

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

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 529/2021

(Arising out of impugned final judgment and order dated 19-10-2012 in CRA No. 118/2008 passed by the High Court Of Chhatisgarh At Bilaspur)

SONADHAR

Petitioner(s)

VERSUS

THE STATE OF CHHATTISGARH

Respondent(s)

(FOR ADMISSION AND I.R AND MR. NEERAJ KUMAR JAIN, SR. ADVOCATE (A.C.), MR. GAURAV AGRAWAL, ADVOCATE FOR NATIONAL LEGAL SERVICES AUTHORITY, MR. DEVANSH A. MOHTA, ADVOCATE (A.C.), MR. ABHIMANYU TEWARI, ADVOCATE FOR STATE OF ARUNACHAL PRADESH, MR. YOGESH KANNA, ADVOCATE FOR STATE OF TAMIL NADU, MR. CHANCHAL K. GANGULI, Advocate for STATE OF WEST BENGAL, MRS. NIRANJANA SINGH Advocate for State of Bihar, MR. MILIND KUMAR, ADVOCATE FOR STATE OF RAJASTHAN, MR. NIKHIL GOEL, ADVOCATE FOR HIGH COURT OF GUJRAT, MR. SARVESH SINGH BAGHEL, ADVOCATE FOR STATE OF UTTAR PRADESH, MAHFOOZ A NAZKI FOR STATE OF ANDHRA PRADESH, MR. SACHIN PATIL FOR STATE OF MAHARASHTRA, MR. SUBHRANSHU PADHI FOR STATE OF KARNATAKA, MR. GARVESH KABRA FOR STATE OF UP, MR. G.S MAKKER FOR ANDAMAN AND NICOBAR ISLANDS, MR. HARSHAD V HAMEED FOR STATE OF KERALA [FOR FURTHER DIRECTIONS]

IA No. 48269/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 47960/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 43485/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 38260/2022 - CLARIFICATION/DIRECTION
IA No. 10916/2022 - GRANT OF BAIL
IA No. 38257/2022 - INTERVENTION/IMPLEADMENT
IA No. 149236/2021 - INTERVENTION/IMPLEADMENT
IA No. 48268/2022 - INTERVENTION/IMPLEADMENT
IA No. 47958/2022 - INTERVENTION/IMPLEADMENT
IA No. 43474/2022 - INTERVENTION/IMPLEADMENT)

WITH

Diary No(s). 15406/2022 (II-B)

(IA No. 86495/2022 - EXEMPTION FROM CUSTODY CERTIFICATE
IA No. 86497/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 86496/2022 - EXEMPTION FROM FILING O.T.
IA No. 86499/2022 - GRANT OF PAROLE)

Date : 17-08-2022 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

Mr. Neeraj Kumar Jain, Sr. Adv. (A.C.),
Mr. Gaurav Agrawal, Adv. (NALSA) (A.C)
Mr. Devansh A. Mohta, Advocate (A.C.)

For Parties

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Mr. Neeraj Kumar Jain, Sr. Adv.

Chhattisgarh

Mr. Sumeer Sodhi, AOR
Mr. Gaurav Arora, Adv

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Karnataka

Mr. Shubhranshu Padhi, Adv.
Mr. Vishal Banshal, Adv.
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Ms. Sonia Mathur, Adv.
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Kerala

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Mrs. Ashly Harshad, Adv.

West Bengal

Mr. Ashok Panda, Sr. Adv.
Mr. Soumitra G. Chaudhuri, Adv.
Ms. Vandana Tiwari, Adv.
Mr. Chanchal Kumar Ganguli, AOR

Bihar

Mr. Saket Singh, Adv.
Ms. Somyashree, Adv.
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Uttar Pradesh	Mrs. Garima Prasad, Sr. Adv./ AAG Mr. Garvesh Kabra, AOR
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Arunachal Pradesh	Mr. Abhimanyu Tewari, AOR Ms. Eliza Bar, Adv.
Tamil Nadu	Mr. V. Krishnamurthy, Sr. Adv./AAG Dr. Joseph Aristotle S., AOR Ms. Nupur Sharma, Adv. Mr. Shobhit Dwivedi, Adv. Mr. Sanjeev Kumar Mahara, Adv. Mr. Richa Vishwakarma, Adv. Mrs. K. Enatoli Sema, Adv. Mr. Amit Kumar Singh, Adv. Ms. Chubalemla Chang, Adv. Ms. Limayinla Jamir, Adv. Mr. Pashupati Nath Razdan, AOR Mr. Mirza Kayesh Begg, Adv. Mr. Shaddab Anwar, Adv. Mr. Prakhar Srivastav, Adv. Mr. Astik Gupta, Adv. Ms. Ayushi Mittal, Adv. Mr. Vipul Abhishek, Adv. Mr. Mukesh Kumar Verma, Adv. Mr. G. S. Makker, AGA

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

COMPLIANCE OF PRE-MATURE RELEASE DIRECTIONS

Learned Amicus Curiae states that some of the inputs in reports have not been adequate and interaction is taking place with the State counsels to ensure that the information sought for by learned Amicus Curiae is made available to give a final report to

this Court.

We are not inclined to give a long period of time and if the submission of the learned counsel for the State of Tamil Nadu is to be appreciated, Advisory Board is stated not to have made it. It thus appear to us that without our directions things do not move, which is not a happy state of affairs. We direct the Advisory Boards for all the States to meet within two weeks.

Learned Amicus Curiae also points out that in the reports of certain States problems have been identified and intimated. All States must take remedial action within the same period i.e. two weeks.

JAIL PETITIONS

Mr. Gaurav Agrawal, learned Amicus curiae suggests that this also be taken up on 14th September, 2022.

POSSIBLE ALTERNATE ROUTE (Order dated 09.2.2022)

We had dealt with possibility of an alternate route in cases where the maximum sentence is 7 years or less and the persons have either served out half the sentence or pending trial have already gone through half the sentence. In this behalf, Mr. Devansh A. Mohta, learned Amicus curiae has drawn our attention to the endeavor to take up the Chhattisgarh State for purposes of pilot project. He has filed an additional note today i.e. 17.8.2022 and a request has been made to the Principal Secretary, Law and Legislative Affairs Department, Raipur for taking necessary steps under Section 432 of the Criminal Procedure Code, 1973 in respect

of these 31 cases. The Chhattisgarh State Legal Services Authority (CSLSA) has also proposed a "Special Campaign" where efforts would be made to secure release of prisoners by adopting to compromise, plea-bargain or set off. Further they are proposing to request the Hon'ble Chief Justice of High Court of Chhattisgarh to issue circular to depute 2 to 3 Magistrates in every district/taluka for holding Court sitting in Jail Premises on every working Saturdays and dispose of cases in which the accused are willing to confess their guilt.

Learned Amicus curiae submits that by the next date i.e. 14th September, 2022 we may have a better appreciation of the efforts made by Chhattisgarh State. However, in our view, that does not preclude the other eight identified States i.e. Delhi, Gauhati, Kerala, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and West Bengal to explore the same route themselves and they will interact with the learned Amicus curiae for the steps to be taken in this behalf.

We may at this stage itself note that we have issued notice to all the States in a separate petition bearing SMW(Cr1) No. 4/2021 where the larger issue would be examined keeping in mind the celebrations of 75 years of the Independence. We note here that plea bargaining in our statute only permits bargaining qua the sentence. The other aspect is plea-bargaining qua the nature of offence which is prevalent in many other countries and operated successfully. We are conscious this would require a legislative change but then on examination this Court can always make a suggestion for such a legislative change.

Mr. Neeraj Kumar Jain, Sr. Adv. and Amicus Curiae in the matter has drawn our attention to the recognized practice in USA of 'Alford plea' and the 'nolo contendere plea'. In fact his submission is that such a course can be adopted even without any legislative action. The ascription of plea arose out of a judgment in North Carolina v. Alford, 400 U.S. 25 (1970) by the U.S. Supreme Court, where an accused pleads guilty not because of an admission to the crime but on an admission that the prosecution has sufficient evidence to obtain a conviction, in order to secure a lesser sentence than may be awarded at trial. A 'nolo contendere plea' is a plea of no contest without admission of guilt i.e. the accused chooses neither to admit the charge against them, nor to contest it. Both these types of pleas permit an accused person to maintain their innocence, while simultaneously permitting them to consent to their conviction.

The aforesaid suggestion is made in the context of the fact that at times the accused have hesitancy in accepting their conviction under a particular offence which may lead to other civil consequences.

It is his suggestion that such a course of action can become the basis of "mutually satisfactory disposition" in criminal cases where the accused may concede conviction without conceding guilt in exchange for the State conceding no further imprisonment, all within the existing framework of plea bargaining. Since the meeting to work out a satisfactory disposition of a case under Section 265C of the CrPC is to be conducted by the Court in the presence of the public prosecutor, victim and accused, the plea of the accused may

or may not be accepted by the State or the Court, depending upon the nature of the crime and the impact of the crime on the victim. Such a plea may also be accepted subject to the accused agreeing to compensate the victim how severely a victim was affected by the offence. It is thus suggested that the involvement of the court in the process will ensure that there is judicious application of guidelines which the Hon'ble Supreme Court may lay down to deal with such cases while simultaneously ensuring that there is flexibility to distinguish unique or more heinous cases.

We call upon the learned Amicus curiae(s) to look into this aspect and the feasibility of incorporating the same as part of an order apart from any legislative exercise which may be recommended with consultation with Mr. Neeraj Kumar Jain, Senior Advocate.

Mr. Gaurav Agrawal states that a meeting has been called on 19th August, 2022 arising from the proceedings in SMW(Cr1) No.4/2021 in which he has also been requested to join. The objective is to work out the parameters on which the States can make constructive suggestions. The aforesaid aspect may also be brought to the notice of the members who are present in the meeting.

WILLINGNESS TO ACCEPT INFRACTION AND NO CONTEST BY LIFE CONVICTS ELIGIBLE FOR REMISSION

Mr. Devansh A. Mohta, learned Amicus Curiae has pointed out from the reports received by various States that while some of the States like Chhattisgarh there has been a positive response (5 cases), in respect of others, there is either lack of positive response or States have also not responded which they are required to do. In case of Tamil Nadu, it is negative, but then that may be

because the time period taken in Tamil Nadu for disposal of appeal itself is not very long.

A suggestion which has been made is to take care of the apprehension of the convicts that if they agree not to contest plea and their application for remission is rejected, it may really amount to double whammy. Thus their right to reactivate the appeal in case of rejection of the request for remission could be a way forward. We believe that the aforesaid would be the right course of action. We, may, however add that every State has certain norms for remission and some of the cases obviously be once in which remission is excluded. Leave aside this scenario, it is stated that in some cases, there is no response or negative response from the Judge concerned. 'No response' is not acceptable. Negative response is something which could be examined by the Committee constituted for remission.

It appears from the note of the State of Tamil Nadu that one of the reasons deciphered for convicts' unwillingness to accept there infractions is stated to be a fear of enhancement of sentence, term of sentence being close to be completed. Insofar as fear of enhancement of sentence is concerned, we really cannot appreciate how that situation would arise where the appeal is of the convict. It would really be a simple exercise of withdrawal of the appeal and remission being granted. Possibly better communication should take place as to how it would operate. This process may be facilitated by adopting the course as in Chhattisgarh with the Magistrates holding the Courts in the Jails on working Saturdays.

Learned Amicus Curiae suggests that the Pilot Project undertaken with nine States now can be extended to some of the other States i.e. Karnataka, Andhra Pradesh, Maharashtra and, Gujarat. We accept the suggestion and ask these States to proceed accordingly.

List for further proceedings on 14th September, 2022.

I.A. No.48269/2022, I.A. No.47960/2022, I.A. No.43485/2022 - APPROPRIATE ORDERS/DIRECTIONS APPROPRIATE ORDERS/DIRECTIONS, I.A. No. 38260/2022 - CLARIFICATION/DIRECTION, I.A. No. 38257/2022, I.A. No. 149236/2021, I.A. No. 48268/2022, I.A. No. 47958/2022, I.A. No. 43474/2022- INTERVENTION/IMPLEADMENT with I.A. No. 10916/2022 - GRANT OF BAIL

There is no need of impleading the applicants in the present petition as the accused can work out their remedies for bail/remission in terms of the guidelines already laid down

Applications stand dismissed with the aforesaid liberty.

Diary No(s). 15406/2022

Applications seeking exemption from filing custody certificate, exemption from filing C/C of the impugned judgment and exemption from filing O.T. are allowed.

Learned counsel for the State has entered appearance and seeks sometime to obtain instructions.

We may however notice that as the case was of kidnapping for ransom money (page 47) proposal for premature release was rejected.

Learned counsel for the State to point out whether such an offence is excluded from the plea of remission and if so for what period.

Learned counsel for the petitioner also submits that in case of "Roshan Ali Vs. Government of Odisha" the same ground for remission was rejected but ultimately interim bail was granted by this court in SLP (Cr1.) No.2781 of 2021 vide order dated 11.7.2022.

Learned counsel for the State is granted two weeks' time to seek instructions and place on record affidavit.

List on 09th September, 2022.

The matter be de-tagged.

(RASHMI DHYANI PANT)
COURT MASTER

(POONAM VAID)
COURT MASTER