

Mafabhai Motibhai Sagar

v.

State of Gujarat & Ors.

(Criminal Appeal No. 4307 of 2024)

21 October 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

The appellant was convicted for offences punishable under Section 302 read with sections 147 and 148 Penal Code, 1860 and sentenced to life imprisonment. His application for remission was considered expeditiously by the State Government after interference of the Supreme Court. The State Government while granting remission imposed four conditions on the appellant. The appellant contended that two out of these four conditions are vague, subjective and arbitrary. The issue before the Hon'ble Supreme Court is the legality of these two conditions imposed by the appropriate government in exercise of its powers under Section 432(1) of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') while remitting the life sentence of the appellant.

Headnotes[†]

Code of Criminal Procedure, 1973 – s.432(1) – Explained:

Held: The appropriate government has the power to remit the whole or any part of the punishment of a convict unconditionally or subject to certain conditions – Actual remission takes effect only after the convict accepts the conditions – There is an identical provision in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) in form of section 473(1). [Paras 9, 17(i), 2]

Code of Criminal Procedure, 1973 – s.432(1) – The power to grant remission – How to be exercised:

Held: A constitution bench of Supreme Court in Union of India v. V. Sriharan alias Murugan & Ors. (2016) 7 SCC 1, while approving the view taken in Mohinder Singh v. State of Punjab (2013) 3 SCC 294 held that, the decision to grant remission has to be well informed, reasonable and fair to all concerned – Convict cannot seek remission of sentence as of right – Factors including public interest,

* Author

Mafabhai Motibhai Sagar v. State of Gujarat & Ors.

the gravity and nature of the offences involved and antecedents of the convict can be looked into by the appropriate government as the power to grant remission is discretionary – Almost all the States including the State of Gujarat who is a respondent here have a written policy on grant of remission in order to avoid arbitrary use of this power. [Paras 10-11, 12, 17(ii), 17(iii)]

Code of Criminal Procedure, 1973 – s.432(1) – Nature of the conditions that can be imposed by the appropriate government:

Held: The conditions imposed must be fair, reasonable and stand the test of scrutiny of Article 14 of the Constitution – Conditions cannot be arbitrary as it will violate rights guaranteed under Articles 14 and 21 of the Constitution. [Paras 12, 17(iv)]

Code of Criminal Procedure, 1973 – s.432(1) – Whether the condition requiring the convict to behave ‘decently’ for a period of two years after his release from jail is arbitrary and hit by Article 14 of the Constitution:

Held: The condition number 1 imposed by the appropriate government required the convict to: (a) behave ‘decently’ for a period of two years after his release from jail and; (b) submit two respectable sureties to ensure that he does not commit the breach of peace and harmony of the society and does not threaten the complainant and the witnesses – The words ‘decent’ and ‘decency’ are not defined in CrPC or any other cognate legislation, it can mean different things to different people and differently in different times – This condition is thus vague, arbitrary, unclear, unambiguous and capable of having different interpretations – Hence the condition is unenforceable and hit by Article 14. [Paras 13, 18a]

Code of Criminal Procedure, 1973 – s.432(1) and 432(3) – Whether the condition providing for arrest and automatic revocation of remission of sentence if appellant commits any other cognizable offence or inflicts any serious injury to any citizen or property after his release, valid:

Held: The Apex Court while dealing with Section 401 of the CrPC of 1898 (identical to Section 432(3) of CrPC of 1973 and Section 473(3) of BNSS), in Shaikh Abdul Azees vs. State of Karnataka (1977) 2 SCC 485, held that, the provision does not intend to automatically revive the sentence already remitted and the government is under no legal obligation to cancel such remission – This drastic power affecting the convict’s liberty has to be exercised only after due

Digital Supreme Court Reports

compliance of the principles of natural justice – Serving show cause notice, opportunity to file reply and of being heard and a reasoned order by the adjudicating authority are essential before cancellation of such remission – An order cancelling remission can be challenged under Article 226 of Constitution by the convict – Mere registration of a cognizable offence or allegation of breach of condition not a ground for cancellation of remission – A decision to cancel remission has to be made on a case to case basis taking into consideration the seriousness and gravity of offence or breach – Condition number 2 thus clarified. [Paras 14-16, 17(v), 17(vi), 18b, 18c]

Case Law Cited

Shaikh Abdul Azees v. State of Karnataka [[1977\] 3 SCR 393](#)] : (1977) 2 SCC 485; *Union of India v. V. Sriharan alias Murugan & Ors.* [[2015\] 14 SCR 613](#)] : (2016) 7 SCC 1; *Epuru Sudhakar & Anr. v. Govt. of A.P. & Ors.* [[2006\] Supp. 7 SCR 81](#)] : (2006) 8 SCC 161; *Mohinder Singh v. State of Punjab* [[2013\] 3 SCR 90](#)] : (2013) 3 SCC 294 – relied on.

List of Acts

Penal Code, 1860; Prisons (Bombay Furlough and Parole) Rules, 1959; Code of Criminal Procedure, 1973; Constitution of India; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Section 432 of Code of Criminal Procedure, 1973; Remission of sentence; Power to remit; Condition imposed by appropriate authority for remission; Cancellation of remission.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4307 of 2024

From the Judgment and Order dated 15.02.2023 of the High Court of Gujarat at Ahmedabad in SCRA No. 963 of 2023

Appearances for Parties

Rauf Rahim, Sr. Adv., Ali Asghar Rahim, Shekhar Kumar, Advs. for the Appellant.

Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Ms. Shreya Jain, Advs. for the Respondents.

Mafabhai Motibhai Sagar v. State of Gujarat & Ors.**Judgment / Order of the Supreme Court****Judgment****Abhay S. Oka, J.**

1. Leave granted.
2. The issue involved in this appeal is as regards the legality of the conditions imposed while remitting the life sentence of the appellant in the exercise of powers under sub-section (1) of Section 432 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'). There is an identical provision in the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the B NSS') in the form of sub-section (1) of Section 473.

FACTUAL ASPECTS

3. The appellant was convicted for the offence punishable under Section 302 read with Sections 147 and 148 of the Indian Penal Code, 1860 (for short, 'the IPC') and was sentenced on 18th February 2008 to undergo life imprisonment. The conviction of the appellant has attained finality.
4. The present appeal arises out of an order passed by the High Court of Gujarat on an application made by the appellant for grant of parole under Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959. As the prayer was rejected by the impugned order, this appeal was filed before this Court. While arguing the appeal before this Court, on 26th June 2023, a submission was made on behalf of the appellant that the application for remission made by the appellant under sub-section (2) of Section 432 of the CrPC was not being considered by the State Government. Therefore, a notice was issued on 26th June 2023 on that limited aspect, and a direction was issued to expeditiously decide the pending application for grant of remission.
5. On 15th September 2023, the Home Department of the Government of Gujarat passed an order granting remission to the appellant. His remaining sentence was remitted. While granting remission by the order dated 15th September 2023, four conditions were imposed, which read thus:

Digital Supreme Court Reports**“Conditions:**

- (1) **After the release from jail the prisoner shall behave decently for 2 (Two) years.** For this purpose he has to submit two Sureties of the respectable persons of the Society stating that the prisoner shall not breach the peace and harmony of the society and also shall not threaten the complainant and witnesses.
- (2) **If the prisoner after the release from the jail carries out any cognizable offence or inflict any serious injury to any citizen or property then he will be arrested again and he will have to serve the remaining period of sentence in jail.**
- (3) After being released from jail the prisoner shall mark his presence in the nearest police station for a period of 1 (one) year.
- (4) The prisoner shall be released only after paying the unpaid fine amount if any.”

(emphasis added)

As the appellant was aggrieved by the first two conditions, we permitted him to amend the appeal and challenge conditions nos.1 and 2 instead of driving him to file a fresh writ petition before the High Court.

SUBMISSIONS

6. Mr Rauf Rahim, the learned senior counsel appearing for the appellant, has made submissions on the power of the State Government to impose conditions while granting remission. He submits that the impugned conditions defeat the very object of the grant of remission. He submitted that the word “decently” used in condition no.1 is vague. The concept of decency differs from person to person. Therefore, putting such a condition of maintaining decent behaviour is completely violative of Article 14 of the Constitution of India being manifestly arbitrary. It is submitted that putting such a condition confers arbitrary power on the State Government to cancel the remission order. Hence, the condition violates Article 21 of the Constitution of India.

Mafabhai Motibhai Sagar v. State of Gujarat & Ors.

7. Regarding condition no.2, the learned senior counsel submitted that even if a false allegation is made against the appellant of commission of any cognizable offence, he will be deprived of remission granted under the order dated 15th September 2023. The learned senior counsel relied upon a decision of this Court in the case of *Shaikh Abdul Azees v. State of Karnataka*.¹ While dealing with sub-section (3) of Section 401 of the Code of Criminal Procedure, 1898 (for short, 'the CrPC of 1898') which is *pari materia* with Section 432 of the CrPC, this Court held that on breach of any of the conditions on which remission is granted, there is no automatic revival of the sentence. He submitted that both conditions are completely illegal.
8. Ms Swati Ghildiyal, the learned counsel appearing for the 1st respondent-State of Gujarat, submitted that under sub-section (1) of Section 432 of the CrPC, the appropriate Government has the power to remit the whole or any part of the punishment subject to certain conditions. The provision requires the convict to accept the said conditions, without which he cannot be granted the benefit of remission. The learned counsel submitted that it is very well settled that a convict is not entitled to remission of the sentence as a matter of right. She submitted that the limited right of the convict is only to be considered for remission as held by this Court in the case of *Union of India v. V. Sriharan alias Murugan & Ors.*² The learned counsel also relied upon a decision of this Court in the case of *Epuru Sudhakar & Anr. v. Govt. of A.P. & Ors.*,³ which lays down that the power to remit sentence is a discretionary power which has to be exercised on public interest considerations. The learned counsel submitted that the appellant has accepted the conditions imposed on him and has furnished surety in terms of condition no.1. Hence, no interference is called for.

CONSIDERATION OF SUBMISSIONS

9. Section 432 of the CrPC reads thus:

"432. Power to suspend or remit sentences.—(1) When any person has been sentenced to punishment for an

1 [1977] 3 SCR 393 : (1977) 2 SCC 485

2 [2015] 14 SCR 613 : (2016) 7 SCC 1

3 [2006] Supp. 7 SCR 81 : (2006) 8 SCC 161

Digital Supreme Court Reports

offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) **If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.**

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and—

Mafabhai Motibhai Sagar v. State of Gujarat & Ors.

- (a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or
 - (b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.
- (6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.
- (7) In this section and in Section 433, the expression “appropriate Government” means,—
- (a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;
 - (b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.”

(emphasis added)

Under sub-section (1) of Section 432 of the CrPC, the appropriate Government has the power to remit the whole or any part of the punishment of a convict. The remission can be granted either unconditionally or subject to certain conditions. As expressly provided under sub-section (1) of Section 432, actual remission takes effect only after the convict accepts the conditions. Thus, there is no doubt that there exists a power in the appropriate Government to grant remission subject to compliance with conditions.

10. Insofar as the exercise of power under sub-section (1) of Section 432 of the CrPC is concerned, the Constitution Bench in the case of V. Sriharan² has approved the view taken by this Court in the case of Mohinder Singh v. State of Punjab.⁴ The view taken is that the

Digital Supreme Court Reports

decision to grant remission has to be well-informed, reasonable and fair to all concerned.

11. It is no doubt true that the power to remit a sentence under Section 432(1) of the CrPC is discretionary. One of the considerations for the exercise of the discretion can be public interest. The gravity and nature of the offences committed by the convict are also factors to be considered. The antecedents of the convict are also relevant. Almost all the States have a written policy on the grant of remission under Section 432(1) of the CrPC. For example, the 1st respondent, the State of Gujarat, has a policy that forms part of the Government Resolution dated 23rd January 2014, which was amended from time to time. The said Government Resolution incorporates guidelines/policy for consideration of cases for grant of remission and premature release of prisoners. The existence of a rational policy is necessary to prevent the arbitrary exercise of power to grant a remission under Section 432(1) of the CrPC.
12. A convict cannot seek remission as a matter of right. However, he has a right to say that his case for the grant of remission ought to be considered in accordance with the law. The power under sub-section (1) of Section 432 of the CrPC has to be exercised in a fair and reasonable manner. Therefore, conditions imposed while exercising the power under sub-section (1) of Section 432 must be reasonable. The conditions must stand the test of scrutiny of Article 14 of the Constitution of India. If the conditions imposed are arbitrary, the conditions will stand vitiated due to violation of Article 14. Such arbitrary conditions may also violate the convict's rights under Article 21 of the Constitution.
13. Now, we come to condition no.1. The first part of this condition requires the convict to behave decently for a period of two years after release from jail. The convict must submit two respectable sureties to ensure that he does not commit the breach of peace and harmony of the society and does not threaten the complainant and the witnesses. The words 'decent' or 'decently' are not defined in the CrPC or any other cognate legislation. The concept of decency of each human being is likely to be different. The idea of decency keeps on changing with time. As the term 'decency' is not defined in the CrPC or any other cognate legislation, every person or authority may interpret the same differently. Therefore, such a condition while granting remission becomes too

Mafabhai Motibhai Sagar v. State of Gujarat & Ors.

subjective. Putting such a vague condition while exercising the power under sub-section (1) of Section 432 of the CrPC will give a tool in the hands of the executive to cancel the remission at its whims and fancies. Therefore, such a condition is arbitrary and will be hit by Article 14 of the Constitution of India. Such a condition cannot be imposed as it will defeat the very object of remitting the sentence in the exercise of powers under sub-section (1) of Section 432 of the CrPC. Therefore, condition no.1 cannot be sustained. If a condition imposed is unclear or ambiguous, it can have different meanings. Consequently, it becomes very difficult to enforce such conditions. Thus, the condition imposed while granting remission must be such that it is capable of being complied with and enforced.

14. Now, we come to condition no.2, which provides that if the appellant, after his release from jail, commits any cognizable offence or inflicts any serious injury to any citizen or property, he will be arrested again and will have to serve the remaining period of the sentence in jail. Thus, this condition authorises the appropriate Government to arrest the convict and revoke the benefit of remission. This clause provides for automatic cancellation of the order remitting the sentence. In this respect, it is necessary to consider the decision of this Court in the case of *Shaikh Abdul Azees*¹. It was a case where remission was earned by the appellant therein after undergoing a life sentence for fifteen and a half years. The High Court held that Section 303 of the IPC was applicable, and this was a case of conditional remission under Section 401 of the CrPC of 1898. Section 401 of the CrPC of 1898 has been quoted in paragraph 13 of the said decision, which reads thus:

“13. We are, however, clearly of opinion that for the purpose of Section 303 IPC it does not make any difference whether the remission under Section 401 CrPC is with or without conditions. This is clear from a perusal of sub-section (3) of Section 401 CrPC which reads as follows:

“401(3) If any condition on which a sentence has been suspended or remitted, is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission and thereupon the person in whose favour the sentence has been suspended or remitted, may, if at large, be arrested by any police officer without

Digital Supreme Court Reports

warrant and remanded to undergo the unexpired portion of the sentence.”

An identical provision is found in sub-section (3) of Section 432 of the CrPC and sub-section (3) of Section 473 of BNSS. Ultimately, in paragraph 14 of the said decision, while dealing with sub-section (3) of Section 401 of the CrPC of 1898, this Court held thus:

“14. It is manifest from the above provision that on breach of any condition of the remission there is not an automatic revival of the sentence. It will certainly be open to the Government in a particular case to cancel the remission but it may not. The Government is not under a legal obligation to cancel the remission. It is only when the Government chooses to pass an order of cancellation of the remission of sentence that the convict is arrested and is required to serve the unexpired portion of the sentence. During the interregnum the accused who is released cannot be said to be under a sentence of imprisonment for life. While he is in enjoyment of the freedom on account of remission, that period is not even reckoned under Section 401 CrPC for the purpose of calculation of the sentence to be served in the eventuality.”

(emphasis added)

15. The effect of remitting the sentence is the restoration of the liberty of a convict. If the order granting remission is to be cancelled or revoked, it will naturally affect the convict's liberty. The reason is that when an action is taken under sub-section (3) of Section 432 of the CrPC or sub-section (3) of Section 473 of the BNSS, it results in the convict being taken to prison for undergoing the remaining part of the sentence. Thus, the benefit of remission stands withdrawn. Therefore, this drastic power cannot be exercised without following the principles of natural justice. A show cause notice must be served on the convict before taking action to withdraw/cancel remission. The show cause notice must contain the grounds on which action under sub-section (3) of Section 432 of the CrPC or sub-section (3) of Section 473 of the BNSS is proposed to be taken. The concerned authority must give the convict an opportunity to file a reply and of being heard. After that, the authority must

Mafabhai Motibhai Sagar v. State of Gujarat & Ors.

pass an order stating brief reasons. The principles of natural justice must be read into sub-section (3) of Section 432 and sub-section (3) of Section 473 of the BNSS. The convict whose remission has been cancelled can always adopt a remedy under Article 226 of the Constitution of India.

16. In view of the legal position stated above, condition no.2 cannot be interpreted to mean that every allegation of a breach thereof would automatically result in the cancellation of the order of remission. Registration of a cognizable offence against the convict, *per se*, is not a ground to cancel the remission order. The allegations of breach of condition cannot be taken at their face value, and whether a case for cancellation of remission is made out will have to be decided in the facts of each case. Every case of breach cannot invite cancellation of the order of remission. The appropriate Government will have to consider the nature of the breach alleged against the convict. A minor or a trifling breach cannot be a ground to cancel remission. There must be some material to substantiate the allegations of breach. Depending upon the seriousness and gravity thereof, action can be taken under sub-section (3) of Section 432 of the CrPC or sub-section (3) of Section 473 of the BNSS of cancellation of the order remitting sentence.
17. Our conclusions can be summarised as under:
 - (i) Under sub-section (1) of Section 432 of the CrPC or sub-section (1) of Section 473 of the BNSS, the appropriate Government has the power to remit the whole or any part of the punishment of a convict. The remission can be granted either unconditionally or subject to certain conditions;
 - (ii) The decision to grant or not to grant remission has to be well-informed, reasonable and fair to all concerned;
 - (iii) A convict cannot seek remission as a matter of right. However, he has a right to claim that his case for the grant of remission ought to be considered in accordance with the law and/or applicable policy adopted by the appropriate Government;
 - (iv) Conditions imposed while exercising the power under sub-section (1) of Section 432 or sub-section (1) of Section 473 of the BNSS must be reasonable. If the conditions imposed are arbitrary, the conditions will stand vitiated due to violation of

Digital Supreme Court Reports

Article 14. Such arbitrary conditions may violate the convict's rights under Article 21 of the Constitution;

- (v) The effect of remitting the sentence, in part or full, results in the restoration of liberty of a convict. If the order granting remission is to be cancelled or revoked, it will naturally affect the liberty of the convict. The reason is that when action is taken under sub-section (3) of Section 432 of the CrPC or sub-section (3) of Section 473 of the BNNS, it results in the convict being taken to prison for undergoing the remaining part of the sentence. Therefore, this drastic power cannot be exercised without following the principles of natural justice. A show cause notice must be served on the convict before taking action to withdraw/cancel remission. The show cause notice must contain the grounds on which action under sub-section (3) of Section 432 of the CrPC or sub-section (3) of Section 473 of BNNS is sought to be taken. The concerned authority must give the convict an opportunity to file a reply and of being heard. After that, the authority must pass an order stating the reasons in brief. The convict can always challenge the order of cancellation of remission by adopting a remedy under Article 226 of the Constitution of India.; and
- (vi) Registration of a cognizable offence against the convict, per se, is not a ground to cancel the remission order. The allegations of breach of condition cannot be taken at their face value, and whether a case for cancellation of remission is made out will have to be decided in the facts of each case. Every case of breach cannot invite cancellation of the order of remission. The appropriate Government will have to consider the nature of the breach alleged against the convict. A minor or a trifling breach cannot be a ground to cancel remission. There must be some material to substantiate the allegations of breach. Depending upon the seriousness and gravity thereof, action can be taken under sub-section (3) of Section 432 of the CrPC or sub-section (3) of Section 473 of the BNNS of cancellation of the order remitting sentence.

18. Therefore, we pass the following order:

- a. The first part of condition no.1 regarding behaving decently, being manifestly arbitrary, is struck down. Therefore, the undertaking

Mafabhai Motibhai Sagar v. State of Gujarat & Ors.

given by the appellant and the surety bonds submitted by him stand cancelled only to that extent;

- b. Condition no.2 stands clarified in terms of this judgment;
- c. The order of remission shall not be revoked on the ground of breaches of conditions without compliance with the principles of natural justice as provided in paragraph 17(v) above; and
- d. The Appeal is partly allowed on the above terms.

Result of the case: Appeal partly allowed.

[†]*Headnotes prepared by:* Swathi H. Prasad, Hon. Associate Editor
(Verified by: Shadan Farasat, Adv.)