

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITION (CRIMINAL) NO.of 2024
(ARISING OUT OF DIARY NO. 28783 OF 2023)**

SURENDRA @ SUNDA

... PETITIONER

VERSUS

THE STATE OF UTTAR PRADESH

... RESPONDENT

ORDER

1. The facts of the case in brief are that the Petitioner, along with several others, was arraigned in F.I.R. No. 43 of 1982 as accused. The Ld. Trial Court¹, *vide* judgment dated 05.02.1983, held the Petitioner guilty and directed him to undergo the sentence of two years rigorous imprisonment under Section 148 of IPC and life under Section 302 read with 149 of IPC.

2. The Petitioner preferred Criminal Appeal² against the judgment of Trial Court. The same was dismissed by the High Court³ *vide* judgment dated 13.09.2018.

¹ ST No. 202 of 1982

² Criminal Appeal No. 370 of 1983.

³ High Court of Judicature at Allahabad.

3. Challenging the same, the Petitioner filed the present Special Leave Petition before this Court. Finding no merit in the petition, this Court dismissed the same on 13.08.2024.

4. During the course of the hearing, this Court was apprised that the Petitioner was prematurely released and a letter dated 11.08.2024 from the office of the Senior Superintendent, Central Jail, Agra was placed on record. The aforesaid letter stated that the Petitioner, who was sentenced to life imprisonment, served only two years, five months and twelve days till 22.03.2024 i.e. the date on which he was released. It was informed that in compliance of a High Court order⁴ dated 10.01.2024 passed in **“Ganesh vs. State of Uttar Pradesh”**, release order of the Petitioner was issued from Central Jail, Agra on 22.03.2024.

5. The question arose as to how the Petitioner, a life convict, has been released on bail in furtherance of an order passed in a different appeal in which the Petitioner was not a party. In view of this information, the Learned Counsel for the State was directed to file an affidavit explaining the circumstances in which the Petitioner, who was a life convict, was released despite his conviction being upheld by the High Court.

⁴ Criminal Appeal No. 165 of 2016.

6. The affidavit filed by the State details the decision of the High Court in **Ganesh** (Supra). In this case, Division Bench of the Allahabad High Court issued directions as under:

“14. Considering the delay in disposing of the premature release cases in the light of the judgement of the Hon’ble Supreme Court in Rashidul Jafar @ Chota (supra), in exercise of power under Article 226 of the Constitution of India read with Section 482 Cr.P.C., it is directed that the Chief Judicial Magistrate as well as Secretary, Legal Services Authority in each sessions division concerned will submit a periodical report to the Registrar General of this Court which will be tagged with this file, after every three months after seeking information from their concerned Jail Superintendents to this effect :-

(a) The number of cases recommended by the Superintendent of jail(s), which are pending approval by the competent authority;

(b) In case, where a case is recommended six months prior to the date when such a person becomes eligible for consideration to premature release, as per the recommendation made by the Superintendent Jail concerned and no final decision is taken despite lapse of six months, the Secretary, District Legal Services Authority of each District will call upon the family member of such a convict informing them that w.e.f. the date when the premature release of a convict is due as per the recommendation and no final decision/call is taken by the State Government the convict will be released on bail subject to furnishing bail/ surety bonds before the Chief Judicial Magistrate concerned apart from;

...(g) This order will apply mutatis mutandis to all the convicts, who are undergoing the sentence in the District/Central Jail in the State of U.P. and all the Secretary, District Legal Services Authority will collect the relevant data from the concerned jail and will make the necessary compliance and will ensure release of the convict on bail to be furnished before Chief Judicial Magistrate concerned after his due date of release as per the recommendation of Superintendent of the concerned jail.

(h) Such directions are issued to put reverse burden on the State Governments to decide the premature release case within the time limit of 6 months as per their own policy/instructions. In case it is to be rejected on the grounds of being a heinous crime or threat to the security to State etc., as provided in instructions such decision be taken within time frame as per policy so that the convict may not get bail.”

6.1. Placing reliance on the aforesaid judgement, the Chief Judicial Magistrate, Mathura, *vide* order dated 15.03.2024, directed the release of the Petitioner on interim bail. Subsequently, the Petitioner was released from jail. On the date of his release, he had served only two years, five months and twelve days against his life sentence.

6.2. The judgment in **Ganesh** (Supra) came to be considered by a Full Bench of the Allahabad High Court (Lucknow Bench) in **Ambrish Kumar Verma v. State of Uttar Pradesh**⁵ upon a

⁵ Criminal Misc. Writ Petition No. 1915/2024

reference⁶ by a Division Bench. *Vide* its order dated 25.05.2024, the Full Bench held that the judgment in **Ganesh** (Supra) is in the teeth of Constitution Bench decision of this Court in **Union of India vs. V. Sriharan @ Murugan and others**⁷. The High Court held that the power of remission lies only with the appropriate authority and the Division Bench in **Ganesh** (Supra) could not have issued any general directions instructing the Chief Judicial Magistrates to release the convicts, whose remission / premature release applications were pending, on interim bail.

7. Upon being asked, learned counsel for the Respondent submits that in the State of Uttar Pradesh, minimum period of 14 years imprisonment must be undergone by a convict sentenced to life imprisonment before they may be considered for remission. It is also pointed out by the learned counsel that the order dated 15.03.2024 passed by the Chief Judicial Magistrate, Mathura is liable to be set aside, and the Petitioner be directed to surrender.

8. Heard the learned counsel for the parties. It is quite perplexing that the Petitioner, a convict who has only undergone imprisonment for a total period of 2 years 5 months, which is significantly lesser than the minimum period of imprisonment

⁶ Order dated 21.03.2024.

⁷ [2015] 14 S.C.R. 613

required for a life convict to be eligible for remission, has been released from prison. It is also not forthcoming from the Respondent as to how the concerned Jail Authorities have recommended the name of the Petitioner for remission being aware of the aforementioned fact.

9. It is pertinent to observe that in the Chief Judicial Magistrate's order dated 15.03.2024, it has been mentioned that upon receiving letter dated 22.02.2024 from Senior Superintendent, Central Jail, Agra, the case of 29 convicts was considered by the Chief Judicial Magistrate on that date alone for interim bail in terms of the judgement in **Ganesh** (Supra). In such view of the matter, it is necessary to find out how many persons all across the State of Uttar Pradesh have been extended the relief of interim bail by different Chief Judicial Magistrates in light of the directions issued in **Ganesh** (Supra). Additionally, after the subsequent decision of the Full Bench of the Allahabad High Court in **Ambrish** (Supra), whether any steps have been taken by the State of Uttar Pradesh to seek cancellation of interim bail which has been granted to the Petitioner and similarly placed convicts by the Chief Judicial Magistrates across the State of Uttar Pradesh in light of the judgement in **Ganesh** (Supra).

10. In the attending facts and circumstances, this Court cannot help but take a strict view of the matter. The order dated 15.03.2024 passed by the Chief Judicial Magistrate, Mathura releasing the Petitioner on bail is hereby set aside and the Petitioner is directed to surrender within a period of two months to serve the life sentence. If the Petitioner does not surrender, Trial Court shall take appropriate measures / steps to take him into custody.

11. Looking to the gravity of the matter, we must also seek a detailed affidavit from the **Principal Secretary (Home)** and **Principal Secretary (Prisons)** of the State of Uttar Pradesh on the following:

- a. How the Jail Authorities could recommend the case of the Petitioner for remission without compliance of the State's remission policy which mandates 14 years minimum imprisonment for a life convict to be considered for remission, since he had only served a period of 2 years 5 months of imprisonment?
- b. After the decision of the Full Bench in **Ambarish** (Supra) setting aside directions issued in **Ganesh** (Supra), whether

the Petitioner has been taken back in custody? If not, whether any steps have been taken by the State of Uttar Pradesh in that regard?

- c. How many convicts have been taken back in custody after the aforesaid directions were set aside by the Full Bench?
- d. Whether these convicts were eligible for premature release as per State Remission Policy? If not, how were their names recommended for remission / premature release by the concerned Jail Authorities?
- e. Whether their application for remission of the aforementioned convicts was pending on the date of their release on interim bail?

12. Let the reply be filed within 8 weeks.

13. List on 11.11.2024.

.....J.
(J.K. MAHESHWARI)

.....J.
(RAJESH BINDAL)

New Delhi
September 9, 2024.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No. 28783/2023

(Arising out of impugned final judgment and order dated 13-09-2018 in CRLA No. 370/1983 passed by the High Court of Judicature at Allahabad)

SURENDRA @ SUNDA

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH

Respondent(s)

(IA No.129279/2024-CONDONATION OF DELAY IN FILING)

Date : 09-09-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.K. MAHESHWARI

HON'BLE MR. JUSTICE RAJESH BINDAL

For Petitioner(s)

Mr. Sanjai Kumar Pathak, AOR
Mr. Arvind Kumar Tripathi, Adv.
Mrs. Shashi Pathak, Adv.
Mr. Maruti Nandan, Adv.

For Respondent(s)

Ms. Garima Prasad, Sr. A.A.G.
Mr. Pradeep Misra, AOR
Mr. Daleep Dhyani, Adv.
Mr. Suraj Singh, Adv.

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

In terms of the signed order, the Court, *inter alia*,
ordered as follows:

10. In the attending facts and circumstances, this Court cannot help but take a strict view of the matter. The order dated 15.03.2024 passed by the Chief Judicial Magistrate, Mathura releasing the Petitioner on bail is hereby set aside and the Petitioner is directed to surrender within a period of two months to serve the life sentence. If the Petitioner does not

surrender, Trial Court shall take appropriate measures / steps to take him into custody.

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- b. After the decision of the Full Bench in **Ambarish** (Supra) setting aside directions issued in **Ganesh** (Supra), whether the Petitioner has been taken back in custody? If not, whether any steps have been taken by the State of Uttar Pradesh in that regard?
- c. How many convicts have been taken back in custody after the aforesaid directions were set aside by the Full Bench?
- d. Whether these convicts were eligible for premature release as per State Remission Policy? If not, how were their names recommended for remission / premature release by the concerned Jail Authorities?
- e. Whether their application for remission of the aforementioned convicts was pending on the date of their release on interim bail?

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13. List on 11.11.2024.”

(NIDHI AHUJA)

AR-cum-PS

(ANU BHALLA)

COURT MASTER (NSH)

[Signed order is placed on the file.]