

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 14 of 2021

Anil Kumar @ Anil Mahto, aged about 42 years, S/o Punit Mahto, Resident of Village Chotki Pona, P.O. Badki Pona, P.S. Ramgarh, District- Hazaribag, Jharkhand, **... Petitioner**

-Versus-

1. The State of Jharkhand
2. The Principal Secretary, Department of Home, Jail & Disaster Management, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi
3. The Inspector General of Prison, Jail Inspectorate, Government of Jharkhand, Engineers Hostel, Gol Chakkar, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District- Ranchi, Jharkhand
4. The Superintendent, Loknayak Jaiprakash Narayan Central Jail, Hazaribagh, P.O. Reformatory School, Kolghatti, P.S. Lohsinghna, District- Hazaribag, Jharkhand **... Respondents**

With

W.P.(Cr.) No. 73 of 2020

Arun Kumar Verma, aged about 48 years, son of Beniram Verma, resident of Sanskrit College, Raja hata, P.O. Ranchi G.P.O., Ranchi, P.S. Sukhdeo Nagar, District- Ranchi **... Petitioner**

-Versus-

1. The State of Jharkhand
2. The Principal Secretary, Department of Home, Jail & Disaster Management, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi
3. The Inspector General of Prison, Jail Inspectorate, Government of Jharkhand, Engineers Hostel, Gol Chakkar, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District- Ranchi, Jharkhand
4. The Superintendent, Birsa Munda Central Jail, Ranchi, Hotwar, P.O. Booty, P.S. Sadar, District- Ranchi, Jharkhand **... Respondents**

With

W.P.(Cr.) No. 85 of 2020

Silvester Kerketta, son of late Simon Kerketta, aged about 46 years, resident of Village- Karong, P.O. & P.S. Raidih, District- Gumla, State- Jharkhand **... Petitioner**

-Versus-

1. The State of Jharkhand
2. The Principal Secretary, Department of Home, Jail & Disaster Management, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi
3. The Inspector General of Prison, Jail Inspectorate, Government of Jharkhand, Engineers Hostel, Gol Chakkar, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District- Ranchi, Jharkhand
4. The Superintendent, Birsa Munda Central Jail, Ranchi, Hotwar, P.O.

Booty, P.S. Sadar, District- Ranchi, Jharkhand ... **Respondents**

With

W.P.(Cr.) No. 221 of 2020

Md. Yunus Ansari, S/o Albabu Ansari, aged about 55 years, R/o Bharrah Basti, P.O. & P.S. Chas, District- Bokaro ... **Petitioner**

-Versus-

1. The State of Jharkhand
2. The Secretary, Department of Home, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
3. The Secretary, Department of Home, Jail and Disaster Management, Govt. of Jharkhand, Project Building, P.O. & P.S. Dhurwa, District- Ranchi
4. The Inspector General of Prison, T.A. Division, Government of Jharkhand, P.O. & P.S. Dhurwa, District- Ranchi
5. The Superintendent of Jail, Lok Nayak Jai Prakash Narayan Central Jail, Hazaribag, P.O., P.S. & District- Hazaribag
6. The Superintendent of Police, Bokaro, P.O. & P.S. Chas, District- Bokaro

... **Respondents**

With

W.P.(Cr.) No. 269 of 2020

Visheshwar Mahto, Son of late Lutan Mahto, aged about 50 years, resident of Sehar, P.S. Ratu, P.O. Piska Nagri, District- Ranchi, State- Jharkhand ... **Petitioner**

-Versus-

1. The State of Jharkhand
2. The Principal Secretary, Department of Home, Jail & Disaster Management, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi
3. The Inspector General of Prison, Jail Inspectorate, Government of Jharkhand, Engineers Hostel, Gol Chakkar, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District- Ranchi, Jharkhand
4. The Superintendent, Birsa Munda Central Jail, Ranchi, Hotwar, P.O. Booty, P.S. Sadar, District- Ranchi, Jharkhand

... **Respondents**

With

W.P.(Cr.) No. 270 of 2020

Narayan Mahto, Son of Kalicharan Mahto, aged about 48 years, resident of Sehar, P.O. Piska Nagri, P.S. Ratu, District- Ranchi, State- Jharkhand ... **Petitioner**

-Versus-

1. The State of Jharkhand
2. The Principal Secretary, Department of Home, Jail & Disaster Management, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi
3. The Inspector General of Prison, Jail Inspectorate, Government of Jharkhand, Engineers Hostel, Gol Chakkar, Dhurwa, P.O. Dhurwa, P.S.

Dhurwa, District- Ranchi, Jharkhand

4. The Superintendent, Birsa Munda Central Jail, Ranchi, Hotwar, P.O. Booty, P.S. Sadar, District- Ranchi, Jharkhand ... **Respondents**

With
W.P.(Cr.) No. 294 of 2020

Lebor Singh Kunkal, age 41 years, S/o Deeyu Kunkal, Resident of Patahatu tola, Nagar Sai, P.O. Gitilpe, P.S. Manjhari, District- West Singhbhum, State- Jharkhand ... **Petitioner**

-Versus-

1. The State of Jharkhand
2. The Principal Secretary, Department of Home, Jail & Disaster Management, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi
3. The Inspector General of Prison, Jail Inspectorate, Government of Jharkhand, Engineers Hostel, Gol Chakkar, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District- Ranchi, Jharkhand
4. The Superintendent, Birsa Munda Central Jail, Ranchi, Hotwar, P.O. Booty, P.S. Sadar, District- Ranchi, Jharkhand ... **Respondents**

With
W.P.(Cr.) No. 297 of 2020

Tombo Kunkal, age 42 years, S/o Jiki Kunkal, Resident of Patahatu tola, Nagar sai, P.S. Manjhari, District- West Singhbhum, State- Jharkhand ... **Petitioner**

-Versus-

1. The State of Jharkhand
2. The Principal Secretary, Department of Home, Jail & Disaster Management, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi
3. The Inspector General of Prison, Jail Inspectorate, Government of Jharkhand, Engineers Hostel, Gol Chakkar, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District- Ranchi, Jharkhand
4. The Superintendent, Birsa Munda Central Jail, Ranchi, Hotwar, P.O. Booty, P.S. Sadar, District- Ranchi, Jharkhand ... **Respondents**

With
W.P.(Cr.) No. 13 of 2021

Rajesh Choudhary, aged about 41 years, S/o Dewan Choudhary, Resident of Chinakuri 3 No., Mandir Para, Niyamat pur, P.O. Radha nagar railway colony, P.S. Kulti, District- Barddhaman, West Bengal- 713360 ... **Petitioner**

-Versus-

1. The State of Jharkhand
2. The Principal Secretary, Department of Home, Jail & Disaster Management, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi

3. The Inspector General of Prison, Jail Inspectorate, Government of Jharkhand, Engineers Hostel, Gol Chakkar, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District- Ranchi, Jharkhand
4. The Superintendent, Loknayak Jaiprakash Narayan Central Jail, Hazaribagh, P.O. Reformatory School, Kolghatti, P.S. Lohsingna, District- Hazaribag, Jharkhand

With W.P.(Cr.) No. 21 of 2021

Mukesh Kumar Mehta @ Mukesh Mehta @ Mahto, aged about 40 years, S/o Dineshwar Prasad Mehta, Resident of Village- Hadari, P.O. & P.S. Ichak, District- Hazaribagh, Pincode-825402, Jharkhand

... Petitioner

-Versus-

1. The State of Jharkhand
2. The Principal Secretary, Department of Home, Jail & Disaster Management, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi
3. The Inspector General of Prison, Jail Inspectorate, Government of Jharkhand, Engineers Hostel, Gol Chakkar, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District- Ranchi, Jharkhand
4. The Superintendent, Loknayak Jaiprakash Narayan Central Jail, Hazaribagh, P.O. Reformatory School, Kolghatti, P.S. Lohsingna, District- Hazaribagh, Jharkhand

With W.P.(Cr.) No. 22 of 2021

Pappu Singh, aged about 43 years, S/o Late Ramadhar Singh, Resident of Village Dumri, P.O. Dumri, P.S. Barhiya, District- Lakhisarai, Pincode-811302, Bihar ... Petitioner

... Petitioner

-Versus-

1. The State of Jharkhand
2. The Principal Secretary, Department of Home, Jail & Disaster Management, Government of Jharkhand, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi
3. The Inspector General of Prison, Jail Inspectorate, Government of Jharkhand, Engineers Hostel, Gol Chakkar, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District- Ranchi, Jharkhand
4. The Superintendent, Loknayak Jaiprakash Narayan Central Jail, Hazaribagh, P.O. Reformatory School, Kolghatti, P.S. Lohsingna, District- Hazaribagh, Jharkhand

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CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

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For the Petitioner : Mr. Rakesh Kumar, Advocate

[In all cases except W.P. (Cr.)-221/2020]

For the State	Mr. Lukesh Kumar, Advocate [In W.P. (Cr.)-221/2020] : Mr. Ashok Kumar Yadav, G.A.-I [In W.P. (Cr.)-14/21, 297/20, 13/21, 21/21] Mr. P.A.S. Pati, G.A.-II [In W.P. (Cr.)-73/20, 294/20] Mr. P.C. Sinha, A.C. to G.A.-III [In W.P. (Cr.)-85/20] Ms. Rashmi Lal, A.C. to Sr. Sr. S.C.-III [In W.P. (Cr.)-221/20] Mr. Gaurav Raj, A.C. to A.A.G.-II [In W.P. (Cr.)-269/20, 270/20]

13/30.11.2021. Heard Mr. Rakesh Kumar and Mr. Lukesh Kumar, learned counsel for the petitioners and Mr. Ashok Kumar Yadav, Mr. P.A.S. Pati, Mr. P.C. Sinha, Ms. Rashmi Lal and Mr. Gaurav Raj, learned counsel for the respondent-State.

Since common questions of law and fact are involved in all these writ applications, the same are being disposed of by this common order.

The petitioners are aggrieved by the decision of the State Sentence Review Board.

W.P. (Cr.) No.14 of 2021

The petitioner is aggrieved by the notification No. 11/bandi vividh-07/2019-2987, dated 20.08.2020 issued by the Joint Secretary of Department of Home, Jail and Disaster Management, Government of Jharkhand, Ranchi, whereby the claim of premature release of the petitioner has been rejected.

The facts enumerated in the present writ application is that the petitioner was convicted by the learned Additional Sessions Judge, F.T.C.-VII, Hazaribagh in connection with S.T. No. 403 of 2002, corresponding to G.R. No.1653 of 2001 arising out of Ramgarh P.S. Case No. 201 of 2001 for the offence under Sections 364, 302, 201/34 of the Indian Penal Code vide

judgment dated 07.03.2006 and was sentenced to undergo R.I. for life.

The petitioner preferred an appeal before this Court being Cr. Appeal (DB) No. 481 of 2006 which was dismissed vide judgment dated 08.01.2016. The matter was placed before the State Sentence Review Board but vide notification dated 20.08.2020 which is impugned to the present application the prayer for premature release was rejected. The petitioner at the time of filing of the writ application had completed 15 years 7 months and 15 days of actual custody and with remission the custody of the petitioner was 21 years 7 months and 15 days as on 18.12.2020.

W.P. (Cr.) No.73 of 2020

The petitioner is aggrieved by the notification No. 11/bandi vividh-07/2019-352, dated 21.01.2020 issued by the Joint Secretary of Department of Home, Jail and Disaster Management, Government of Jharkhand, Ranchi, whereby the claim of premature release of the petitioner has been rejected.

The facts enumerated in the present writ application is that the petitioner was convicted by the learned Judicial Commissioner, Ranchi in connection with S.T. No. 12 of 2001 for the offence under Sections 302/34, 376G, 394 of the Indian Penal Code vide judgment dated 19.05.2004 and was sentenced to undergo R.I. for life.

The petitioner preferred an appeal before this Court being Cr. Appeal (DB) No. 1549 of 2004, which was dismissed vide judgment dated 25.01.2016. The matter was placed before the State Sentence Review Board but vide notification dated 21.01.2020 which is impugned to the present application the prayer for premature release was rejected. The petitioner at the time of filing of the writ application had completed 15 years 11 months and 4 days of actual custody and with remission the custody of the

petitioner was 22 years 1 month and 9 days as on 22.02.2020.

W.P. (Cr.) No.85 of 2020

The petitioner is aggrieved by the notification No. 11/bandi vividh-07/2019-352, dated 21.01.2020, issued by the Joint Secretary of Department of Home, Jail and Disaster Management, Government of Jharkhand, Ranchi, whereby the claim of premature release of the petitioner has been rejected.

The facts enumerated in the present writ application is that the petitioner was convicted by the learned 1st Additional Sessions Judge, Gumla in connection with S.T. No. 20 of 2004 for the offence under Sections 302, 380, 449 of the Indian Penal Code vide judgment dated 15.05.2006 and was sentenced to undergo R.I. for life.

The petitioner preferred an appeal before this Court being Cr. Appeal (DB) No. 1164 of 2006 which was dismissed vide judgment dated 07.06.2017. The matter was placed before the State Sentence Review Board but vide notification dated 21.01.2020 which is impugned to the present application the prayer for premature release was rejected. The petitioner at the time of filing of the writ application had completed 16 years 4 months and 22 days of actual custody and with remission the custody of the petitioner was 22 years 11 months as on 17.03.2020.

W.P. (Cr.) No. 221 of 2020

The petitioner is aggrieved by the notification No. 353, dated 21.01.2020, issued by the Joint Secretary of Department of Home, Jail and Disaster Management, Government of Jharkhand, Ranchi, whereby the claim of premature release of the petitioner has been rejected.

The facts enumerated in the present writ application is that the

petitioner was convicted by the learned Additional Sessions Judge 1st, Bokaro in connection with S.T. No. 24 of 2005 (Bokaro Sector-IV P.S. Case No. 61 of 1999) vide judgment dated 20.05.2004 and was sentenced to undergo R.I. for life.

The matter was placed before the State Sentence Review Board but vide notification dated 21.01.2020 which is impugned to the present application the prayer for premature release was rejected. The petitioner at the time of filing of the writ application had completed 18 years 9 months of actual custody and with remission the custody of the petitioner was 24 years.

W.P. (Cr.) No. 269 of 2020

The petitioner is aggrieved by the notification No. 11/bandi vividh-07/2019-2987, dated 20.08.2020, issued by the Joint Secretary of Department of Home, Jail and Disaster Management, Government of Jharkhand, Ranchi, whereby the claim of premature release of the petitioner has been rejected.

The facts enumerated in the present writ application is that the petitioner was convicted by the learned Additional Judicial Commissioner, F.T.C., Ranchi in connection with S.T. No. 225 of 1995, corresponding to G.R. No.1595 of 1994 arising out of Ratu P.S. Case No. 82 of 1994 for the offence under Sections 364A, 387/34 of the Indian Penal Code vide judgment dated 27.05.2005 and was sentenced to undergo R.I. for life.

The petitioner preferred an appeal before this Court being Cr. Appeal (DB) No. 569 of 2007 which was dismissed vide judgment dated 25.02.2016. The matter was placed before the State Sentence Review Board but vide notification dated 20.08.2020 which is impugned to the present

application the prayer for premature release was rejected. The petitioner at the time of filing of the writ application had completed 17 years 1 month and 7 days of actual custody and with remission the custody of the petitioner was 23 years 11 months and 25 days as on 17.10.2020.

W.P. (Cr.) No. 270 of 2020

The petitioner is aggrieved by the notification No. 11/bandi vividh-07/2019-2987, dated 20.08.2020, issued by the Joint Secretary of Department of Home, Jail and Disaster Management, Government of Jharkhand, Ranchi, whereby the claim of premature release of the petitioner has been rejected.

The facts enumerated in the present writ application is that the petitioner was convicted by the learned Additional Judicial Commissioner, F.T.C.-VII, Ranchi in connection with S.T. No. 225 of 1995, corresponding to G.R. No.1595 of 1994 arising out of Ratu P.S. Case No. 82 of 1994 for the offence under Sections 364A, 387/34 of the Indian Penal Code vide judgment dated 27.05.2005 and was sentenced to undergo R.I. for life.

The petitioner preferred an appeal before this Court being Cr. Appeal (DB) No. 866 of 2005 which was dismissed vide judgment dated 25.02.2016. The matter was placed before the State Sentence Review Board but vide notification dated 20.08.2020 which is impugned to the present application the prayer for premature release was rejected. The petitioner at the time of filing of the writ application had completed 17 years 6 months and 1 day of actual custody and with remission the custody of the petitioner was 24 years 2 months and 5 days as on 17.10.2020.

W.P. (Cr.) No. 294 of 2020

The petitioner is aggrieved by the notification No. 11/bandi vividh-

07/2019-2987, dated 20.08.2020 issued by the Joint Secretary of Department of Home, Jail and Disaster Management, Government of Jharkhand, Ranchi, whereby the claim of premature release of the petitioner has been rejected.

The facts enumerated in the present writ application is that the petitioner was convicted by the learned Additional Sessions Judge, F.T.C.-II, Chaibasa in connection with S.T. No. 223 of 2003, corresponding to G.R. No. 237 of 2003 arising out of Manjhari P.S. Case No.11 of 2003 for the offence under Sections 302/34, 376(2)(g), 201 of the Indian Penal Code vide judgment dated 06.10.2004 and was sentenced to undergo R.I. for life.

The petitioner preferred an appeal before this Court being Cr. Appeal (DB) No. 1924 of 2004 which was dismissed vide judgment dated 27.04.2016. The matter was placed before the State Sentence Review Board but vide notification dated 20.08.2020 which is impugned to the present application the prayer for premature release was rejected. The petitioner at the time of filing of the writ application had completed 17 years 3 months and 16 days of actual custody and with remission the custody of the petitioner was 24 years 4 months and 25 days as on 17.10.2020.

W.P. (Cr.) No. 297 of 2020

The petitioner is aggrieved by the notification No. 11/bandi vividh-07/2019-2987, dated 20.08.2020 issued by the Joint Secretary of Department of Home, Jail and Disaster Management, Government of Jharkhand, Ranchi, whereby the claim of premature release of the petitioner has been rejected.

The facts enumerated in the present writ application is that the petitioner was convicted by the learned Additional Sessions Judge, F.T.C.-II,

Chaibasa in connection with S.T. No. 223 of 2003, corresponding to G.R. No. 237 of 2003 arising out of Manjhari P.S. Case No.11 of 2003 for the offence under Sections 302/34, 376(2)(g), 201 of the Indian Penal Code vide judgment dated 06.10.2004 and was sentenced to undergo R.I. for life.

The petitioner preferred an appeal before this Court being Cr. Appeal (DB) No. 1924 of 2004 which was dismissed vide judgment dated 27.04.2016. The matter was placed before the State Sentence Review Board but vide notification dated 20.08.2020 which is impugned to the present application the prayer for premature release was rejected. The petitioner at the time of filing of the writ application had completed 17 years 3 months and 16 days of actual custody and with remission the custody of the petitioner was 24 years 4 months and 20 days as on 17.10.2020.

W.P. (Cr.) No. 13 of 2021

The petitioner is aggrieved by the notification No. 11/bandi vividh-07/2019-2987, dated 20.08.2020 issued by the Joint Secretary of Department of Home, Jail and Disaster Management, Government of Jharkhand, Ranchi, whereby the claim of premature release of the petitioner has been rejected.

The facts enumerated in the present writ application is that the petitioner was convicted by the learned Additional Sessions Judge, F.T.C.-VI, Dhanbad in connection with S.T. No. 93 of 2003/137 of 2003, corresponding to G.R. No. 2649 of 2002 arising out of Jharia P.S. Case No. 330 of 2002 for the offence under Sections 364, 302, 201 of the Indian Penal Code vide judgment dated 22.08.2006 and was sentenced to undergo R.I. for life.

The petitioner preferred an appeal before this Court being Cr. Appeal (DB) No. 1269 of 2006 which was dismissed vide judgment dated

25.05.2016. The matter was placed before the State Sentence Review Board but vide notification dated 20.08.2020 which is impugned to the present application the prayer for premature release was rejected. The petitioner at the time of filing of the writ application had completed 16 years 3 months and 16 days of actual custody and with remission the custody of the petitioner was 21 years 11 months and 8 days as on 18.12.2020.

W.P. (Cr.) No. 21 of 2021

The petitioner is aggrieved by the notification No. 11/bandi vividh-07/2019-2987, dated 20.08.2020 issued by the Joint Secretary of Department of Home, Jail and Disaster Management, Government of Jharkhand, Ranchi, whereby the claim of premature release of the petitioner has been rejected.

The facts enumerated in the present writ application is that the petitioner was convicted by the learned Additional Sessions Judge, F.T.C.-V, Hazaribagh in connection with S.T. No. 217 of 2003, corresponding to G.R. No. 2907 of 2001 arising out of Ichak P.S. Case No. 128 of 2001 for the offence under Sections 364A, 302, 323, 376, 201, 34 of the Indian Penal Code vide judgment dated 21.12.2004 and was sentenced to undergo R.I. for life.

The petitioner preferred an appeal before this Court being Cr. Appeal (DB) No. 60 of 2005 which was dismissed vide judgment dated 23.01.2006. The matter was placed before the State Sentence Review Board but vide notification dated 20.08.2020 which is impugned to the present application the prayer for premature release was rejected. The petitioner at the time of filing of the writ application had completed 19 years and 6 days of actual custody and with remission the custody of the petitioner was 25 years 4

months and 6 days as on 18.12.2020.

W.P. (Cr.) No. 22 of 2021

The petitioner is aggrieved by the notification No. 11/bandi vividh-07/2019-2987, dated 20.08.2020 issued by the Joint Secretary of Department of Home, Jail and Disaster Management, Government of Jharkhand, Ranchi, whereby the claim of premature release of the petitioner has been rejected.

The facts enumerated in the present writ application is that the petitioner was convicted by the learned Additional Sessions Judge, F.T.C.-III, Dhanbad in connection with S.T. No. 11 of 2003, arising out of Dhanbad P.S. Case No. 281 of 2002 for the offence under Sections 364A/120B, 379/120B of the Indian Penal Code vide judgment dated 25.03.2004 and was sentenced to undergo R.I. for life.

The petitioner preferred an appeal before this Court being Cr. Appeal (DB) No. 837 of 2004 which was dismissed vide judgment dated 04.02.2011. The matter was placed before the State Sentence Review Board but vide notification dated 20.08.2020 which is impugned to the present application the prayer for premature release was rejected. The petitioner at the time of filing of the writ application had completed 17 years 11 months and 11 days of actual custody and with remission the custody of the petitioner was 23 years and 5 days as on 18.12.2020.

The common thread which runs through the arguments advanced by the learned counsels for the petitioners in all the cases is that the 1984 policy with respect to premature release of a convict issued by the State of Bihar shall be applicable in the cases of the petitioners and the State Sentence Review Board should have considered the 1984 policy and no

other policy which have come into effect after the creation of the State of Jharkhand. Learned counsels for the petitioners submit that in terms of 1984 policy the petitioners have completed 14 years in actual custody and 20 years with remission and therefore since the 1984 policy continued to hold the field till a new policy came into being in 2007 the petitioners are guided by the earlier policy which ruled the roost even after creation of the State of Jharkhand in terms of Section 85 of the Bihar Reorganisation Act and therefore the respondents be directed to release the petitioners as they have completed their respective terms and eligible for being prematurely released in view of the policy of 1984.

Per contra Mr. P.A.S. Pati, learned counsel for the State submits that the resolution of the State of Bihar dated 24.02.1984 is not a policy in the strict sense of the term and the same does not have any statutory force of law which can be extended to the convicts. He further submits that basically the memo dated 24.02.1984 is merely a letter and is not a law in terms of Section 2 (f) and therefore does not have a binding effect on the successor State of Jharkhand in terms of Section 85 of the Bihar Reorganisation Act. He also submits that in terms of the judgment passed by the Hon'ble Supreme Court in the case of ***Laxman Naskar versus Union of India and Others*** reported in ***AIR (2000) SC 986***, consideration for premature release of a convict can only be arrived at after various factors enumerated in the said judgment has to be considered and which formed the basis for issuance of resolution in the year 2007 by the State of Jharkhand. Submission has been advanced that the petitioners cannot claim as a matter of right to be released in terms of the 1984 policy after completing 14 years in custody without remission and 20 years in custody with remission as the

1984 policy did not have a binding effect on the State of Jharkhand and moreover the various factors enumerated by the Hon'ble Supreme Court in the case of **Laxman Naskar (supra)** has also to be considered which ultimately led to the subsequent resolution of 2007 of the State of Jharkhand and by no stretch of imagination the benefit of premature release to the petitioners can be extended in terms of the 1984 policy and therefore all these applications are liable to be dismissed. Mr. P.A.S. Pati, learned counsel for the State by way of referring the judgment rendered by the Hon'ble Supreme Court in the case of **State of Haryana and Others v. Jagdish**, reported in **(2010) 4 SCC 216**, submits that the Hon'ble Supreme Court has also observed in that paragraph while deciding the remission that the concerned authority is required to consider the factors for remission. According to him, following factors are required to be considered in the case of remission:

- (a) whether the offence was an individual act of crime without affecting the society at large;
- (b) whether there was any chance of future recurrence of committing a crime;
- (c) whether the convict had lost his potentiality in committing the crime;
- (d) whether there was any fruitful purpose of confining the convict any more;
- (e) the socio-economic condition of the convict's family;
- (f) any other similar circumstances;
- (g) provisions contained in Jail Manual Rules 527 to 529 (particularly) Rule 529; and

(h) opinion of the learned trial court.

The main foundation upon which the arguments of the learned counsels for the petitioners have been built is the 1984 policy of the State of Bihar. In order to ascertain as to whether such argument can lead to construction of an edifice it would be beneficial to refer to the 1984 policy and briefly translated in English the conditions enumerated in the policy dated 24.02.1984 reads as follows:-

- (i) In terms of Section 428 of the Cr.P.C. the benefit of set off shall not be given to the convicts which would mean that the period of custody undergone by a convict during investigation and trial would not be set off from 20 years of custody.
- (ii) After an accused has been convicted and sentenced to life imprisonment in which one of the sentence includes a sentence of death and where the death sentence has been reduced to life imprisonment and where such sentence has been imposed on or after 18.12.1978 such convict shall be released provided that;
 - (a) He has completed 14 years in custody after his conviction.
 - (b) The total period completed in custody is 20 years including remission.

The gist of the resolution noted above would therefore mean that a convict is entitled for premature release provided he remains in custody for 14 years after his conviction and 20 years including remission.

A subsequent resolution bearing resolution no. 3115 dated 25.05.1985 was issued by the State of Bihar on consideration of the judgment rendered by the Hon'ble Supreme Court in the case of **Bhagirath v. Administration of Delhi**, wherein the benefit of set off and the period

the convict has remained in custody during investigation and trial shall be adjusted/set off from the period of life imprisonment. Thus it would ultimately mean that a convict who has completed 14 years of actual custody and 20 years of custody with remission shall be entitled to premature release in terms of the policy dated 24.02.1984. Resolution was taken by the State of Jharkhand dated 18.04.2007 pursuant to the judgment rendered by the Hon'ble Supreme Court in the case of **Laxman Naskar (supra)** in which the constitution of the State Sentence Review Board was formulated and the factors which would entail consideration of premature release of a convict was also enumerated. This consideration was made applicable only to those convicts whose case falls u/s 433 (a) of the Cr.P.C. and who has completed 14 years of actual physical custody and 20 years of custody with remission. Subsequently a resolution dated 10.09.2009 was also issued with respect to a modification in Clause 3 (i) of the earlier resolution dated 18.04.2007.

Section 85 of the Bihar Reorganisation Act, 2000 reads as follows:-

85. Power to adapt laws.- *For the purpose of facilitating the application in relation to the State of Bihar or Jharkhand of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.*

Explanation.- In this section, the expression "appropriate Government" means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.

Section 85 thus does not abrogate or seize the enforceability of any

law as was prevailing in the State of Bihar prior to creation of the Successor State of Jharkhand. Section 2 (f) of the Bihar Reorganisation Act defines law which reads as under:-

Section 2 (f) "law" includes any enactment, ordinance, regulation, order, by-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Bihar.

The resolution dated 24.02.1984 cannot be said to be merely a letter as the same was the basis for releasing convicts prematurely on the convict having fulfilled the criteria of remaining in custody for the period denoted in the same. Thus what was made operative by the State of Bihar w.e.f. 24.02.1984 was a resolution which continued to hold the field till a resolution was taken by the State of Jharkhand on 18.04.2007. The conviction of the petitioners was after the 1984 policy came into being and prior to the policy of the State of Jharkhand dated 18.04.2007 and as such the case of the petitioners are clearly to be guided by the 1984 policy.

In the case of ***State of Haryana and Others versus Jagdish*** reported in **(2010) 4 SCC 216**, since there was conflicting judgments the same was referred to a three Judges Bench which held as follows:-

38. *In view of the above, it is evident that the clemency power of the executive is absolute and remains unfettered for the reason that the provisions contained under Article 72 or 161 of the Constitution cannot be restricted by the provisions of Sections 432, 433 and 433-A CrPC though the authority has to meet the requirements referred to hereinabove while exercising the clemency power. To say that clemency power under Articles 72/161 of the Constitution cannot be exercised by the President or the Governor, as the case may be, before a convict completes the incarceration period provided in the short-sentencing policy, even in an exceptional case, would be mutually inconsistent with the theory that clemency power is unfettered.*

44. *Liberty is one of the most precious and cherished possessions of a human being and he would resist forcefully any attempt to diminish it. Similarly, rehabilitation and social reconstruction of a life convict, as objective of punishment become of paramount importance in a welfare State. "Society without crime is a utopian theory." The State has to achieve the goal of protecting the society from the convict and also to rehabilitate the offender. There is a very real risk of revenge attack upon the convict from others. Punishment enables the convict to expiate his crime and assist his rehabilitation. The remission policy manifests a process of reshaping a person who, under certain circumstances, has indulged in criminal activity and is required to be rehabilitated. Objectives of the punishment are wholly or predominantly reformative and preventive.*

49. *This Court in Mahender Singh has taken note of the provisions of the 1894 Act and the Rules framed thereunder as well as the relevant paragraphs of the Punjab Jail Manual. Section 59(5) of the 1894 Act, enables the Government to frame rules for "award of marks and the shortening of sentences". The Rules define prisoner as including a person committed to prison in default of furnishing security to keep peace or be of good behaviour. The Rules further provide for classification of prisoners according to the intensity and gravity of the offence. According to the classification of prisoners, Class 1 prisoners are those who had committed heinous organised crimes or specially dangerous criminals. Class 2 prisoners include dacoits or persons who commit heinous organised crimes. Class 3 prisoners are those who do not fall within Class 1 or Class 2. Rule 20 thereof provides that life convict being a Class 1 prisoner if earned such remission as entitles him to release, the Superintendent shall report accordingly to the local Government with a view to the passing of orders under Section 401 CrPC. Rule 21 provides that save as provided by Rule 20, when a prisoner has earned such remission as entitles him to release, the Superintendent shall release him. The instant case falls in Class 3, not being a case of organised crime or by professionals or hereditary or specially dangerous criminals.*

50. *Undoubtedly, the aforesaid Rules are applicable in Haryana in view of the States Reorganisation Act. These are statutory rules, not merely executive instructions.*

Therefore, a "lifer" has a right to get his case considered within the parameters laid down therein.

53. *The right of the respondent prisoner, therefore, to get his case considered on a par with such of his inmates,*

who were entitled to the benefit of the said policy, cannot be taken away by the policy dated 13-8-2008. This is evident from a bare perusal of the recitals contained in the policies prior to the year 2008, which are referable to Article 161 of the Constitution. The High Court, therefore, in our opinion, was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction.

54. *The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given benefit thereof.*

Thus in the case of Jagdish (supra) it was categorically laid down that the policy which was prevailing on the date of consideration for premature release of a life convict the benefit of the same should be given to the convict.

In the case of ***Union of India versus V. Sriharan alias Murgan and Others*** reported in **2016 (1) JLJR 121 (SC)** the Constitution Bench held as follows:-

236. *The power under Sections 432/433 CrPC and the one exercisable under Articles 72 and 161 of the Constitution, as laid down in **Maru Ram** (supra) are streams flowing in the same bed. Both seek to achieve salutary purpose. As observed in **Kehar Singh** (supra) in clemency jurisdiction it is permissible to examine whether the case deserves the grant of relief and cut short the sentence in exercise of Executive Power which abridges the enforcement of a judgment. Clemency jurisdiction would normally be exercised in the exigencies of the case and fact situation as obtaining when the occasion to exercise the power arises. Any order putting*

the punishment beyond remission will prohibit, exercise of statutory power designed to achieve same purpose under Sections 432/433 CrPC. In our view, Courts cannot and ought not deny to a prisoner the benefit to be considered for remission of sentence. By doing so, the prisoner would be condemned to live in the prison till the last breath without there being even a ray of hope to come out. This stark reality will not be conducive to reformation of the person and will in fact push him into a dark hole without there being semblance of the light at the end of the tunnel.

238. *The law on the point of life imprisonment as laid down in **Godse's case** (supra) is clear that life imprisonment means till the end of one's life and that by very nature the sentence is indeterminable. Any fixed term sentence characterised as minimum which must be undergone before any remission could be considered, cannot affect the character of life imprisonment but such direction goes and restricts the exercise of power of remission before the expiry of such stipulated period. In essence, any such direction would increase or expand the statutory period prescribed under Section 433-A of Cr.P.C. Any such stipulation of mandatory minimum period inconsistent with the one in Section 433-A, in our view, would not be within the powers of the Court.*

Our answer to Sub Question (b) of Question in para 52.1 is:

Question b: *Whether as per the principles enunciated in paragraphs 91 to 93 of **Swamy Shraddananda (2)**, a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment for imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?*

Answer. *In our view, it would not be open to the Court to make any special category of sentence in substitution of death penalty and put that category beyond application of remission, nor would it be permissible to stipulate any mandatory period of actual imprisonment inconsistent with the one prescribed under Section 433-A of Cr.P.C.*

It was held that the Courts cannot and ought not deny to a prisoner the benefit to be considered for remission of sentence.

The 1984 policy was under consideration by this Court in W.P.(Cr.) No. 40 of 2011 in which it was held that the policy decision of 1984 remained

operative till the new policy was framed in the year 2007 by the State of Jharkhand and thereafter a direction was given to the State Sentence Review Board to consider the case of the said convict for his premature release in light of the policy decision of 1984. The said order was affirmed up to the Hon'ble Supreme Court.

In batch of cases being W.P. (Cr.) No. 262 of 2014 and analogous cass, a coordinate Bench of this Court held that the petitioners of those cases shall be guided by the 1984 policy and no other and therefore all those writ petitions were disposed of with a direction to the respondents to consider the case of those petitioners for premature release strictly on the basis of 1984 policy dated 28.02.1984.

Identical matter numbered as W.P. (Cr.) No. 32 of 2011 travelled up to the Hon'ble Supreme Court, which has been affirmed by the Hon'ble Supreme Court in S.L.P. (Cr.) No.5696 of 2012.

In view of these facts, there is no doubt that the case of the petitioners are required to be considered for premature release strictly on the basis of 1984 policy dated 28.02.1984. The coordinate Bench of this Court has not discussed paragraph 46 of the judgment rendered by the Hon'ble Supreme Court in the case of ***Jagdish (supra)***. Paragraph 46 of the said judgment is quoted herein below:

46. At the time of considering the case of premature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances.

In view of the above facts, these matters are remitted back to the Jharkhand State Sentence Review Board to consider in light of the judgment passed by the coordinate Bench and in the case of ***Jagdish (supra)*** and pass a fresh order. This exercise shall be completed within a period of three months from the date of receipt/production of a copy of this order.

Accordingly, these writ applications stand disposed of.

(Sanjay Kumar Dwivedi, J.)

Ajay/