property, he/she shall be liable to be apprehended and confined to serve the unexpired portion of his sentence, so remitted.

(3) ***The Jail Advisory Committee shall scrutinize each case as directed by Hon. Supreme Court in Criminal Appeal No.566 of 2010 (Arising out of SLP (Cri.) No.6638 of 2009) and Criminal Appeal No.490-491 of 2011 before granting this State Remission****.*

(4) If a prisoner is on Parole or Furlough, the remission shall be granted only if the prisoner surrendered in the jail before the expiry of period of Parole or Furlough.

(5) ***The State Remission is one time and <u>cannot be extended to a future date</u>****.*

(6) ***The remission shall be granted as per the Government Resolution No.JLK / 822012 / 1859 / J, dated 23-01-2014 and its subsequent amendment No.JLK /822012 /1859 /J, dated 25/01/2017****.*

By order and in the name of the Governor of Gujarat,

(M. B. Soni)
Deputy Secretary to the Government of Gujarat,
Home Department."

Based on the aforesaid policy / circular, benefit was extended to respondent No.4.

[11.0] Now, the centripetal issue in the matter which is required to be considered is only as to whether respondent No.3 had any power or authority to address or to issue the impugned letter (Annexure-A) to grant pardon to

respondent No.4.

[11.1] Before dealing with the said issue, it is appropriate to refer to section 3(23) of the General Clauses Act, which reads as under:

> *"Government" or "the Government" shall include both the Central Government and any State Government.*

It is also relevant to refer to section 17 of the IPC, which provides that the notation "GOVERNMENT" is denoted for the Central and State Government of India. Further, section 55A of the IPC reads as under:

> ***"55A. "appropriate Government" means, —***
>
> *(a) In case where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and*
>
> *(b) In case where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced."*

[11.2] Upon bare reading of Circular and impugned communication (Annexure-A), it appears that respondent No.3 has arbitrarily issued the letter without any authority and ignoring the settled principles of law as respondent No.3 does not fall in the category of "Government" or "Appropriate Government". Even if for the sake of argument we accept that there was an authority to respondent No.3 for issuing such letter, even though

circular (Annexure-I) was issued with certain embargo and conditions. Herein, without following any stipulation prescribed under the Circular dated 25.01.2017 (Annexure-I), straightway without considering anything, on the same day i.e. on 29.01.2018, respondent No.3 has issued the impugned letter. Though policy was floated only for the year 2017, though the benefit is extended for the period subsequent thereto, which is illegal.

[11.3] At the outset, State has also submitted that, circular issued was one time circular to extend the special benefit to the prinsoners who had served sentence of 12 years with certain conditions and following the recommendation of Advisory Board Committee. Herein, in the case on hand, after expiry of one year, impugned letter / order has been issued by the respondent No.3 and that too without following stipulation provided thereunder and on his own, he has addressed the letter without complying with conditions stated in the Circular (Annexure-I).

[11.4] The stand taken by respondent No.3 is that, he has only followed the directions as a controlling authority of Jail Administration being the Head of the Jails of the Gujarat State, he has instructed and addressed a communication to respondent No.2 – Jail Superintendent, Junagadh to consider the case of respondent No.4 to relese him. Hence, it was upon the respondent No.2 to follow the stipulation provided under the Circular (Annexure-I) and respondent

No.3 has already released other 7 convicts till date and no one has raised any grievance and even the State has not challenged such release. Hence, no colorable exercise on the part of respondent No.3 as he has acted as controlling officer and as a supervisory authority and once son of respondent No.4 had approached the respondent No.3, he has only passed instruction.

[11.5] Perusing the record also, it appears that stipulation provided in the Circular dated 25.01.2017 (Annexure-I) is required to be followed prior to exercise of the power or prior to passing any direction by respondent No.3. Herein, no any conditions are followed as stated in the Circular and hence, said argument is nothing but an afterthought and ignoring specific instruction to pass instruction to release respondent No.4 immediately, which is nothing but abuse of power and colorable exercise of power on the part of respondent No.3 and said order is *non est*.

[11.6] As respondent No.4 is an affected party, he is also heard at length. The main submission of respondent No.4 is that benefit under Article 161 of the Constitution was extended hence, no need to follow any condition either under Section 432 of the CrPC or any statutory provisions as powers to pardon is under Article 161 of the Constitution which are constitutional powers. Further, respondent No.4 has served the sentence for 18 years, which was more than 14 years and hence, he was entitled

to get the benefit of circular and for that his son approached the authority and belatedly the petitioner has approached this Court without there being any *locus*. Hence, he has requested to dismiss the petition as the power exercised by respondent No.3 is just legal and proper and does not call for any interference and no judicial review is permissible once the constitutional powers being exercised.

[11.7] As per Circular dated 25.01.2017 (Annexure-I), benefit of remission is granted and not a pardon is given. The word "remission" refers to the reduction of duration of prisoner's sentence without altering the nature of sentence. It allows the convict to be released earlier than the original term prescribed by the Court provided that they meet a specific eligibility criteria. Articles 72 and 161 of the Constitution of India are constitutional powers which grant pardon, reprieve, respite or remit the sentence or to suspend, remit or commute the sentence of any person convicted of an offence under the Union Law or involving Military Courts. Hon'ble Governor having the same power under Article 161 of the Constitution in the matter of State Government and such powers are amenable to writ jurisdiction. The statutory provisions to extend the benefit of remission is provided under Section 432 of the CrPC (section 473 of the BNSS). The powers to grant the remission or remit the sentence without or without the condition are under the domain of State

Government.

[11.8] The Hon'ble Supreme Court has prescribed the criteria while granting the benefit of remission in the case of **Laxman Naskar vs. Union of India** reported in **(2000) 2 SCC 595** and outlined five factors of remission namely (1) societal impact; (2) crime severity; (3) risk of recidivism; (4) prison conduct and (5) potential for reintergration ensuring a balanced approach to justice and public safety. The judicial review of remission order is also permissible on the ground of non-application of mind, malafide intent, reliance on extaneous or irrelevant considerations.

[11.9] Perusing condition No.6 also of the impugned policy / circular, it clearly reveals that certain restriction and limited power is required to be exercised and under Section 437(2) of the CrPC, word "appropriate government" for remission is explained and same fact is also reiterated and considered in the decision of Hon'ble Supreme Court in the case of ***Sangeet & Another (Supra)*** and ***V. Sriharan (Supra)***. At the same time, considering various pronouncements of Apex Court rendered in the case of ***Sangeet & Another (Supra)*** and in the case of **State of Haryana & Others vs. Mohinder Singh** reported in **(2000)3 SCC 394,** in the case of ***Laxman Naskar (Supra)***, Hon'ble Supreme Court emphasized that the convict cannot claim the remission as a matter of right. It is settled principle of law that remission policy only gives right to the

convict to be considered and his case for remission do not provide an indefeasible right to claim remission and powers of remission are required to be exercised in fair and reasonable manner and cannot be exercised arbitrarily.

[11.10] Herein, as stated above and considering the circular at Annexure-I, *prima facie,* this Court is of considered view that said circular dated 25.01.2017 (Annexure-I) was one time without future extention and with certain conditions. Therefore, report of Advisory Board Committee and other conditions provided under other two circulars are required to be followed, which are also not followed by respondent No.3 and straightway impugned communication is made without verifying the record or contents of the application of son of respondent No.4 accepting the same as gospel truth passed an order. Hence, it appears that the impugned letter / communication is not in consonance with the circular issued by the authority. Not only that, in the said letter, word used is "રાજ્યમાફી" (*Rajya Mafi*), which means “pardon”. The word “pardon” means to completely absolve a person of the offence and its consequences and said power is only under Articles 72 and 161 of the Constitution of India and are to be exercised by Hon’ble The President of India and Hon’ble Governor only based on recommendation or advice of Minister of Council and herein, no such deligation of power to respondent No.3 to pass any such order and no any order is passed by the

Government or such name of the Governor also.

[11.11] Respondent No.4 was also convicted for the offence under the provisions of TADA and central legislation was there and therefore, to extend the benefit under the circular at Annexure-I, minimum stipulation was 12 years. Respondent No.4 herein was convicted and sentenced for life imprisonment and even as per the submission of learned Counsel Mr. Syed, convict had undergone 18 years means his case was to be considered in the category to extend the benefit of remission to lessen the sentence without changing its characteristics as respondent No.4 was convicted by the Hon'ble Apex Court. Herein, no any powers with respondent No.3 of commutation and hence, question does not arise to exercise any power to pardon or to commute the sentence as of right. Even, as per the settled principle of law, the power under Article 161 of the Constitution is required to be exercised by the State Government with Hon'ble The Governor acting on their advise. Herein, respondent No.3 does not fall in the purview of "appropriate government" or "Government" though he has extended the benefit of pardon to respondent No.4 and that too without following condition of circular at Annexure-I and *de hors* the said legal frame work and the requirement to exercise the power.

[12.0] The application dated 29.01.2018 was filed for "pardon" by son of respondent No.4. Word "*pardon*" means to

completely absolve a person of offence and its consequences. “Remission” means lessening the amount of sentence without changing its characteristics and word “Reprieve” means delay the execution of sentence allowing more time to the convict person to avail or seek other legal remedies. “Respite” means awarding lesser sentence instead of original sentence usually due to special circumstances such as illness and pregnancy. Impugned letter at Annexure-A clearly reveals that benefit of “pardon” is extended, means convict is completely absolved of offence and its consequences. The said letter is issued by respondent No.3 on his own and not on behalf of the State Government or in the name of Hon’ble The Governor and that too without following any due procedure. If we accept that, the said letter is issued keeping in mind the provisions of remission even though no stipulation provided under the circular at **Annexure-I** is complied with or followed neither by respondent No.3 nor by respondent No.2 as argued by learned Counsel for respondent No.3.

[12.1] Even, if for the sake of argument it is accepted that, circular at Annexure-I is issued under Article 161 of the Constitution for premature release of prisoners, exercise of such powers is under the domain of Hon’ble Governor and upon the advise of Ministers of Council and prior to exercise of such power or issuance of circular, perusing the material produced by the State Authority before this

Court, it clearly reveals that prior to issuance of Circular the proposals were called for from throughout the State wherein the prisoners who have completed 12 years of sentence and considering their jail remarks, opinion of Advisory Board Committee alongwith proposals, everything were placed before the Governor with recommendation and thereafter, circular dated 25.01.2017 came to be issued for one year i.e. for the year 2017 only. At that time, from Junagadh District Jail also, detail of beneficiary prisoners called for, who were convicted for life imprisonment and lesser punishment. Perusing the said communication also, it appears that name of only five life convict prisoners, for the offence under Section 302 of the IPC as on 26.01.2017 came to be forwarded to the government wherein, name of respondent No.4 herein, was not included in the list as a beneficiary of the said circular and other 10 convicts who were convicted for the offence under Section 125 CrPC, sections 304 (Part II) IPC, 326, 324, 114, 279, 337, 338 of IPC and provisions of MV Act etc. were given the benefit under the said circular by the Government as part of one time exercise. On that count also, argument canvassed by learned Counsel for respondent Nos.3 and 4 is not accepted.

[12.2] Even, at relevant point of time, respondent No.4 did not raise any objection or not made any correspondence while the said list was submitted as per the circular to the State Government for consideration on 26.01.2017. Herein, after

one year, relying on antback dated circular, straightway respondent No.3 has issued the letter at Annexure-A without forwarding it to the State Government for consideration though benefit was not extended by State Government to respondent No.4, at that time, though respondent No.3 on his own addressed letter to respondent No.2.

[12.3] Thus, it is crystal clear that respondent No.3 did not follow the conditions stipulated in the said circular and even otherwise prior to that also, while the proposal was forwarded in the year 2013-14 for the benefit of remission to respondent No.4, at that time, name of respondent No.4 was not considered and benefit of remission was not extended to him. At that time also, respondent No.3 had addressed a communication wherein it is clearly stated that, respondent No.2 **recommended** to consider the case of respondent No.4. Herein also, he ought to have only to make recommendation on same line as he was superior or controlling officer but herein, straightway he has usurped the power of the State Government. Nonetheless, learned Counsel for respondent No.3 has stated that it was for respondent No.3 to follow the stipulation and the condition enumerated in the circular dated 25.01.2017 and he did not follow the said condition. Even if we accept the said submission for the sake of argument then also, release of respondent No.4 is *de hors* and against the established procedure of law and circular (Annexure-I)

itself.

[12.4] Learned Counsel for respondent No.4 has submitted that, there is no need to follow the provisions of section 432 of the CrPC as respondent No.3 has exercised powers under Article 161 of the Constitution but as discussed above, powers under Article 161 of the Constitution are required to be exercised by Hon'ble Governor only based on the advise of the Ministers of Council. Respondent No.3 did not fall in the category of Ministers of Council or State or appropriate Government. The nature and scope of powers of Governor is discussed by the Hon'ble Supreme Court in the case of **State of Haryana and Others Vs. Rajkumar @ Bittu** reported in **(2021)9 SCC 292** wherein it is observed that said power is required to be exercised by the Governor on aid and advise of State Government and not by Hon'ble Governor on his own and only restriction under Section 433A of the CrPC is not applicable when powers under Article 161 of the Constitution is exercised.

[12.5] Herein, in the case on hand, while exercising powers under Article 161 of the Constitution, name of present respondent No.4 was not included in the list of beneficiaries of circular at Annexure-I. Not only that, there is no bar to exercise the power under Article 161 of the Constitution with terms and conditions of the statutory provisions for remission policy of the State Government. As per argument of learned Counsel for respondent No.3 is

that, respondent No.3 has exercised the power being controlling and superior officer of Jail Administration. Such power and authority is clearly mentioned in the Bombay Jail Manual and Prisoners Act, which clearly defines the power and authority of IG, Prison wherein, it is provided that power of IG, Prison is only to have control over the staff and general jail administration and supervision and for remission purpose, he is only medium of communication to forward the proposals to the Government and he has to submit the proposals to the State Government in turn whenever he receives such proposal. Except this, respondent No.3 has no role to play. His functions as a government servant / officer are provided under Rules 257 and 258 under Chapter X of Jail Manual. Nowhere, power of remission or to exercise power under Article 161 of the Constitution is entrusted or bestowed upon respondent No.3. Hence, argument canvassed by learned Counsel Mr. Syed is not acceptable.

[12.6] Moreover, as per the Rules of Business of Government of Gujarat, if any circular is issued for and on behalf of the State Government, in that event also, the General Administration Department of Gujarat State has prescribed the procedure and Rules under the said Rules of Business of Gujarat Government wherein also, it is clearly mentioned in Rule 13 that every order of State Government is required to be passed by the Secretary, Additional Secretary, Joint Secretary, Deputy Secretary,

Under Secretary or Section Officers based on the powers given by the Government. Herein, respondent No.3 has passed order not in the name and on behalf of the Hon'ble Governor. Hence, this Court is of the considered opinion that the impugned order dated 29.01.2018 (Annexure-A) passed by respondent No.3 is not in accordance with law and he was incompetent to pass the impugned order extending pardon or benefit of remission to respondent No.4. Thus, it appears that in absence of any source of power, respondent No.3 has exceeded his authority / power. Herein, specific case of respondent No.4 that he had served sentence or more than 14 years and hence, actual imprisonment was within the scope of section 433A of the CrPC and it was for the Hon'ble Governor to exercise the power conferred to him under Article 161 of the Constitution as per the policy.

[12.7] Even if for the sake of argument it is accepted then also, under Article 161 of the Constitution and the circular at Annexure-I, power was conferred even though there was no question to give a concession in a sentence below 14 years i.e. 12 years as per the Circular. If argument of respondent No.4 is accepted that the circular at Annexure-I was issued under Article 161 of the Constitution with certain restrictions, which is permissible under the law and appropriate government is also empowered to impose restrictions under Section 432(5) of the CrPC for check and balances of past conduct of convict after release and sole

purpose of such benefit is given or extended only for the purpose of rehabilitation of convict in the society. Earlier also, under Section 432(5) of the CrPC, policies were framed with such condition. The distinction is that remission is taken into consideration where prisoner convicted for the offence under Section 302 of the IPC has undergone the **sentence of not less than 14 years** and then it would fall under the **circular dated 25.01.2017 (Annexure-I)**. It appears that respondent No.3 has arbitrarily usurped the power of government.

[12.8] Even, the Hon'ble Supreme Court in the case of ***Bilkis Yakub Rasool (Supra)*** has been pleased to examine the scope and ambit of remission. The argument of learned Senior Counsel for respondent No.4 that decision in the case of ***Sangeet & Another (Supra)*** is overruled and not applicable is not acceptable in toto. Present petitioner is convicted and sentenced with life imprisonment by the Hon'ble Supreme Court. Section 53 of the IPC speaks about various punishments which could be ordered against the offenders and imprisonment for life is one of such punishment. Section 53 of the IPC reads as under:

> *"53. Punishments.— The punishments to which offenders are liable under the provisions of this Code are—*
>
> *First.— Death;*
>
> *Secondly. — Imprisonment for life;*
>
> ****[Clause "Thirdly" omitted by Act 17 of 1949, sec. 2 (w.e.f. 6.4.1949]*

Fourthly.— Imprisonment, which is of two descriptions, namely: —(1)Rigorous, that is, with hard labour;
(2)Simple;

Fifthly— Forfeiture of property;
Sixthly— Fine."

Section 57 of the IPC is also relevant and is extracted as under :

> *"**57. Fractions of terms of punishment.-** In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.*

In the case of **Swamy Shraddhananda (2) vs. State of Karnataka** reported in **(2008) 13 SCC 767,** the Hon'ble Supreme Court took note of the contention that a convict undergoing a sentence of imprisonment has no right to claim remission was not the same as the Court, while imposing the punishment of imprisonment, suspending the operation of the statutory provisions of remission and restraining the appropriate Government from discharging its statutory function. It was contended in the said case that just as the Court could not direct the appropriate Government for granting remission to a convicted prisoner, it was not open to the Court to direct the appropriate Government not to consider the case of a convict for grant of remission in sentence. It was contended therein that giving punishment for an offence is a judicial function but the execution of the punishment passes into the hands of the executive and the scheme of statute, the Court had not control over the execution. This

contention was however, not accepted and held to be untenable. Referring to sections 45, 53, 54, 55 and 57 of the IPC, it was observed that section 57 of the IPC provides that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. That, Section 57 of the IPC does not in any way limit the punishment for imprisonment for life to a term of twenty years. It only provides that imprisonment for life shall be reckoned as imprisonment for twenty years while calculating fraction of terms of punishment.

[12.9] The Constitution Bench of the Hon'ble Supreme Court in the case of ***V. Sriharan (Supra)*** considered, *inter alia,* two questions namely, (i) as to whether the imprisonment for life means till the end of convict's life with or without any scope for remission? and (ii) whether a special category of sentence instead of death for a term exceeding 14 years can be made by putting that category beyond grant of remission? The Constitution Bench for the majority observed that the first question relates to Sections 53 and 45 of the IPC vis-a-vis the meaning of "life imprisonment" as to whether it means imprisonment for the rest of one's life or a convict has a right to claim remission. The second question is based on the ruling of ***Swamy Shraddhananda (Supra)***. Having noted the decisions of the Hon'ble Supreme Court in case of **Gopal Vinayak Godse v. The State of Maharashtra and others [(1961) 3 SCR 440]** and

Maru Ram (Supra) as well as other cases discussed therein which have followed those decisions, it was observed that, "the first part of the first question can be conveniently answered to the effect that imprisonment for life in terms of Section 53 read with Section 45 of the IPC only means imprisonment for rest of the life of the prisoner subject, however to the right to claim remission etc. as provided under Articles 72 and 161 of the Constitution to be exercisable by the President and the Governor of the State and also as provided under Section 432 of the CrPC. Herein, neither the State or Governor has exercised any power in issuing impugned letter (Annexure-A).

[12.10] The ratio laid down in the case of ***Swamy Shraddhananda (Supra)*** with regard to special category of sentence was affirmed. It was expressed that the opinion of the Court in the case of ***Sangeet & Another (Supra)*** that the deprival of remission power of the appropriate Government by awarding sentences of twenty or twenty-five years without any remission was not permissible, was not in consonance with law and hence, the said judgment was over-ruled upto that extent only.

[12.11] In the said decision, only term "life imprisonment" is explained and partly over-ruled *qua* "life imprisonment" and for getting the benefit of remission, 14 years' sentence is required to be undergone and same ratio is affirmed by the Hon'ble Supreme Court subsequently in the case of ***Bilkis Yakub Rasool (Supra)*** and paragraphs 164 to 170 of

the said decision read as under:

> *"164. Be that as it may, it would be useful to refer to the following judgments in the context of passing an order of remission in terms of Section 432 read with Section 435 of the CrPC.*
>
> *165. V. Sriharan is a judgment of this Court wherein the Constitution Bench answered seven questions out of which the following questions are relevant for the purposes of this case: (SCC p. 52, para 8)*
>
> > *"8. 8.3. (iii) Whether the power under Sections 432 and 433 of*
> > *the Criminal Procedure Code by the appropriate Government would be available even after the constitutional power under Articles 72 and 161 by the President and the Governor is exercised as well as the power exercised by this Court under Article 32?*
> >
> > *8.4. (iv) Whether the State or the Central Government have the primacy under Section 432(7) of the Criminal Procedure Code?*
> >
> > *8.5. (v) Whether there can be two appropriate Governments under Section 432(7)?*
> >
> > *8.6. (vi) Whether power under Section 432(1) can be exercised suo motu without following the procedure prescribed under Section 432(2)?*
> >
> > *8.7. (vii) Whether the expression "consultation" stipulated in Section 435(1) really means "concurrence"?"*
>
> *This Court observed that the procedure to be followed under* ***Section 432(2) is mandatory and that suo moto power of remission cannot be exercised under Section 432(1) and it can only be initiated by an application of the person convicted*** *as provided under Section 432(2) and the ultimate order of suspension of sentence or remission should be guided by the opinion to be rendered by the Presiding Officer of the Court concerned. In this case the earlier judgement of this court in Sangeet was approved.*
>
> *166. In Sangeet, it was observed that a convict undergoing a sentence does not have a right to get remission of sentence, however, he certainly does have a right to have his case considered for the grant of remission as held in Mahender Singh*

and Jagdish. It was further observed in the said case that there does not seem to be any decision of this Court detailing the procedure to be followed for the exercise of power under Section 432 of the CrPC which only lays down the basic procedure i.e. by making an application to theappropriate Government for the suspension or remission of a sentence, either by the convict or someone on his behalf. It was observed that sub-section (1) of Section 432 of the CrPC is only an enabling provision to override a judicially pronounced sentence, subject to the fulfilment of certain conditions. These conditions are found either in the Jail Manual or in statutory rules.

167. It was pertinently observed that when an application for remission is made the appropriate Government may take a decision on the remission application and pass orders granting remission subject to certain conditions or, refuse remission. But there has to be an application of mind on the remission application so as to eliminate discretionary en-masse release of convicts on "festive" occasions, since each release requires a case by case scrutiny. It was observed that the power of remission cannot be exercised arbitrarily and the decision to grant remission has to be well informed, reasonable and fair to all concerned. The statutory procedure under Section 432 of the CrPC provides a check on the possible misuse of power of the appropriate Government.

168. ***It was further observed that there is a misconception that a prisoner serving a life sentence has an indefeasible right to be released on completion of fourteen years or twenty years of imprisonment****; however, in reality, the prisoner has no such right. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the CrPC which, in turn, is subject to the procedural checks in that section and the substantive check in Section 433-A of the CrPC. That the application of Section 432 of the CrPC to a convict is limited inasmuch as, a convict serving a definite term of imprisonment is entitled to earn a period of remission under a statutory rule framed by the appropriate Government or under the Jail Manual. The said period is then offset against the term of punishment given to him. Thus, upon completion of the requisite period of incarceration, a prisoner's release is automatic. However, Section 432 of the CrPC will apply only when a convict is to be given an "additional" period of remission for his release i.e., the period to what he has earned as per the Jail Manual or the statutory rules.That in the case of convict undergoing life imprisonment, the period of custody is*

indeterminate. Remissions earned or awarded to such a life convict are only notional and Section 432 of the CrPC reduces the period of incarceration by an order passed by an appropriate Government which cannot be reduced to less than fourteen years as per Section 433-A of the CrPC.

169. This Court after a detailed discussion came to the following conclusions on the aspect of grant of remissions:

> *"77.5. The grant of remissions is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced.*
>
> *77.6. Remission can be granted under Section 432 Cr.P.C. in the case of a definite term of sentence. The power under this section is available only for granting "additional" remission, that is, for a period over and above the remission granted or awarded to a convict under the Jail Manual or other statutory rules. If the term of sentence is indefinite (as in life imprisonment), the power under Section 432 Cr.P.C. can certainly be exercised but not on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.*
>
> *77.7. Before actually exercising the power of remission under Section 432 Cr.P.C. the appropriate Government must obtain the opinion (with reasons) of the Presiding Judge of the convicting or confirming Court. Remissions can, therefore, be given only on a case-by-case basis and not in a wholesale manner."*

*170. Ram Chander was a case of a writ petition being filed before this Court under Article 32 of Constitution seeking a direction to the respondent-State therein to grant him premature release. This Court speaking through Dr. D.Y. Chandrachud., J., (presently the learned Chief Justice) considered the aspect of judicial review of power of remission and referred to Mohinder Singh to observe that the power of remission cannot be exercised arbitrarily and the decision to grant remission should be informed, reasonable and fair. In this context, reliance was placed on Laxman Naskar wherein this Court, stipulated the factors that govern the grant of remission namely: (**Laxman Naskar Case, SCC p. 598, para 6**)*

> *"6. (i) Whether the offence is an individual act of crime without affecting the society at large?*

(ii) Whether there is any chance of future recurrence of committing crime?

(iii) Whether the convict has lost his potentiality in committing crime?

(iv) Whether there is any fruitful purpose of confining this convict any more?

(v) Socio-economic condition of the convict's family.

(Emphasis supplied)"

[12.12] Herein, the order is passed by respondent No.3 straightway without following the aforesaid prescribed procedure and embargo provided therein and without any opinion of the Presiding Judge, without imposing any condition while allowing the remission application to put check and balances and considering the societal interest, reasonable conditions are required to be imposed so that in the event of any default, if purpose of rehabilitation of convict fails, after getting the particular of convict, order of remission can be revoked. Herein, no such condition is imposed and petitioner has submitted that after passing of the impugned order, respondent No.4 has continued indulging in illegal activities and three offences are registered out of which one offence is quashed and such offence took place due to filing of PIL against respondent No.4 and his premature release, registration of subsequent offences is not disputed by respondent No.1 and 4 also.

[12.13] It is needless to say that, the remission is reduction of

sentence without changing the characteristics of sentence and due to this guilt of offender is not affected nor the sentence passed by the Court except in the sense that the person concerned does not suffer incarceration for the entire period of sentence but is relieved from serving the part of it. **Section 432 of the CrPC empowers the appropriate government to suspend or remit the sentence** and remission of sentence does not mean acquittal and aggrieved party has every right to vindicate himself or herself and section 432(1) of the CrPC is an enabling provision which deals with the application made to the appropriate government for suspension or remission of a sentence and the appropriate government may call for the opinion from the Presiding Judge of the Court by which the conviction was confirmed and then the application is required to be considered. Herein, in the case on hand, no application was filed before the appropriate government. If respondent No.3 has received any application from son of respondent No.4 then it was the duty of respondent No.3 in turn to send the proposal to the appropriate government alongwith all opinions and material in support of the application. Even otherwise, herein no any opinion of convicting Court is sought for.

[13.0] Respondent No.4 was convicted by Hon'ble Supreme Court in appeal and without any judicial opinion straightway respondent No.3 has considered the application. The Home Department also has to follow the circular. In the

year 2014, though recommendation was made by respondent No.3 on 02.01.2014, it was not considered and then the remedy was different either to challenge the said refusal to make request or sought relief to consider his case for grant of remission. Translation of earlier recommendation dated 02.01.2014 made by respondent No.3 to the respondent No.2 – Jail Superintendent, said documents are produced by respondent No.4 by way of additional affidavit, which reads as under:

"No. MAG/C/6575/13

Office of District Magistrate
Jilla Seva Sadan,
Bh. Sardar Baug,
Junagadh, District: Junagadh.

Date: 02/01/2014

To,
The Superintendent
District Jail,
Junagadh.

Subject: About giving opinion on pre-mature release of convict-prisoner No. 35631 Aniruddsinh Mahipatsinh Jadeja under Section 433-A of Cr.P.C.

With regard to the captioned subject, this office has been asked, vide your letter no. JUDI/2297/2013 dated 23/12/2013, to give opinion on the pre-mature release of convict-prisoner No. 35631 – Aniruddhsinh Mahipatsinh Jadeja of Junagadh District Jail under Section 433(a) of Cr.P.C.

Perusing the report qua the Letter No. CB-5/PRISONER/ RELEASE/ 3280/2013 dated 18/12/2013 of the Superintendent, Rajkot Rural, Rajkot appended to your letter dated 23/12/2013 and

considering the opinion given by the Police Inspector, Gondal City and the Deputy Superintendent of Police, Gondal, a 'positive' opinion has been given about pre-mature release of the prisoner.

Considering the opinion given by you as well as the Superintendent of Police, Rajkot Rural, Rajkot, as stated above, it is opined to give benefit of pre-mature release to this prisoner. It is informed to do the needful in this regard as per law.

Sd/- (illegible)
(District Magistrate)
District Junagadh, Junagadh

Outward No.:
Date:
Branch:

4/- The opinion by concerned authorities for early release of accused is as under:

(1) The District Magistrate, Rajkot has recommended for early jail release.

(2) The Superintendent of Police, Rajkot has recommended for early jail release.

*(3) **In Jail Advisory Board Committee, in-charge District and Sessions Judge has given negative and other members, who were present, have given affirmative opinion**.*

(4) Superintendent, Junagadh District Jail has recommended for early jail release.

*In view of the above, considering the opinion given by the committee and jail conduct, the accused is hereby **recommended to be released early from the jail, which may be noted**.*

Encl.:-
Report (Page No.1 to 275) with copy of judgments

Yours faithfully,

Sd/-
*(**T.S. Bishth**)*
Additional Director General of Police
and Inspector General of Prisons,
Gujarat State, Ahmedabad.

Copy forwarded to-
Superintendent, Junagadh District Jail, Junagadh for information"

[13.1] Herein, rather than challenging the refusal or non-consideration of grant of remission in the year 2014, straightway after four years, son of respondent No.4 has approached respondent No.3 which was a strange procedure. Even if for the sake of argument it is accepted that respondent No.3 was having administrative control then also as per the statutory provision as well as the circular issued by the Government and as per the policy also, in turn respondent No.3 ought to have only forwarded the said proposal for consideration to the appropriate government though respondent No.3 himself acted as an appellate authority or appropriate government and without verifying anything straightway accepted the request made by son of respondent No.4 as a gospel truth though he was well-versed with the procedure and his power also, he has passed an order of pardon which is not only against the settled principle of law but also without authority.

[13.2] As held by the Hon'ble Supreme Court in the case of ***Bilkis Yakub Rasool (Supra)*****,** when respondent No.3 was not competent to pass the remission order, which goes to the root of the matter, and once remission or pardon order is passed by the incompetent authority, same would be ***non est*** and nullity. Hence, in the present case, respondent No.3 has passed impugned order without any authority, which is nullity.

[13.3] It is pertinent to note that earlier respondent Nos.1 and 2 have not specifically placed on record any material about competency of respondent No.3. The State has relied on the affidavit 14.02.2025 filed by one Mr. Ashvin G. Chauhan, Inspector General of Prison, Gujarat State wherein rather than making out specific defence or case, reiterated the facts based on affidavit filed in the proceedings of SCR.A No.3499/2018, which has been reproduced in the present proceeding also and as there was no any specific stand taken by the State Authority, this Court is compelled to pass the order on 17.07.2025 directing the respondent Nos.1 and 3 to place on record a report on or before the next date of hearing indicating as to whether, while passing the impugned order dated 29.01.2018 in favor of respondent No.4, any proceedings of the Jail Advisory Committee or any material thereof was taken into consideration as mentioned in condition of circular and respondent No.3 was also directed to clarify as to what material was relied upon prior to taking the

decision dated 29.01.2018.

[13.4] Further, it is stated that respondent No.3 having no any document or material and has further stated that respondent No.3 has passed order as per the rules and regulations and Jail Superintendent has to follow the conditions if any of the circular (Annexure-I), which was conditional and is required to be followed by the respondent No.2. The State has also rather than placing on record any material, learned Public Prosecutor has placed on record the communication made to the learned Public Prosecutor wherein it is stated that prior to passing the order to release respondent No.4, circular was not followed and case of respondent No.4 was not placed before the Advisory Board Committee. Thus, it clearly reveals that as per Circular (Annexure-I), case of respondent No.4 was not placed before the Advisory Board Committee for consideration and was not considered in light of condition No.3 of the circular dated 25.01.2017 (Annexure-I) though till date State has not taken any call *qua* impugned order dated 29.01.2018 and has remained silent for quite a long for the reasons that are best known to the State Authorities.

[14.0] As the impugned order is without authority and ***non est*** also and not passed in the name of Hon'ble Governor and is passed by respondent No.3, the argument canvassed by learned Counsel for respondent Nos.3 and 4 that order is

passed on behalf of the government and under the policy / circular (Annexure-I) in exercise of power under Article 161 of the Constitution and hence, there was no need to comply with any condition imposed in the circular and any other statutory restriction and no judicial review is called for is not acceptable. It is needless to say that, judicial review has been recognized as a necessary and fundamental requirement for construction of an advanced civilization to safeguard the liberty and rights of citizens and judicial review is the Court's power to review the actions of government and other branches of the government especially the Court's power to deem invalid the action exercised by the government and the executives as unconstitutional.

[14.1] A judicial review of any action or any decision of government is permissible on the grounds viz. (i) jurisdictional error; (ii) irrationality; (iii) procedural impropriety; (iv) proportionality and (v) legitimate expectation. Herein, Court came to the conclusion that, the order passed by respondent No.3 is lacking jurisdiction and once authority having no power or jurisdiction at all to pass such order, the Court may review such administrative action on the ground that the authority exercised the jurisdiction which it was not supposed to and in such cases, issuance of the writ of certiorari is also permissible. Even, the procedural impropriety also found from the action of respondent No.3. If an executive passes any order without

authority then same is nothing but amounts to nullity. In this regard, reference is required to be made to the case of **Mansuklal Vithaldas Chauhan vs. State of Gujarat** reported in **(1997) 7 SCC 622**, the Hon'ble Supreme Court held that the legality of administrative decision could be reviewed and if decision making authority exceeded its power and committed an error of law and reached to the conclusion then the review is permissible.

[14.2] Herein, in the case on hand, It appears that respondent No.3 has passed an order with extraneous or wholly irrelevant consideration and prior to passing any order he has to consider the relevant material, condition imposed in the circular and in turn he has to submit the proposal to the State Government and when order suffers from arbitrariness then as stated by the Hon'ble Supreme Court in the case of **Swamy Shraddhananda (2) vs. State of Karnataka** reported in **(2008) 13 SCC 767**, judicial notice has to be taken of the fact that remission, if allowed to life convicts in a mechanical manner, without any sociological or psychiatric appraisal of the convict and without any proper assessment as to the effect of early release of a particular on the society. The impugned order is passed without considering any material. While passing such order the power of executive clemency is not permissible based on whims and fancies and respondent No.3 has only taken into consideration the benefit of convict but what has to be borne in mind is the effect of the decision on the family

of the victims, society as a whole.

[14.3] Further, in the case of ***Maru Ram (Supra)***, the limitations of judicial review over exercise of powers under Articles 72 and 161 of the Constitution have been delineated by the Constitution Bench and it has been observed that all public power, including constitutional power, shall never be exercisable arbitrarily or mala fide, and ordinarily guidelines for fair and equal execution are guarantors of valid play of power. Ignoring such guidelines, if any order is passed then the same would be bad in the eyes of law. The condition and embargo of the policy itself refers to the circular dated 23.01.2014. The Hon'ble Supreme Court in the case of ***Laxman Naskar (Supra)*** has laid down the guidelines for considering premature release as stated earlier in paragraph No.[11.8]. No such ground or any aspect is also considered by respondent No.3 and even any authority allowing the application filed by the son of respondent No.4 and said principle including the one laid down in the case of ***Maru Ram (Supra)*** and ***V. Sriharan (Supra)***, various aspects *qua* remission of sentence are discussed. Even in the case of **Epuru Sudhakar vs. State of Andhra Pradesh** reported in **(2006)8 SCC 161,** the Hon'ble Supreme Court has held that judicial review of an order of remission is available when there is non-application of mind and relevant material have not been considered and order is passed based on irrelevant considerations and suffers from arbitrariness. Hence, judicial review of such

order is permissible.

[14.4] Even, in the case of **Satpal vs. State of Haryana** reported in **(2000)5 SCC 170,** an order of granting remission to the convicts under Article 161 of the Constitution was assailed wherein also, the Hon'ble Supreme Court examined the parameters of judicial review and come to conclusion that the judicial review in relation to order granting remission by the Governor is also permissible and if any order is passed irrationally and arbitrarily and without considering the material fact then judicial review is permissible.

[14.5] Thus, it is crystal clear from various pronouncements of Hon'ble Supreme Court that, the powers granting remission on an application filed by the convict or on his behalf and now State on its own be considered but ultimately the exercise of discretion by the appropriate government is required to be used to grant the benefit of remission in exercise of such power coupled with discretion, administrative authorities and the test is whether the authority concerned was acting within the scope of its power. This would not only mean that the concerned authority and in the instant case the "appropriate government" has not passed any order and respondent No.3 – authority was not vested with to exercise such power and even otherwise the said powers are not exercised in accordance with law and is in the nature of arbitrariness and is improper exercise of

discretion.

[14.6] While first time, when the exercise was undertaken to grant benefit of remission to respondent No.4, at that time, matter was placed before the Advisory Board Committee and the then I/c. PDJ has opined in negative. Not only that, respondent No.4 was also convicted for the offence under Section 302 of the IPC and under the provisions of TADA and further pleased to make the comment and sought opinion from the appellate Court has conviction recorded by the Hon'ble Supreme Court. Hence, case of respondent No.4 at that point of time in the year 2014 was not considered. At that time also, proposal was forwarded and respondent No.3 only made a recommendation vide letter dated 02.01.2014 but said decision was not challenge at any point of time and proposal was filed.

[14.7] Thereafter, another opinion is sought for not based on the Advisory Board Committee but recording the statement by the police authority and signature of son of deceased which is also disputed by the petitioner wherein also learned Additional Sessions Judge had formed one committee of two Additional District Judges however, rather than opining as a member of Advisory Board Committee, a committee consisting of two Additional Judges, Additional Sessions Judge has opined based on the statement recorded by the police authority and based

on good jail conduct of respondent No.4 was mentioned to however, the learned Additional Sessions Judge did not opine judicially or not on the merits of the case and such opinion was nothing but *per functory* and not helpful to respondent No.4 and same is also not considered and was not taken into consideration also. So far without applying independently or examining the case or seriousness of the offence, the then Additional Sessions Judge has relied on the reports submitted by the police authority in casual manner while conduct of respondent No.4 in the jail is already disputed earlier, more particularly the judicial observations made by the coordinate Bench in the order dated 08.12.2017 passed in SCR.A No.9552/2017, which reads as under:

> *"The case put up by the writ-applicant, a resident of village Ramod, District Rajkot, in this writ-application is something very shocking. He has brought to the notice of this Court that one Aniruddhsinh Jadeja came to be convicted by the Supreme Court for the offence under Section 5 of the TADA Act and also for the offence of murder punishable under Section 302 of the Indian Penal Code. Aniruddhsinh Jadeja is sentenced to undergo life imprisonment.*
>
> *It is pointed out by the writ-applicant that he has been confined in a sub-jail at Junagadh. Ordinarily, a life convict is confined in a central prison. The allegations levelled in this writ-application are that, on the pretext of taking medical treatment, everyday the Jailor takes the convict from Junagadh to Rajkot, and in Rajkot, the convict would attend the public meetings in connection with the forthcoming*

Assembly Elections.

If the allegations levelled in this writ-application are true, then this is something very shocking."

Then the report of the then learned PDJ was also called for and passed an order. In light of the judicial observations, the report submitted by the learned Additional Sessions Judge having no any value. Hence, argument canvassed by learned Counsel for respondent No.4 about opinion and conduct of respondent No.4 is not acceptable and said alleged opinion or other material was also not placed or submitted to respondent No.3 alongwith application dated 29.01.2018 submitted by son of respondent No.4.

[14.8] It is true that appropriate government is not bound to mechanically follow the opinion of the learned Presiding Judge. If opinion of the Presiding Judge does not comply with the requirement of section 432(2) of the CrPC or if the learned Judge does not consider the relevant factor for grant of remission that have been laid down in the case of ***Laxman Naskar (Supra)***, the government may request the Presiding Judge to consider the matter afresh. Herein, the special designated Court has acquitted the accused and conviction is recorded by the Hon'ble Supreme Court and hence, opinion of appellate Court is mandatory. In such case, compliance of section 432(2) of the CrPC was required but no fresh opinion or nothing is on record which

shows that as mentioned in the policy also, circular dated 23.01.2014 is complied with as mentioned in Circular dated 25.01.2017.

[14.9] Even, the petitioner has raised the concern about judicial observations made by this Court in SCR.A No.3499/2018 and SCR.A No.9552/2017 whereby it was observed that though respondent No.4 was in jail, he was attending the election rallies and report from the then learned PDJ, Jail Authority and other authorities was called for and directed to look into the issue though State has not carry the issue and rather than considering the issue, has swept the issue under carpet and benefit of remission is extended to respondent No.4. Though it was the duty of the State to reach to logical conclusion but State has not inquired into said allegation and though State was aware of the fact that respondent No.3 has exercised the power without jurisdiction, till date neither recalled the said letter / order dated 29.01.2018 nor challenged the said decision and remained silent for quite a long which speaks volume.

[15.0] Learned Counsel for respondent No.4 has submitted that jail conduct of respondent No.4 was good and even the Jail Committee has opined in positive manner and District Judge has also opined in his favor but as discussed in the earlier part, judicial observations are contrary while he was in jail at Junagadh. Nonetheless, at that time, recommendation was not considered on 02.01.2014 and

respondent No.3 himself addressed a letter to the Jail Superintendent wherein the then I/c. PDJ, Rajkot had opined in negative and thereafter, based on another report of the learned Additional District Judge, Rajkot which was opined based on the report of Jail Authority, rather than applying judicial mind independently, a casual report was submitted and procedure was not properly followed. Hence, based on the said erroneous material, respondent No.4 is not entitled for getting the benefit of remission at present and even otherwise once this Court comes to conclusion that order passed by respondent No.3 is without considering any material, the respondent No.3 authority or any statutory authority having no power to supplement or to back the reasons subsequently. At this stage, it is apposite to refer to the decision of the Hon'ble Supreme Court in the case of **Mohinder Singh Gill and Another vs. Chief Election Commissioner, New Delhi and Others** reported in **(1978)1 SCC 405** wherein in paragraph No.8, the Hon'ble Supreme Court has observed and held as under:

> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1)*
>
> > *"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what*

he meant, or of what was in Ms mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Hence, respondent No.4 or respondent No.3 are not entitled to supplement reasons subsequently after passing order dated 29.01.2018. Hence, argument canvassed by learned Counsel for respondent No.4 is not acceptable.

[15.1] Learned Senior Advocate for respondent No.4 has further argued that decision in the case of ***Sangeet & Another (Supra)*** would bear no effect in view of the decision in the case of ***V. Sriharan (Supra)*** as the term "life sentence" is interprted by the Hon'ble Supreme Court but it is needless to say that as per the guideline issued in the case of ***Sangeet & Another (Supra)*** does exist till date. Herein, in the case on hand, though the petitioner was convicted by the Hon'ble Supreme Court, respondent No.3 has granted pardon. It is needless to say that there is a diffence between remission and pardon and the Constitution Bench in the case of **Sarat Chandra Rabha and Others vs. Khagendranath Nath and Others** reported in **AIR 1961 SC 334** wherein the Hon'ble Supreme Court has distinguished 'remission' and 'pardon' and observed as under:

"...Further, a remission of sentence does not mean acquittal and an aggrieved party still has every right to vindicate himself or herself. In this context, reliance could be placed

on Sarat Chandra Rabha vs. Khagendranath Nath (AIR 1961 SC 334), wherein a Constitution Bench of this Court, while distinguishing between a pardon and a remission, observed that an order of remission does not wipe out the offence and it also does not wipe out the conviction."

Respondent No.3 has without any authority passed an order and not only that, he has ignored the specific embargo put in the policy dated 25.01.2017 (Annexure-I). Hence, this Court is of considered view that the order passed by respondent No.3 is nothing but nullity as the impugned order is passed without assigning any reason.

[15.2] It is needless to say that while passing any order or granting the benefit of remission or pardon, whatever may be, the authority has to assign the reason and the Hon'ble Supreme Court in the case of ***Bilkis Yakub Rasool (Supra)*** indicated that the certain factors must be taken into account while entertaining an application for remission under the provisions of CrPC and the test which has been discussed can be enumerated as under:

"222.1. The application for remission under Section 432 of the CrPC could be only before the Government of the State within whose territorial jurisdiction the applicant was convicted (appropriate Government) and not before any other Government within whose territorial jurisdiction the applicant may have been transferred on conviction or where the offence has occurred.

222.2. A consideration for remission must be by way of an application under Section 432 of the CrPC which has to be made by the convict or on his behalf. In the first instance whether there is compliance of Section 433A of the CrPC must be noted inasmuch as a person serving a life sentence cannot seek remission unless fourteen years of imprisonment has been completed.

222.3. The guidelines under Section 432(2) with regard to the opinion to be sought from the Presiding Judge of the Court which had convicted the applicant must be complied with mandatorily. While doing so it is necessary to follow the requirements of the said Section which are highlighted by us, namely,

> *(i) the opinion must state as to whether the application for remission should be granted or refused and for either of the said opinions, the reasons must be stated;*
>
> *(ii) the reasons must have a bearing on the facts and circumstances of the case;*
>
> *(iii) the opinion must have a nexus to the record of the trial or of such record thereof as exists;*
>
> *(iv) the Presiding Judge of the Court before or by which the conviction was had or confirmed, must also forward along with the statement of such opinion granting or refusing remission, a certified copy of the record of the trial or of such record thereof as exists.*

222.4. The policy of remission applicable would therefore be the Policy of the State which is the appropriate Government and which has the jurisdiction to consider that application. The policy of remission applicable at the time of the conviction could apply and only if for any reason, the said policy cannot be made applicable a more benevolent policy, if in vogue, could apply.

222.5. While considering an application for remission, there cannot be any abuse of discretion. In this regard, it is necessary to bear in mind the following aspects as mentioned in Laxman Naskar, namely, -

> *(i) Whether the offence is an individual act of crime without affecting the society at large?*
>
> *(ii) Whether there is any chance of future recurrence of committing crime?*
>
> *(iii) Whether the convict has lost his potentiality in committing crime?*
>
> *(iv) Whether there is any fruitful purpose of confining this convict any more?*
>
> *(v) Socio-economic condition of the convict's family.*

222.6. There has also to be consultation in accordance with Section 435 of the CrPC wherever the same is necessitated.

222.7. The Jail Advisory Committee which has to consider the application for remission may not have the District Judge as a Member inasmuch as the District Judge, being a Judicial Officer may coincidently be the very judge who may have to render an opinion independently in terms of sub-section (2) of Section 432 of the CrPC.

222.8. Reasons for grant or refusal of remission should be clearly delineated in the order by passing a speaking order.

222.9. When an application for remission is granted under the provisions of the Constitution, the following among other tests may apply to consider its legality by way of judicial review of the same:

(i) that the order has been passed without application of mind;

(ii) that the order is mala fide;

(iii) ***that the order has been passed on extraneous or wholly irrelevant considerations****;*

(iv) that relevant materials have been kept out of consideration;

(v) that the order suffers from arbitrariness."

(Emphasis supplied)

Thus, keeping in mind above exhaustive guidelines and who has to exercise power of remission under Section 432 of the CrPC and that prior to exercising such power, appropriate government must obtain the opinion with reason from the Presiding Judge of the convicting or confirming Court and such opinion must be one case to case basis and not in wholesale manner and in the case of ***V. Sriharan (Supra)***, declaration of law made by the

Hon'ble Supreme Court in the case of ***Sangeet & Another (Supra)***, held to be correct law and come to conclusion that compliance of section 432(2) of the CrPC is mandatory. Herein, order dated 29.01.2018 passed without any compliance of guideline issued by the Government and case on hand is squarely covered by the ratio laid down by the Hon'ble Apex Court in the case of ***Bilkis Yakub Rasool (Supra)***.

[15.3] Learned Counsel for respondent No.3 has submitted that earlier one note for speaking to minutes was filed in Criminal Misc. Application No.1 of 2018 in SCR.A No.3499/2018 requesting to arraign present respondent No.3 as party respondent but the said request was not acceded to but perusing the said order and entire proceeding of SCR.A No.3499/2018, it appears that the Court was not inclined to pass any order based on the argument to pass an order in the note for speaking to minutes and therefore, said argument would not avail any assistance to respondent No.3 as no any order was passed on merit and because wrong is wrong and even silence on the part of State Authority does not confer the power of jurisdiction to respondent No.3. Now, the State in this matter for the first time before this Court says that, respondent No.3 having no power and impugned order is passed without considering the embargo mentioned in the policy and without placing the case before the Advisory Board Committee for consideration. Hence, argument

canvassed by learned Counsel for respondent No.3 that respondent No.3 is wrongly joined as party respondent is not accepted since order passed by him is assailed.

[15.4] The State has not challenged or recalled the order dated 29.01.2018. Hence, the Court has to ensure that the rule of law prevails over the abuse of process of law which may result from inaction or arbitrary action of protecting the offender or failure by the different authorities in discharge of statutory duty or other obligations and in case of breach of law, judicial review is always permissible. It is said that justice should remain loyal to the rule of law and justice cannot be done without adherence to rule of law. The concept of justice encompasses not just the right of convict but also the right of victims also. The law abiding section of society looks forward to the Court as a vital instrument for preservation of peace and curtailment of crime. In this regard, reference is required to be made to the decision of Hon'ble Supreme Court in the case of **Surya Baksh Singh vs. State of U.P.** reported in **(2014)14 SCC 222** wherein the Hon'ble Supreme Court has observed that, "*the concept of 'justice', suffice it to say that it encompasses not just the rights of the convict, but also of victims of crime as well as of the law abiding section of society who look towards the Courts as vital instruments for preservation of peace and the curtailment or containment of crime by punishing those who transgress the law. If convicts can circumvent the consequence of their conviction, peace,*

tranquility and harmony in society will be reduced to a chimera".

[16.0] Learned Counsel for respondent Nos.3 and 4 have argued about delay in filing the present petition. The petitioner has clearly stated that he is the grandson of the deceased and considering the high-handedness and fear of respondent No.4, entire family of the petitioner was compelled to leave village Ribda and his father restricted him to initiate any action considering the high-handedness and life threat from respondent No.4. Even, the State Government and the government officials were also scared. The Hon'ble Supreme Court while convicting the respondent No.4 made observations in paragraphs 4 and 5 , which read as under:

> ***"4. Popatbhai, a sitting member of Legislative Assembly was done to death in the public gaze when full ceremonial Independence Day function was in progress. The chief dignitary of the event, the Deputy Collector and Sub-Divisional Magistrate, Mr. J. P. Dave who was sitting beside the deceased, witnessed the occurrence of shooting of deceased from behind; however, when culprit was caught, it would be obvious that he saw him; yet he has turned hostile to the prosecution and even refused to identify the respondent in the Court sabotaging the prosecution case. Thus, he betrayed his duty as a responsible officer and as a worthy citizen and has denied himself to hold an office of trust and responsibility. His own unworthiness is writ large in the present case. Similar is the case of many a dignitary including the Mamlatdar, PW-36, a leading private doctor and Chief Officer of the Municipality and a host of others numbering 45 in all. It would speak volumes of unworthy conduct forsaking their responsibility as dutiful citizens driving the prosecution to fall back upon the***

circumstantial evidence.

5. Mr. Jhala, the Assistant Commandant, Special Reserved Police, PW-4 and I.B. Shekhawat, PW-58 another officer on duty from the same force, displayed high degree of responsibility, courage and sense of duty in assistance of the prosecution by swinging into action immediately. PW-4 caught the culprit; PW-58 secured the weapon of the offence, lodged the FIR and handed over the accused and the weapon with material particulars mentioned in that behalf in the FIR to the Station House Officer. Everyone needs to take leaf out of their books of service. It is seen that in som cases of recent origin terror by the accused or at his behest, has instilled in the mind of the witnesses the instinct of self-preservation and inclined them to avoid their extermination or reprisal. The State should extend protection to them. This case is a classic illustration of how the prosecution case gets sabotaged by the material witnesses turning hostile and creating a disbelief in the efficacy of criminal justice system which needs urgent attention and appropriate remedial action on the part of the legislature and the executive, in that behalf."

Aforesaid observation of Hon'ble Supreme Court also is very indicative and reflects the prevalent situation as, the government officials turned hostile and even thereafter also, it is alleged that respondent No.4 was continuously administering threats. One litigation was also filed by a person who impersonated himself as the father of present petitioner however, the said petition also could not come to its logical conclusion and State remained silent in that proceedings also. Not only that, one Writ Petition (PIL) was also filed the petitioner of which was assaulted and thereafter consent quashing was filed and complainant / victim was compelled to withdraw such

proceeding.

[16.1] While exercising jurisdiction under Article 226 of the Constitution, Court should not mechanically refuse to exercise the jurisidiction and dismiss the writ petition on the ground of delay without considering relevant factors, considering circumstances as explained by the petitioner and earlier continuous unyielding pursuasion which cannot be brushed aside mechanically and Court has to exercise prerogative jurisdiction. In this regard reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Ram Autar Singh vs. State of Uttar Pradesh and Others** rendered in **Civil Appeal No.13806/2024 [Arising out of SLP(C) No.26568/2023] (3 Judges' Bench)**. Further, in the case of **Noida Toll Bridge Company Ltd. v. Federation of Noida Residents Welfare Association** reported in **(2025) 6 SCC 717**, it has been held by the Hon'ble Supreme Court that the writ proceeding under Article 32 or 226 of the Constitution of India are not guided by the provisions of the Limitation Act and doctrine of delay and laches cannot be applied *stricto senso* to writ petitions. Delay is always not a material factor as there is no fixed time period of limitation in invoking jurisdiction under Article 226 of the Constitution of India and each case should be considered on its own facts and circumstances. Thus, allowing for a more liberal approach while applying the said doctrine and limitation is not rigid rule but is rather a practice that is founded on the exercise

of sound judicial discretion. Hence, argument of delay canvassed by learned Counsel for respondent No.4 is not accepted considering peculiar facts and circumstances of the case on hand.

[16.2] Thereafter, one person has only made an application to cancel the remission of respondent No.4 and he had also committed suicide and in this regard recently an offence is registered wherein specific allegation levelled against respondent No.4 and respondent No.4 is on run in connection of that offence also. The said fact is also denied neither by respondent No.4 nor by the State. The petitioner herein is the kith and kin of the deceased and he has a right to challenge the arbitrary action or any action of respondent authority and merely on the ground of alleged delay, illegal act never become the legal one or attain the finality or get seal of confirmation to such illegal order. The judiciary is guardian of rule of law and therefore, it is the duty and function of judiciary to perform its duty independently. Rule of law does not mean to protect fortunate few and justice is not only for accused or convict. The justice is for victim also and right to justice is indispensible human and fundamental right. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Anita Kushwaha vs. Pushap Sudan** reported in **(2016)8 SCC 509,** wherein it has been observed and held as under:

"Access to justice is and has been recognised as a part and parcel

of right to life in India and in all civilized societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. The Magna Carta, the Universal Declaration of Rights, the International Covenant on Civil and Political Rights, 1966, the ancient Roman Jurisprudential maxim of 'Ubi Jus Ibi Remedium', the development of fundamental principles of common law by judicial pronouncements of the Courts over centuries past have all contributed to the acceptance of access to justice as a basic and inalienable human right which all civilized societies and systems recognise and enforce.

[16.3] Further, as regards the reliance being placed on the proceedings undertaken in some of the earlier petitions filed by third party is concerned, the same is irrelevant for the reasons that (a) the same were instituted by third parties, but, the present petition has been filed by the grandson of the deceased, being kith and kin of the deceased and being aggrieved party and (b) in none of the matters which are stated to have been filed earlier, there was adjudication of issue being raised in the present petition. Even, identity of Kantilal Ramjibhai Solanki who had filed SCR.A No.3499/2018 was itself in dispute. There were three Kantilal Solanki in town and their addresses, fathers' name and surnames were also different in different government documents namely Election Card, Ration Card and Voter List. Once it is proved on record that respondent No.3 has passed an order without any authority, such ***non est*** order cannot be continued or perpetuated on the ground that other seven people had been released and State has not raised any objection.

Hence, petition filed by the petitioner is maintainable and objection raised by respondent No.4 is not accepted.

[17.0] Further, learned Senior Counsel Mr. Syed for respondent No.4 has submitted that the petitioner herein has not challenged the Circular (Annexure-I) issued under Article 161 of the Constitution of India. As discussed in earlier part, the respondent No.4 was not entitled to any benefit of extension based on circular dated 25.01.2017 (Annexure-I) as State has categorically stated that, it was for the limited period of one year and was conditional. Herein, no any condition was followed. Not only that, powers of pardon is not exercised by Hon'ble The Governor based on advise of Minister of Council. Even, the said circular was conditional coupled with the statutory provisions of section 432/433 of the CrPC and hence, argument canvassed by learned Counsel for respondent No.4 that petition is not maintainable as Circular (Annexure-I) is not challenged by the petitioner. Herein, powers of respondent No.3 is under challenge. Hence, question does not arise to challenge the said Circular (Annexure-I). Hence, argument is not accepted.

[18.0] So far as the authorities relied upon by learned Counsel for respondent No.4 i.e. ***Sangeet & Another (Supra)***; ***Maru Ram (Supra)***; ***V. Sriharan (Supra)*** and ***Pyare Lal (Supra)*** are concerned, the Hon'ble Supreme Court in said decisions has elaborately discussed the scope of powers of

remission which are already taken into consideration in the earlier part of judgment and said decisions are more helpful to the case of the petitioner rather than respondent No.4 more particularly when, on record it clearly transpires that respondent No.3 failed to comply the mandatory provisions and directions and exceeded his authority. Hence, no further discussion is required in this regard.

[19.0] Lastly, it is argued by learned Counsel for respondent No.4 to keep pending the present petition as the issue is writ large referred to the Larger Bench in the case of ***Pyare Lal (Supra)*** *qua* powers of Hon'ble Governor under Article 161 of the Constitution and applicability of section 433A of the CrPC. It is needless to say that as discussed in earlier part, herein powers are exercised under Article 161 of the Constitution based on the Circular dated 25.01.2017 (Annexure-I) and even if for the sake of argument it is accepted that powers are exercised under Article 161 of the Constitution based on Circular (Annexure-I) then also, the said circular was conditional and there is no bar to exercise the power under Article 161 of the Constitution by Hon'ble The Governor based on advise of Minister of Council and at relevant point of time in the year 2017, as submitted by the learned Public Prosecutor and perusing the original record placed for perusal of this Court, it reveals that to extend the benefit of said circular, proposal for 167 prisoners was forwarded and subsequently after

fulfilling the condition enumerated in the Circular (Annexure-I), one time benefit was extended. Herein, no such exercise is undertaken and powers of Hon'ble Governor and power of remission under Section 432 of the CrPC both operates in different fields, which is already discussed by the Hon'ble Supreme Court and also mentioned in earlier part of the judgment relying on the decision of the Hon'ble Supreme Court in the case of ***Rajkumar @ Bittu (Supra)*** and therefore, argument canvassed by the learned Counsel for respondent No.4 is not acceptable. Even, matter is referred to the Larger Bench is not a ground. The Court may have to defer the matter for indefinite time.

[19.1] As discussed in the case of ***Epuru Sudhakar (Supra)*** and ***V. Sriharan (Supra)***, only appropriate government has to decide the remission application and as discussed in earlier part, respondent No.3 has without any authority exercised the power and relied on the case of ***Bilkis Yakub Rasool (Supra)***. The Constitution of India has accorded the clemency power to the Governor and Hon'ble President and such order is also required to be passed based on "Rule of Law".

[20.0] Further, learned Counsel for respondent No.4 has also submitted that reference is pending before the Larger Bench and hence, present petition is required to be deferred but he has made such a request after conclusion

of the arguments. At this stage, it is apposite to refer to the decision of the Hon'ble Supreme Court in the case of **Ashok Sadarangani and Another vs. Union of India and Others** reported in **(2012)11 SCC 321 (Para 29)** wherein it is held that mere reference of an issue to a Larger Bench would not make the judgment inoperative. In the case of **Manager, National Insurance Company Limted vs. Saju P. Paul and Another** reported in **(2013)2 SCC 41,** the Hon'ble Supreme Court emphatically held that mere pendency of certain question before Larger Bench would not mean that a particular course that was followed in the earlier judgment could not be followed. The same view is also reiterated in the case of **P. Sudhakar Rao and Others vs. U. Govinda Rao and Others** reported in **(2013)8 SCC 693** and it has been held in Paragraph 55 as under:

> *"55. Be that as it may, the pendency of a similar matter before a larger Bench has not prevented this Court from dealing with the issue on merits. Even on earlier occasions, the pendency of the matter before the larger Bench did not prevent this Court from dealing with the issue on merits. Indeed, a few cases including Pawan Pratap Singh were decided even after the issue raised in Asis Kumar Samanta was referred to a larger Bench. We, therefore, do not feel constrained or precluded from taking a view in the matter.*

Hence, pendency of similar matter before the Larger Bench does not prevent the Court from dealing with the issue on merit. Even outcome of any question referred to Larger Bench does not bear any effect to present controversy involved in the matter and on that count also, argument canvassed by learned Counsel for respondent

No.4 is not acceptable. Herein, no any such controversy also involved in the matter.

[21.0] As discussed in the earlier part, respondent No.3 has passed an order without authority and on extraneous consideration and is a ***non est*** and once order is nullity then the Court has to consider justice, equity and good conscience and considering the aforesaid aspect, writ jurisdiction is required to be exercised. Hence, considering the circumstances explained by the petitioner which prevented him from approaching the Court in timely fashion, delay is immaterial.

[22.0] It is pertinent to note that respondent No.4 is an affected party. It is true that without giving an opportunity of being heard to respondent No.4, remission order should not be revoked or cancelled. This Court is conscious about the law in this regard. In the case on hand, ample opportunity is given to respondent No.4 and he has also filed reply and learned Counsel for respondent No.4 is heard at length. In the present case, respondent No.4 was released without any condition. The State remained silent for quite a long time and it appears that the State was in complicit. Though power is exercised by respondent No.3 without any authority but in absence of any material to show or point out mala fide, though the State was aware of the same since the year 2018 from earlier proceeding and stance taken by the State in earlier proceeding also, State has

remained silent for quite a long time and hence, merely based on assumption or presumption it is difficult to jump to conclusion of issuing any direction to the respondent State to initiate appropriate proceeding against respondent No.3 herein and other officer who have been instrumental in illegal release of respondent No.4 more particularly in absence of any material which shows malafide on the part of respondent No.3 in exercising such power.

[22.1] Article 21 of the Constitution of India states that no person shall be deprived of his liberty except in accordance with law. Herein, respondent No.4 is an affected party. As discussed in the earlier part, impugned order is without an authority and is a *non est.* In such circumstances, the moot question arising for this Court to determine is can respondent No.4's liberty be protected or continued in breach or violation of law? The said aspect was aslso considered in the case of ***Bilkis Yakub Rasool (Supra)*** wherein the Hon'ble Supreme Court has clearly held that the rule of law must prevail over the personal liberty of person and Court must be a beacon in upholding the rule of law failing which it would give rise to an impression that the Court is not serious about rule of law. While upholding the principle of rule of law, compassion and sympathy have no role to play where rule of law is required to be enforced and the rule of law has to be preserved as an essence of democracy and it is the duty of the Courts to enforce the

same without fear and favor, affection or ill-will. Justice is supreme and justice ought to be beneficial for the society. Therefore, it is the prime duty and highest responsibility of this Court to correct arbitrary orders to maintain the confidence of litigant, public in the purity of fountain of justice to respect the rule of law.

[22.2] In sequel, once this Court has come to conclusion that respondent No.3 has passed an order which is *non est*, arbitrary and passed with extaneous consideration or wholly on irrelevant consideration and the relevant material is kept out from consideration and order suffers from inherent lack of jurisdiction and based on the said order respondent No.4 has enjoyed his liberty, same is required to be restored. At the same time, the Court has to consider deprivation of liberty of respondent No.4. Based on the said erroneous and contrary to law order is passed and respondent No.4 is set at liberty and he is enjoying such liberty since last 7 years and at the same time, if the respondent No.4 wants to claim the remission in accordance with law then he has to be in prison and without being in prison, he cannot seek remission when he is outside the jail. Hence, order directing respondent No.4 to surrender is also required to be passed.

[22.3] Even as per the principle of law and as per the administrative law also, if statute provides for a thing to be

done in a particular way, then it has to be done in the said manner and in no other manner. ***Expressio uninus est exclusio alterius*** which means, if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner. ***Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud*** means an authority cannot be permitted to evade a law by "shift or conveience" and what cannot be done directly is not permissible to be done obliquely.

CONCLUSION:

[23.0] In wake of aforesaid discussion, this Court has arrived at the following conclusions:-

(i) Respondent No.3 has released respondent No.4 giving benefit of pardon without any authority. Therefore, impugned order / letter dated 29.01.2018 (Annexure-A to the petition) passed by respondent No.3 is arbitrary and passed on extraneous considerations without any authority and is ***non est*** and **nullity**.

(ii) The circular at Annexure-I was conditional and one time measure and there was no future extension and as per the said circular, remission could not be extended to a future date.

(iii) Respondent No.2 or respondent No.3 have failed to forward the proposal to the competent authority and respondent No.3 himself has passed the impugned order without any material or without verifying anything merely based on the application dated 29.01.2018 of the son of respondent No.4 as a gospel truth without placing the case before the Advisory Board Committee and without following condition No.6 of the Circular at Annexure-I.

(iv) Each and every convict has a right to make a request to consider his case for remission but do not have any absolute right to claim pardon or remission as a matter of right.

[24.0] *Ergo,* aforesaid discussions and conclusions, petition is **allowed** and it is declared that the direction issued by respondent No.3 – Shri T.S. Bishth, the then Additional Director General of Police, Jail and Administrative Reforms, State of Gujarat, Ahmedabad (Now Retired) to respondent No.2 – the Superintendent, Junagadh District Jail, Junagadh by letter dated 29.01.2018 (Annexure-A) is without authority and does not have any force of law and is a nullity and that premature release of respondent No.4 – Aniruddhsinh Mahipatsinh Jadeja is illegal and without any authority of law and consequently, respondent No.4 – Anirudhsinh Mahipatsinh Jadeja is directed to surrender before the Jail Authority within a period of **TWO WEEKS**

from today to serve the sentence.

[24.1] Respondent No.1 – State is directed to consider the case of respondent No.4 for grant of benefit of remission considering parameters fixed by the Hon'ble Supreme Court in the case of **Nawas @ Mulanavas Vs. State of Kerala** reported in **2024 INSC 215** and **Suo Motu Writ Petition (Cri.) No.4/2021** reported in **2025 INSC 239** and as per the Standard Operating Procedure for Process of Premature Release of Prisoners keeping in mind the principles and SOP issued by NALSA, independently on its own merits without being influenced by any of the observations made by this Court preferably within a period of **eight weeks** from the date of surrender of respondent No.4. Rule is made absolute to the aforesaid extent.

Be You So High, Law Is Above You.

(HASMUKH D. SUTHAR, J.)

FURTHER ORDER

At this stage, learned Senior Advocate Mr. I.H. Syed appearing for the respondent No.4 through virtual mode has made request to extend the time for surrender for the respondent No.4 from two weeks to four weeks.

Learned Advocate Mr. Bhargav Bhatt appearing for the

petitioner has opposed the said request on the ground that without any reason no case is made out to extend the time for surrender and possibility cannot be ruled out that respondent No.4 will flee away from justice and therefore, has requested to direct the respondent No.4 to surrender his passport and meanwhile during interregnum period mark his presence before the concerned Police Station. With the aforesaid stipulation if order extending time to surrender is passed then he has no objection.

Having heard learned Counsel appearing for respective parties and for the reasons recorded in the judgment, so as to secure the presence of respondent No.4, respondent No.4 is directed to mark his presence with the concerned police station once in a week till he surrenders before the Jail Authority and directed to surrender his passport before the concerned Police Station within a period of one week from today and the time to surrender by respondent No.4 is extended and he shall surrender before the concerned Jail Authority on or before **18.09.2025** without fail. If respondent No.4 is not having a passport then he shall have to file an affidavit in that regard before this Court.

(HASMUKH D. SUTHAR, J.)

Ajay