

2023 LiveLaw (SC) 33

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

DINESH MAHESHWARI; J., BELA M. TRIVEDI; J.

WRIT PETITION (CRL.) NO. 323 OF 2022; 13.01.2023

JASWANT SINGH & ORS. *versus* THE STATE OF CHHATTISGARH & ANR.

Code of Criminal Procedure, 1973; Section 433 (2) - Grant of Remission - Presiding Judge should give adequate reasons while giving opinion under Section 432 (2) Cr.P.C. *Laxman Naskar vs. Union of India (2002) 2 SCC 595 (Followed)*

For Petitioner(s) Mr. Mohd. Irshad Hanif, AOR Mr. Gurmeet Singh, Adv. Mr. Danis Sher Khan, Adv.

For Respondent(s) Mr. Vishal Prasad, AOR Ms. Ritika Sethi, Adv.

J U D G M E N T

BELA M. TRIVEDI, J.

1. The petitioners, who are the convicts and undergoing the sentence of life imprisonment in view of the order dated 13.02.2015 passed by this Court in SLP (Crl.) No. 1348-49 of 2015, confirming the judgement and order dated 10.05.2013 passed by the High Court of Chhattisgarh at Bilaspur, in Criminal Appeal No. 933/2010 (arising out of Sessions Case No. 16/2006), have invoked Article 32 of the Constitution of India seeking issuance of appropriate writ, order or direction commanding the respondents for presenting the case of the petitioners to the sentencing Court for fresh consideration.

2. The present petitioners along with other co-accused having been charged for the offences under Section 147, 148, 302/149, 307/149 of IPC and Section 3(2)(5) of the Scheduled Caste and Scheduled Tribes (Prevention of Corruption Act) were tried and found guilty for the said offences by the Special Judge (SC, ST), Durg, in Special Case No. 16/2006, were sentenced to life imprisonment. It was alleged against them that all the accused, 8 in number, had constituted an unlawful assembly and had killed Kartikram and Puneet using deadly weapons like sword, axe, wooden stick etc.

3. The petitioner no.1 Jaswant Singh, aged about 63 years; petitioner no.2 Ajay, aged about 43 years and petitioner no.3 Naresh, aged about 57 years on their undergoing the sentence of imprisonment for about 16 years without remission (with remission about 21 years of imprisonment) had submitted their respective applications under Section 432(2) of Cr.PC to the Jail Superintendent, Central Jail, Durg seeking their premature release. The Jail Superintendent sought an opinion of the concerned Sessions Court which had convicted the petitioners. The Special Judge, Durg, Chhattisgarh vide the letters dated 2.7.2021, 10.8.2021 and 1.10.2021 respectively gave his opinion stating *inter alia* that in view of the facts and circumstances of the case, it was not appropriate to allow remission of the remaining sentence of the said petitioners.

4. The Law Department, Government of Chhattisgarh, also vide the note dated 27.11.2021 gave an opinion that in view of the opinion given by the presiding Judge of the Sentencing Court, the petitioner no. 1 and 3 ought not to be given the benefit of the provisions of Section 433-A Cr.PC. Thereafter, the Director General, Jail and Correctional Services Chhattisgarh on 21.02.2022 referred the case of the petitioner no.2 to the Home Department, Government of Chhattisgarh and on 02.03.2022, addressed a letter to the Addl. Chief Secretary, Jail Department, Government of Chhattisgarh, for again moving the file of the petitioner no.1 and 3 for remission along with other convicts. On 22.3.2022, the Law Department, Government of Chhattisgarh once again gave its opinion that since the

presiding Judge of the Sentencing Court had not given positive opinion, the petitioner no.1 and 3 should not be released on remission. The Director General, Jail and Correctional Services, therefore, rejected the applications of the petitioner no. 1 and 3 for their release on remission. It appears that the application of the respondent no.2 remained pending for consideration before the Home Department, Government of Chhattisgarh.

5. In the meantime, one of the co-accused Ram Chander, who was also convicted along with the present petitioners in the said case, had preferred a writ petition being Writ Petition (Criminal) No.49/2022, in which this Court vide order dated 22.4.2022 directed the respondents to reconsider the case of the said petitioner and directed the Special Judge to provide an opinion afresh accompanied by adequate reasoning after taking into consideration the relevant factors laid down in **Laxman Naskar vs. Union of India**¹. The Special Judge (Atrocities Act Durg), therefore, considering the guidelines given by this Court in **Laxman Naskar vs. Union of India (supra)** opined *inter alia* that the sentence of the prisoner Ram Chander (co-accused) could be set aside and accordingly recommended to remit his sentence.

6. We have heard learned counsels for the parties and carefully considered the judgment and order passed by this Court in Writ Petition (Criminal) No.49/2022 filed by the co-accused Ram Chander. In the said judgment, the Coordinate Bench has considered in detail the requirement of the factors laid down in case of **Laxman Naskar vs. Union of India (supra)**, to be considered by the Presiding Judge while giving opinion under Section 432(2) Cr.P.C., and the powers of the appropriate Government to suspend or remit sentences under Sections 432 and 433-A of Cr.PC. The Court in the said judgement, after considering the earlier judgements of this Court, more particularly of the Constitution Bench in case of **Union of India vs. Sriharan @ Murugan**² and in case of **Laxman Naskar vs. Union of India (supra)** observed as under: -

“20. In Sriharan (supra), the Court observed that the opinion of the presiding judge shines a light on the nature of the crime that has been committed, the record of the convict, their background and other relevant factors. Crucially, the Court observed that the opinion of the presiding judge would enable the government to take the ‘right’ decision as to whether or not the sentence should be remitted. Hence, it cannot be said that the opinion of the presiding judge is only a relevant factor, which does not have any determinative effect on the application for remission. The purpose of the procedural safeguard under Section 432 (2) of the CrPC would stand defeated if the opinion of the presiding judge becomes just another factor that may be taken into consideration by the government while deciding the application for remission. It is possible then that the procedure under Section 432 (2) would become a mere formality.

21. However, this is not to say that the appropriate government should mechanically follow the opinion of the presiding judge. If the opinion of the presiding judge does not comply with the requirements of Section 432 (2) or if the judge does not consider the relevant factors for grant of remission that have been laid down in **Laxman Naskar v. Union of India (supra)**, the government may request the presiding judge to consider the matter afresh.

22. In the present case, there is nothing to indicate that the presiding judge took into account the factors which have been laid down in **Laxman Naskar v. Union of India (supra)**. These factors include assessing (i) whether the offence affects the society at large; (ii) the probability of the crime being repeated; (iii) the potential of the convict to commit crimes in future; (iv) if any fruitful purpose is being served by keeping the convict in prison; and (v) the socio-economic condition of the convict’s family. In **Laxman Naskar v. State of West Bengal (supra)** and **State of Haryana v. Jagdish (2010) 4 SCC 216**, this Court has reiterated that these factors will be considered while deciding the application of a convict for premature release.

¹ (2002) 2 SCC 595

² (2016) 7 SCC 1

23. In his opinion dated 21 July 2021 the Special Judge, Durg referred to the crime for which the petitioner was convicted and simply stated that in view of the facts and circumstances of the case it would not be appropriate to grant remission. The opinion is in the teeth of the provisions of Section 432 (2) of the CrPC which require that the presiding judge's opinion must be accompanied by reasons. Halsbury's Laws of India (Administrative Law) notes that the requirement to give reasons is satisfied if the concerned authority has provided relevant reasons. Mechanical reasons are not considered adequate. The following extract is useful for our consideration: "[005.066] Adequacy of reasons Sufficiency of reasons, in a particular case, depends on the facts of each case. It is not necessary for the authority to write out a judgement as a court of law does. However, at least, an outline of process of reasoning must be given. It may satisfy the requirement of giving reasons if relevant reasons have been given for the order, though the authority has not set out all the reasons or some of the reasons which had been argued before the court have not been expressly considered by the authority. A mere repetition of the statutory language in the order will not make the order a reasoned one. Mechanical and stereotype reasons are not regarded as adequate. A speaking order is one that speaks of the mind of the adjudicatory body which passed the order. A reason such as 'the entire examination of the year 1982 is cancelled', cannot be regarded as adequate because the statement does explain as to why the examination has been cancelled; it only lays down the punishment without stating the causes therefor." (Halsbury's Laws of India (Administrative Law) (Lexis Nexis, Online Edition).

24. Thus, an opinion accompanied by inadequate reasoning would not satisfy the requirements of Section 432 (2) of the CrPC. Further, it will not serve the purpose for which the exercise under Section 432 (2) is to be undertaken, which is to enable the executive to make an informed decision taking into consideration all the relevant factors.

25. In view of the above discussion, we hold that the petitioner's application for remission should be reconsidered. We direct the Special Judge, Durg to provide an opinion on the application afresh accompanied by adequate reasoning that takes into consideration all the relevant factors that govern the grant of remission as laid down in *Laxman Naskar v. Union of India* (supra). The Special Judge, Durg must provide his opinion within a month of the date of the receipt of this order. We further direct the State of Chhattisgarh to take a final decision on the petitioner's application for remission afresh within a month of receiving the opinion of the Special Judge, Durg."

7. Since the case of the present petitioners is also similar to the case of the co-accused Ram Chander, in as much as the Presiding Officer's opinions contained in the letters dated 02.07.2021, 10.08.2021 and 01.10.2021 do not contain reasons with regard to the factors to be taken into consideration as laid down in case of ***Laxman Naskar vs. Union of India*** (supra), we propose to pass similar order as passed in the case of co-accused Ram Chander.

8. In that view of the matter, it is held that the petitioners' applications for remission are required to be reconsidered by the respondent authorities afresh. Accordingly, we direct the Special Judge, Durg to provide an opinion on the applications of the petitioners afresh accompanied by adequate reasoning after taking into consideration the relevant factors that govern the grant of remission as laid down in ***Laxman Naskar vs. Union of India*** (supra). After receiving the opinion of the Special Judge Durg, the State of Chhattisgarh shall take a final decision on the petitioners' applications for remission afresh as expeditiously as possible and not later than one month of receiving the opinion of the Special Judge. The present writ petition stands allowed in the above terms.

All pending applications, if any shall stand disposed of.