



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

WRIT PETITION(CRL.) NO(S). 135 OF 2022

**RADHESHYAM BHAGWANDAS SHAH
@ LALA VAKIL**

...PETITIONER(S)

VERSUS

STATE OF GUJARAT & ANR.

...RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. The present petition has been filed by the convict petitioner seeking direction in the nature of Mandamus to the State of Gujarat to consider his application for pre-mature release under the policy dated 9th July, 1992 which was existing at the time of his conviction.

2. The petitioner along with other co-accused persons faced trial for the offence under Section 302, 376(2)(e)(g) read with Section 149 IPC committed in the State of Gujarat in 2004.

3. Indisputedly, the crime was committed in the State of Gujarat but this Court in Transfer Petition(Crl.) No. 192 of 2004, in the

peculiar facts and circumstances of the case, considered it appropriate to transfer Sessions Case No. 161 of 2004 pending before the learned Additional Sessions Judge, Dahod/Ahmedabad to the competent Court in Mumbai for trial and disposal by an Order dated 6th August 2004.

4. The learned trial Court, Mumbai in Sessions Case No. 634 of 2004, after holding trial, held the petitioner guilty and convicted him for the afore-stated offences and sentenced him to undergo rigorous imprisonment for life by judgment dated 21st January 2008.

5. It may be relevant to note that one of the co-accused Ramesh Rupabhai, who had faced trial along with the petitioner and later convicted by judgment dated 21st January 2008, approached the High Court of Bombay by filing Criminal Writ Petition no. 305 of 2013 seeking pre-mature release but his application came to be dismissed by the High Court of Bombay by Order dated 5th August, 2013 on the premise that the crime was committed in the State of Gujarat and his trial came to be transferred in the peculiar circumstances, under the directions of this Court by Order dated 6th

August, 2004 and once the trial stands concluded and the prisoner has been convicted, the appropriate prison would be the State of Gujarat and accordingly the application filed by the co-accused Ramesh Rupabhai for pre-mature release was left to be examined as per the policy applicable in the State of Gujarat.

6. The present petitioner filed his petition for pre-mature release under Sections 433 and 433A of the Code of Criminal Procedure, 1973(hereinafter being referred to as the “CrPC”) stating that he had undergone more than 15 years 4 months of custody but his petition filed in the High Court of Gujarat came to be dismissed taking note of Section 432(7) CrPC and placing reliance on the judgment of this Court in ***Union of India Vs. V. Sriharan alias Murugan and Others***¹ on the premise that since the trial has been concluded in the State of Maharashtra, the application for pre-mature release has to be filed in the State of Maharashtra and not in the State of Gujarat, as prayed by the petitioner by judgment impugned dated 17th July 2019.

¹ 2016(7) SCC 1

7. As per the custody certificate which has been placed on record, the petitioner, as on 1st April 2022, has undergone the sentence of more than 15 years 4 months without remission.

8. The policy with which the petitioner has to be governed, applicable in the State of Gujarat on the date of conviction, indeed is Resolution No. JLK/3390/CM/16/Part/2/J dated 9th July 1992.

9. It has been settled by this Court in ***State of Haryana Vs. Jagdish***² that the application for grant of pre-mature release will have to be considered on the basis of the policy which stood on the date of conviction. The relevant para is as under:-

“**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.”

10. Learned counsel for the respondents has placed reliance on the judgment of this Court in ***Union of India Vs. V. Sriharan***

2 2010(4) SCC 216

alias Murugan and Others (supra) and submits that since the trial has been concluded in the State of Maharashtra, taking assistance of Section 432(7) CrPC, the expression 'appropriate Government' as referred to under Section 433 CrPC in the instant case, would be the State of Maharashtra and accordingly no error has been committed by the High Court in the order impugned.

11. In our considered view, the submission made by learned counsel for the respondents is not sustainable for the reason that the crime in the instant case was admittedly committed in the State of Gujarat and ordinarily, the trial was to be concluded in the same State and in terms of Section 432(7) CrPC, the appropriate Government in the ordinary course would be the State of Gujarat but the instant case was transferred in exceptional circumstances by this Court for limited purpose for trial and disposal to the neighbouring State (State of Maharashtra) by an order dated 06th August, 2004 but after the conclusion of trial and the prisoner being convicted, stood transferred to the State where the crime was committed remain the appropriate Government for the purpose of Section 432(7) CrPC.

12. Indisputedly, in the instant case, the crime was committed in the State of Gujarat which is the appropriate Government competent to examine the application filed for pre-mature release and that is the reason for which the High Court of Bombay in Criminal Writ Petition No. 305 of 2013 filed at the instance of co-accused Ramesh Rupabhai under its Order dated 5th August, 2013 declined his request to consider the application for pre-mature release and left the application to be examined according to the policy applicable in the State of Gujarat by the concerned authorities.

13. The judgment on which the learned counsel for the respondents has placed reliance may not be of any assistance for the reason that under Section 432(7) CrPC, the appropriate Government can be either the Central or the State Government but there cannot be a concurrent jurisdiction of two State Governments under Section 432(7) CrPC.

14. In the instant case, once the crime was committed in the State of Gujarat, after the trial been concluded and judgment of conviction came to be passed, all further proceedings have to be

considered including remission or pre-mature release, as the case may be, in terms of the policy which is applicable in the State of Gujarat where the crime was committed and not the State where the trial stands transferred and concluded for exceptional reasons under the orders of this Court.

15. Consequently, the petition is allowed. The judgment impugned dated 17th July, 2019 is set aside.

16. The respondents are directed to consider the application of the petitioner for pre-mature release in terms of its policy dated 9th July, 1992 which is applicable on the date of conviction and may be decided within a period of two months. If any adverse order is passed, the petitioner is at liberty to seek remedy available to him under the law.

17. Pending application(s), if any, shall stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(VIKRAM NATH)

NEW DELHI
MAY 13, 2022.