



IN THE HIGH COURT OF ORISSA AT CUTTACK

JCRLA No. 49 of 2008

Lajara Chhatria

....

Appellant

Mr. J.K. Panda, Advocate

-versus-

State of Odisha

....

Respondent

Mr. Arupananda Das
Addl. Govt. Advocate

CORAM:

THE HON'BLE MR. JUSTICE S.K. SAHOO

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

ORDER

20.06.2024

Order No.

08. 1. This order arises on the basis of the information furnished by the learned trial Court upon receipt of the direction issued by this Court pursuant to the dismissal of the JCRLA preferred by the Appellant against the order of his conviction and sentence awarded by the trial Court. In its direction, this Court called upon the Appellant to surrender and to serve the remainder of the sentence. The learned trial Court informed that pending the Appeal, in exercise of the powers conferred under Article 161 of the



Constitution of India, the Governor has been pleased to remit the unexpired portion of the sentence passed on the Appellant and to order his premature release.

It is, therefore, considered expedient by this Court to deal with a situation of this nature by this order more particularly in respect to the various aspect to be looked into in a pending Appeal where clemency is allowed. To assist in passing the order, this Court directed the learned Law Secretary, Government of Odisha and the DG, Prisons, Odisha to furnish affidavit showing any guidelines to deal with a situation where premature release order is passed pending Appeal. Both, the Secretary, Law and DG, Prisons have filed their respective affidavits.

2. Heard the learned AGA Mr. Das.

3. Having gone through the affidavits and the circumstances, this Court finds it worth to deal with issue as hereunder.

4. The High Court of Punjab & Haryana, in the matter of *Ravdeep Kaur Vs. State of Punjab & Ors.* reported in **2023:PHHC:127233** took the following view –

“Merely because the appeal filed by the petitioner is still pending for disposal is apparently not enough for the authorities concerned not to initiate



and consider her case for grant of premature release. In **Harjit Singh @ Hare Ram vs. State of Punjab and Others 2015(1) R.C.R. (Criminal) 370**, a Division Bench of this Court after relying upon the judgment of the Hon'ble Supreme Court in **Narayan Dutt and Others vs. State of Punjab and another 2011 (2) R.C.R. (Criminal) 140**, has held that the case of a convict for being released prematurely could not be withheld merely for the reason that the appeal preferred by him/her was pending before the Appellate Court. On the other hand, if the case of the convict falls squarely under the instructions issued by the Governor of Punjab for premature release, the Government has to consider the same despite the pendency of the appeal before the Court.”

5. In the matter of *Maru Ram Vs. Union of India* reported in (1981) 1 SCC 107, the Constitutional Bench of Supreme Court while answering the vires of premature release in the then newly enacted provision of 433-A in the Code of Criminal Procedure, 1973, held that –

“Sentencing is a judicial function but the execution of the sentence, after the Court’s pronouncement, is ordinarily a matter for the Executive under the CrPC, going by Entry 2 in List III of the Seventh Schedule. Keeping aside the constitutional powers under Arts. 72 and 161 which are ‘untouchable’ and ‘unapproachable’ for any legislature, let us examine the law of sentencing, remission, and release.

...



In the first place, an order of remission does not wipe out the offence; it also does not wipe out the conviction. All that it does is to have an effect on the execution of the sentence. An order of remission thus does not in any way interfere with the order of the Court; it affects only the execution of the sentence passed by the Court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the Court, though the order of conviction and sentence passed by the Court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional Court would have of reducing the sentence passed by the trial Court and substituting in its place the reduced sentence adjudged by the appellate or revisional Court.

...

Though, therefore, the effect of an order of remission is to wipe out that part of the sentence of imprisonment which has not been served out and thus in practice to reduce the sentence to the period already undergone, in law the order of remission merely means that the rest of the sentence need not be undergone, leaving the order of conviction by the Court and the sentence passed by it untouched.”

6. It emerges from the above decisions that an order of premature release, as granted by the executive authority, affects the execution of the sentence but does not alter the judicial determination of guilt or the sentence itself. The principles established under the law clarify that an order



of remission or premature release does not erase the offence or the conviction. It impacts only the execution of the sentence, meaning the convict is relieved from serving the remainder of the sentence as ordered by the Court. The conviction and the sentence imposed by the Court remain intact and unaltered. In the case in hand, the Government, exercising its executive powers under Section 432 of the Code of Criminal Procedure, 1973 and the relevant provisions, has granted premature release to the Appellant. This release means that the Appellant is not required to serve the remaining term of the life sentence as initially imposed. However, the judicial conviction and sentence remain valid and effective. The premature release of the Appellant does not affect the pending appeal and as such the appeal against the conviction and sentence remains under the jurisdiction of this Court. The Appellant's release does not equate to an acquittal or a reduction in the sentence. This Court retains the authority to adjudicate the appeal, including the power to confirm, alter, or set aside the conviction and sentence based on the merits of the case.

7. Keeping in mind the dictum of the supreme Court, to ensure consistency and clarity in handling cases where a convict is granted premature release in the event of



pendency of their appeal, the following facts need be required to ensure to avoid confusion. It is expected that this may help harmonize the judicial process with executive actions of premature release, ensuring that the legal principles regarding sentencing, remission, and execution of sentences are consistently applied. Adherence of the following shall maintain judicial integrity and clarity in the adjudication of appeals involving premature release.

Key points to consider:

- 1. Upon being notified of the premature release of a convict by the trial Court or executive authorities, the appellate Court shall formally acknowledge the action;*
- 2. The order of premature release should be recorded in the case file;*
- 3. The appeal against the conviction and sentence shall continue to be adjudicated on its merits, unaffected by the premature release;*
- 4. The Court retains full authority to confirm, alter, or set aside the conviction and sentence based on the appeal's merits;*
- 5. Both the prosecution and the defence should be clearly informed that the premature release pertains only to the execution of the sentence;*



6. *The conviction and original sentence remain legally effective until modified by judicial order;*
7. *The Court should ensure that the convict complies with any conditions imposed by the executive authority as part of the premature release;*
8. *The registry of the Court must ensure that cases involving premature release are prioritized and listed for hearing at the earliest possible date;*
9. *A separate in-house mechanism may be maintained for such cases to monitor compliance and expedite proceedings;*
10. *Detailed records of the premature release, including the executive order and any conditions imposed, should be maintained in the Court's records;*
11. *Any subsequent orders or actions by the Court related to the appeal shall have no effect on the premature release unless its merit is under challenge in a judicial review.*

8. From the discussions as above, there is no anomaly regarding the power of the appropriate Government for premature release pending an Appeal. In the instant case, this Court has confirmed the conviction and sentence passed by the learned trial Court. Since the function of execution of the sentence rests with the executive and the



Hon'ble Governor in exercise of the power conferred under Article 161 of the Constitution has been pleased to extend the benefit of premature release to the Appellant, respecting the said decision of the appropriate Government which is not under challenge, this Court modifies its order dated 15.11.2023 and withdraws its direction calling upon the Appellant before the learned trial Court to serve out the sentence.

(S.K. Sahoo)
Judge

(Chittaranjan Dash)
Judge

Bijay