High Court of Judicature at Allahabad
(Lucknow)

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Reserved on 27.04.2024

Delivered on 25.05.2024

Court No. - 9
Case :- CRIMINAL MISC. WRIT PETITION No. - 1915 of 2024

Petitioner :- Ambrish Kumar Verma
Respondent :- State Of U.P. Thru. Chief Scy. Civil Secrt. Lko. And Others
Counsel for Petitioner :- Yogeshwar Sharan Srivastava
Counsel for Respondent :- G.A.,Arvind Kumar Tiwari,Pranjal Krishna,Ravi Kant Pandey

Hon'ble Vivek Chaudhary,J.
Hon'ble Abdul Moin,J.
Hon'ble Saurabh Lavania,J.

1. Heard Shri Yogeshwar Sharan Srivastava, learned counsel for the petitioner, Dr V. K. Singh, learned Government Advocate, Shri S.N. Tilhari, learned A.G.A.-I, Shri Bipul Kumar Singh and Shri Shivendra Shivam Singh Rathore, learned counsels for the State-respondents, Shri Ravi Kant Pandey, learned counsel for the respondent No.3, Ms Abhilasha Singh, Advocate, holding brief of Shri Arvind Kumar Tiwari, learned counsel for the respondent No.4, Shri Pranjal Krishna, learned Amicus Curiae and Shri Prashant Kumar Singh, learned Advocate appearing from the Bar.

2. A Division Bench of this Court vide order dated 21.03.2024 passed in this petition has referred the following questions for consideration by the Larger Bench.

> *"(1) Whether the directions issued by the Division Bench in Ganesh (supra) that too general directions, commanding the Chief Judicial Magistrates to release convicts whose applications for remission/premature release have remained pending beyond a particular period, as interim measure, till disposal of the said applications, is in accordance with law especially in view of the Constitution Bench decision in V. Sriharan @ Murugan and others (supra) and H. Nilofer Nisha (supra)?*
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> *(2) Whether the High Court in exercise of its criminal appellate jurisdiction under the Code of Criminal Procedure read with Section 482 Cr.P.C. can confer jurisdiction upon the Chief*

> *Judicial Magistrates/Magistrates in the District Courts which the law otherwise does not confer upon them?"*

3. The reason of referral order dated 21.03.2024 passed in this petition is difference of opinion between the judgment and order dated 10.01.2024 passed by this Court at Allahabad in ***Criminal Appeal No.165 of 2016 (Ganesh vs. State of U.P.)*** and the referral order dated 21.03.2024 passed in the present writ petition.

4. In the case of ***Ganesh*** (supra), the appellant/convict, who was convicted for the charge of murder of three minor children, preferred second application under Section 389 Cr.P.C. for suspending the sentence and enlarging him on bail on the ground that the appellant has undergone 18 years, 9 months total custody and approximately 24 years of custody while his application for remission is pending consideration. Taking note of the same, the Division Bench directed the State counsel to verify as to whether the remission application of the appellant was recommended by the Superintendent, Central Jail, Fategarh or not. In response thereof, learned AGA on the date fixed, i.e. 10.01.2024, informed the Court that the case of the appellant has been recommended and is under consideration and it would be decided by the competent authority expeditiously. The Division Bench issued certain directions in order dated 10.01.2024. Relevant paragraphs 13 and 14 of the said order read as under:-

> *"13. The primary concern of this Court is with regard to the delay on the part of State Government at various levels as the case is processed through different departments before the sanction for premature release is either finally granting or declining.*
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> *14. Considering the delay in disposing of the premature release cases in the light of the judgement of the Hon'ble Supreme Court in Rashidul Jafar @ Chota (supra), in exercise of power under Article 226 of the Constitution of India read with Section 482 Cr.P.C., it is directed that the Chief Judicial Magistrate as well as Secretary, Legal Services Authority in each sessions division concerned will submit a periodical report to the Registrar General of this Court which will be tagged with this file, after every three months after seeking information from their concerned Jail Superintendents to this effect :-*

(a) The number of cases recommended by the Superintendent of jail(s), which are pending approval by the competent authority;

(b) In case, where a case is recommended six months prior to the date when such a person becomes eligible for consideration to premature release, as per the recommendation made by the Superintendent Jail concerned and no final decision is taken despite lapse of six months, the Secretary, District Legal Services Authority of each District will call upon the family member of such a convict informing them that w.e.f. the date when the premature release of a convict is due as per the recommendation and no final decision/call is taken by the State Government, the convict will be released on bail subject to furnishing bail/surety bonds before the Chief Judicial Magistrate concerned apart from;

(c) An undertaking by a family member of the convict that in the event of premature release case of such a convict is rejected by the Government, he/she will surrender back to the concerned Jail to undergo further imprisonment;

(d) The passport of such a convict, if any, till the time final decision is taken by the competent authority, will remain deposited with the local police where FIR was registered or with the Court and such person will not be permitted to travel abroad without the prior permission of the Chief Judicial Magistrate concerned;

(e) Where the convicts are residents of other States, the Chief Judicial Magistrate may in his/her discretion ask for an undertaking of a respectable, like Sarpanch or Lamberdar or any other permanent resident of that village that till the time a final decision is taken, the person will stay at his given native address and will surrender back, if so required;

(f) The Secretary, District Legal Service Authority will also maintain record of the convict(s), who are likely to apply for premature release within the next six months so as to provide him/her the necessary information in this regard to avoid any overstay in jail.

(g) This order will apply mutatis mutandi to all the convicts, who are undergoing the sentence in the District/Central Jail in the State of U.P. and all the Secretary, District Legal Services Authority will collect the relevant data from the concerned jail and will make the necessary compliance and will ensure release of the convict on bail to be furnished before Chief Judicial Magistrate concerned after his due date of release as per the recommendation of Superintendent of the concerned jail.

(h) <u>Such directions are issued to put reverse burden on the State Governments to decide the premature release case within the time limit of 6 months as per their own policy/instructions.</u> In case it is to be rejected on the grounds of being a heinous crime or threat to the security to State etc., as provided in instructions

> *such decision be taken within time frame as per policy so that the convict may not get bail." (Emphasis added)*

5. In the present petition after taking into consideration the judgment of Constitution Bench of Supreme Court in ***Union of India Vs. V. Sriharan @ Murugan and others; 2016 (7) SCC 1*** and ***Home Secretary (prison) and others vs. H. Nilofer Nisha; (2020) 14 SCC 161***, the Division Bench has held that the judgment in ***Ganesh (Supra),*** requires reconsideration and, thus, the Division Bench referred the aforesaid two questions.

6. Remission of a convict is permissible under Articles 72 and 161 of the Constitution of India and also under Section 432/433 of the Cr.P.C. A policy was framed in the State of U.P. vide Government Order dated 01.08.2018 in exercise of power under Article 161 of the Constitution of India which was amended by Government Orders dated 28.07.2021 and 27.05.2022. The said policy of the State Government was considered by the Supreme Court in the case of ***Rashidul Jafar @ Chota; 2022 SCC Online SC 1201***, which is considered in the latter part of this judgment.

7. In the case of ***V. Sriharan @ Murugan and others*** (Supra)**,** the Constitution Bench of the Supreme Court was dealing with the questions referred *"Whether the 'appropriate Government' is permitted to exercise the power of remission under Sections 432/433 of the Code after the parallel power has been exercised by the President under Article 72 or the Governor under Article 161 or by this Court in its constitutional power under Article 32 as in this case?"* The said question is answered in Paragraph 114 in the following terms:-

> *"**114**. Therefore, it must be held that there is every scope and ambit for the appropriate Government to consider and grant remission under Sections 432 and 433 of the Criminal Procedure Code even if such consideration was earlier made and exercised under Article 72 by the President and under Article 161 by the Governor. As far as the implication of Article 32 of the Constitution by this Court is concerned, we have already held that the power under Sections 432 and 433 is to be exercised by the appropriate Government statutorily, it is not for this Court to exercise the said power and it is always left to be decided by the appropriate Government, even if someone approaches this Court*

> *under Article 32 of the Constitution. We answer the said question on the above terms." (Emphasis added).*

8. In the case of **H. Nilofer Nisha (Supra)**, the Supreme Court encountered a dispute akin to the present matter regarding the premature release of life imprisonment detainees. The Court clarified that such determinations fall within the realm of governmental authority rather than judicial purview. Parole or remission is regarded as a privilege subject to specific conditions, not an inherent right. While the Court can step in if authorities unduly delay decisions on a detainee's representation, it lacks the direct power to grant release. Its intervention is limited to compelling the competent authority to promptly adjudicate. Moreover, the court reserves the right to review and intervene if it deems the authority's decision unjust. The relevant paras i.e. para(s) 17, 26, 31 to 33 of this judgment on reproduction reads as under:-

> *"**17.** In these cases, the detenus have been sentenced to imprisonment for life and as such their detention cannot be said to be illegal. It is not for the writ court to decide whether a prisoner is entitled to parole or remission and these matters lie squarely in the domain of the Government.*
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> ***26.** We would also like to point out that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations. The court cannot exercise these powers though once the powers are exercised, the Court may hold that the exercise of powers is not in accordance with rules. In support of his contention, the learned Senior Counsel for the detenus relied upon the Rules of the High Court of Madras and referred to Rule 1 of the Rules which reads as follows:*
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> *"A petition for direction, order or writ, including a writ of habeas corpus, mandamus, certiorari, quo warranto. Prohibition or certiorarified mandamus or any other writ shall be in the form of a petition accompanied by an affidavit containing facts, grounds and the prayer…"*
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> ***31**. The issue before us in the present case is whether the High Court can direct the release of a petitioner under G.O. (Ms.) No.64 dated 01.02.2018. We do not think so. In all these cases, the representations made by the detenus had not been decided. In our view, the proper course for the Court was to direct that the representations of the detenus be decided within a short period.*

Keeping in view the fact that the Scheme envisages a report of the Probation Officer, a reference by the District Level Committee and thereafter the matter has to be placed before the Range Deputy Inspector General concerned and before Regional Probation Officer and thereafter before the State Level Committee, we feel that it would be reasonable to grant 2 - 3 months depending on the time when the representation was filed for the State to deal with them. When the petition is filed just a few days before filing the representation then the Court may be justified in granting up to 3 months' time to consider the same. However, if the representation is filed a couple of months earlier and the report of the Probation Officer is already available then lesser time can be granted. No hard and fast timelines can be laid down but the Court must give reasonable time to the State to decide the representation.

***32**. We are clearly of the view that the Court itself cannot examine the eligibility of the detenu to be granted release under the Scheme at this stage. There are various factors, enumerated above, which have to be considered by the committees. The report of the Probation Officer is only one of them. After that, the District Committee has to make a recommendation and finally it is the State Level Committee which takes a final call on the matter. We are clearly of the view that the High Court erred in directing the release of the detenu forthwith without first directing the competent authority to take a decision in the matter. Merely because a practice has been followed in the Madras High Court of issuing such type of writs for a long time cannot clothe these orders with legality if the orders are without jurisdiction. Past practice or the fact that the State has not challenged some of the orders is not sufficient to hold that these orders are legal.*

***33**. In case, as pointed out above, a petition is filed without any decision(s) of the State Level Committee in terms of Para 5(I) of the G.O. in question, the Court should direct the Committee/authority concerned to take decision within a reasonable period. Obviously, too much time cannot be given because the liberty of a person is at stake. This order would be more in the nature of a writ of mandamus directing the State to perform its duty under the Scheme. The authorities must pass a reasoned order in case they refuse to grant benefit under the Scheme. Once a reasoned order is passed then obviously the detenu has a right to challenge that order but that again would not be a writ of habeas corpus but would be more in the nature of a writ of certiorari. In such cases, where reasoned orders have been passed the High Court may call for the record of the case, examine the same and after examining the same in the context of the parameters of the Scheme decide whether the order rejecting the prayer for premature release is justified or not. If it comes to the conclusion that the order is not a proper order then obviously it can direct the release of the prisoner by giving him the benefit of the Scheme. There may be cases where*

> *the State may not pass any order on the representation of the petitioner for releasing him in terms of the G.O.(Ms) No.64 dated 01.02.2018 despite the orders of the Court. If no orders have been passed and there is no explanation for the delay then the Court would be justified in again calling for the record of the case and examining the same in terms of the policy and then passing the orders."*

9. The policy of the State of U.P. introduced by the Government Order dated 28.07.2021 and modified by the Government Order dated 27.05.2022 was duly considered by the Supreme Court in the case of ***Rashidul Jafar*** (supra). After thorough consideration of the same, the following directions were issued by the Supreme Court.

> *"18. We direct that:*
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> *(i) All cases for premature release of convicts undergoing imprisonment for life in the present batch of cases shall be considered in terms of the policy dated 1 August 2018, as amended, subject to the observations which are contained herein.*
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> *The restriction that a life convict is not eligible for premature release until attaining the age of sixty years, which was introduced by the policy of 28 July 2021, stands deleted by the amendment dated 27 May 2022. Hence, no case for premature release shall be rejected on that ground;*
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> *(ii) In the event that any convict is entitled to more liberal benefits by any of the amendments which have been brought about subsequent to the policy dated 1 August 2018, the case for the grant of premature release would be considered by granting benefit in terms of more liberal amended para/clause of the policies. All decisions of premature release of convicts, including those, beyond the present batch of cases would be entitled to such a beneficial reading of the policy;*
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> *(iii) In terms of para 4 of the policy dated 1 August 2018, no application is required to be submitted by a convict undergoing life imprisonment for premature release. Further, through amendment dated 28 July 2021, para 3(i), which included convicts undergoing life imprisonment who have not filed application for pre-mature release in the prohibited category, has specifically been deleted. Accordingly, all cases of convicts undergoing life sentence in the State of Uttar Pradesh who are eligible for being considered for premature release in terms of the policy, including but not confined to the five hundred and twelve prisoners involved in the present batch of cases, shall be considered in terms of the procedure for premature release stipulated in the policy;*

> *(iv) The District Legal Services Authorities in the State of Uttar Pradesh shall take necessary steps in coordination with the jail authorities to ensure that all eligible cases of prisoners who would be entitled to premature release in terms of the applicable policies, as noticed above, would be duly considered and no prisoner, who is otherwise eligible for being considered, shall be excluded from consideration.*
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> *(v) These steps to be taken by DLSAs would, include but not be limited to, Secretaries of DLSAs seeking status report on all prisoners undergoing life imprisonment in the prisons falling under their jurisdiction in terms of the format of table prepared in Annexure-A covering the details mentioned in para 13 of this judgment and ensuring its submission by relevant authorities within eight weeks of this order as well as on an annual basis. Further, DLSAs would utilize this status report to monitor and engage with respective authorities to ensure the implementation of our directions to ensure premature release in terms of applicable policies in all eligible cases of convicts undergoing life sentence on a continuous basis;*
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> *(vi) The applications for premature release shall be considered expeditiously.*
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> *Those cases which have already been processed and in respect of which reports have been submitted shall be concluded and final decisions intimated to the convict no later than within a period of one month from the date of this order. Cases of eligible life convicts who are (i) above the age of seventy years; or (ii) suffering from terminal ailments shall be taken up on priority and would be disposed of within a period of two months. The Uttar Pradesh State Legal Services Authority shall, within a period of two weeks, lay down the priorities according to which all other pending cases shall be disposed of. All other cases shall, in any event, be disposed of within a period of four months from the date of this order; and*
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> *(vii) Where any convict undergoing life imprisonment has already been released on bail by the orders of this Court, the order granting interim bail shall continue to remain in operation until the disposal of the application for premature release."*

10. From a perusal of the directions issued by the Supreme Court in the case of ***Rashidul Jafar*** (supra), it is apparent that; (a) the application for premature release shall be considered expeditiously; (b) one month's period has been prescribed for taking decision on the applications in regard to the convict whose cases have already been processed; (c) in regard to eligible life convicts who are (i) above 70 years of age or (ii) suffering from permanent ailments, the Supreme Court has observed that their cases shall

be taken up on priority and should be disposed of within a period of two months and (d) in regard to other pending cases, the Supreme Court directed the State authorities to take final decision in the matter within a period of four months from the date of order i.e. the order passed in the case of ***Rashidul Jafar*** (supra).

11. In the case of ***Rashidul Jafar*** (supra) the Supreme Court has not directed, that, if a decision with regard to premature release is not taken within the time specified therein, a convict in prison should be released on bail, without any application of mind, subject to decision on his remission application. The Supreme Court did not find any requirement to apply the principle of reverse burden on the State.

12. It is clear from the directions issued by the Supreme Court in the case of ***Rashidul Jafar*** (supra) that the decision of premature release or remission has to be taken by the concerned competent authority in the light of observations and directions issued by the Supreme Court in terms of policy dated 01.08.2018, as amended from time to time and as also other provisions of law.

13. Further in view of the Constitution Bench judgment in ***V. Sriharan (Supra),*** it is evident that power of remission can be exercised by the appropriate authority only and not by the Courts including the constitutional courts and the constitutional courts can only direct for consideration of a case for remission in a time bound manner and thereafter has power to judicially review the decision of the appropriate authority on the remission application of a person within the parameters settled under the law (***Bilkis Yakub Rasool vs. Union of India and others; AIR 2024 SC 289).***

14. In view of aforesaid, it can be safely held that the Courts have no power to decide the question of remission till decision is taken by the appropriate Government or concerned authority or State Government.

15. Now coming to the general directions issued by this Court in the case of ***Ganesh*** (Supra), that where a case is recommended for remission by the Superintendent of Jail concerned and no final decision is taken within six

months, such a person shall be released on bail subject to furnishing of bail/surety bonds before Chief Judicial Magistrate concerned and subject to the conditions provided in the order. It is apparent that the Division Bench has tried to exercise the power of remission of releasing an accused in the garb of bail, without there being any bail application on behalf of such a person and without applying its mind with regard to entitlement of any such bail, on merits, to such a person. Since the power of remission could not have been exercised by the Division Bench there is no question of exercising such a power in the garb of a bail order. There is no power either under Article 226 of the Constitution of India and/or under Section 482 of the Cr.P.C. with the High Court to direct release of convicts enmass on bail or without their filing any application for bail only because their applications for remission are not decided in time. The relief that could not have been granted by the Division Bench with regard to remission in a writ petition cannot be granted by it by merely calling it an order of bail. Thus, the order of the Division Bench in ***Ganesh*** (Supra), is directly in the teeth of Constitution Bench judgment of the Supreme Court in the case of ***Union of India Vs. V. Sriharan @ Murugan and others*** (Supra) as well as the judgment in ***Rashidul Jafar*** (supra). Further even constitutional courts do not have power to release convicts enmass, either on bail or remission, without considering each case on its merits, as is directed in the case of ***Ganesh (Supra).*** There is no such principle of reverse burden recognized in law empowering court to do so.

17. There is yet another reason for us not to agree with the view expressed by the Division Bench in the case of ***Gansesh*** (Supra). The policy of the State Government for remission expressed by the Government Order dated 28.07.2021 and modified by the Government Order dated 27.05.2022, is duly considered by the Supreme Court in the case of ***Rashidul Jafar*** (supra) and required directions are already provided therein. Once the matter is duly considered and decided by the Supreme Court, the judicial discipline requires all the High Courts and other Courts in India to follow the same. Once the policy is duly considered and required directions are given by the

Supreme Court in the case of ***Rashidul Jafar*** (supra), it was no more open for this Court to revisit the said policy and issue any further direction diluting or modifying the directions given by the Supreme Court. Any such modifications could only be made by the Supreme Court.

18. The Supreme Court in ***Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and others; (1985) 1 SCC 260,*** has held that under Article 141 of the Constitution, the law declared by the Supreme Court shall be binding on all the Courts within the territory of the India. The relevant Paragraph - 6, reads as under:-

> *"6. There is just one more thing that we wish to say. In Siliguri v. Amalendu Das, the Court was put to the necessity of pointing out the following: (SCC Para 4, pp.438-39; SCC (Tax) pp. 135-36).*
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> > *"We will be failing in our duty if we do not advert to feature which causes us dismay and distress. On a previous occasion, a Division Bench had vacated an interim order passed by a learned Single Judge on similar facts in a similar situation. Even so when a similar matter giving rise to the present appeal came up again, the same learned Judge whose order had been reversed earlier, granted a non-speaking interlocutory order of the aforesaid nature. This order was in turn confirmed by a Division Bench without a speaking order articulating reasons for granting a stay when the earlier Bench had vacated the stay. We mean no disrespect to the High Court in emphasizing the necessity for self-imposed discipline in such matters in obeisance to such weighty institutional considerations like the need to maintain decorum and comity. So also we mean no disrespect to the High Court in stressing the need for self-discipline on the part of the High Court in passing interim orders without entering into the question of amplitude and width of the powers of the High Court to grant interim relief. The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation keeping in mind the presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has therefore to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardized and institutional embarrassment is eschewed".*
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> *We desire to add and as was said in Cassel and Co. Ltd. v. Broome we hope it will never be necessary for us to say so again that 'in the hierarchical system of Courts' which exists in our country, 'it is*

necessary for each lower tier', including the High Court, 'to accept loyally the decisions of the higher tiers'. "It is inevitable in a hierarchical system of Courts that there are decisions 11 of the Supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary.....But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted"(2). The better wisdom of the Court below must yield to the higher wisdom of the Court above. That is the strength of the hierarchical judicial system. In Cassel v. Broome, commenting on the Court of Appeal's comment that Rookes v. Barnard(3) was rendered per incuriam Lord Diplock observed,-

> *"The Court of Appeal found themselves able to disregard the decision of this House in Rookes v. Barnard by applying to it the label per incuriam That label is relevant only to the right of an appellate court to decline to follow one of its own previous decisions, not to its right to disregard a decision of a higher appellate court or to the right of a judge of the High Court to disregard a decision of the Court of Appeal."*

It is needless to add that in India under Act. 141 of the Constitution the law declared by the Supreme Court shall be binding on all courts within the territory of India and under Art. 144 all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court."

19. In ***Hombe Gowda Educational Trust and another Vs. State of Karnataka and others; (2006) 1 Supreme Court Cases 430,*** the Supreme Court again reiterated that the inferior Courts are bound to follow the decisions of the Supreme Court which they cannot ignore the ratio laid down nor refuse to follow the same. The relevant Paragraph-30 of the same, reads as under:-

> ***"30.*** *This Court has come a long way from its earlier view points. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed that how discipline at the workplaces/ industrial undertaking received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in*

> *the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to that of this court was bound to follow the decisions of this Court which are applicable to the fact of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same."*

20. Similarly, in the case of ***Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd. and another; (1997) 6 Supreme Court Cases 450,*** the Supreme has deprecated the tendency of subordinate Courts including the High Courts in not applying the settled principles of law and in passing whimsical orders and directed to stop this practice. Relevant Paragraphs 31 & 32 reads as under:

> *"31. It is unfortunate, that notwithstanding the authoritative pronouncements of this Court, the High Courts and the courts subordinate thereto, still seem intent on affording to this Court innumerable opportunities for dealing with this area of law, thought by this Court to be well settled.*
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> *32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial ordor which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wronful and unwarranted relief to one of the parties. It is time that this tendency stops."*

21. We, accordingly answer the aforesaid questions as under:-

(1) The Division Bench in ***Ganesh*** (Supra) could not have issued any direction for granting the general directions of bail commanding the Chief Judicial Magistrates to release convicts whose applications for remission/premature release have remained pending beyond a particular period, as interim measure, till disposal of the said applications.

(2) Learned AGA submits that there is no power vested by the High Court in the Chief Judicial Magistrates for grant of bail. The said power is already exercised by granting bail to all such persons and the Chief Judicial Magistrate is directed

only to release such person(s) whose applications are pending beyond a particular time by accepting their bail/surety bonds. However, we leave the said question unanswered as in Question-A, we have already held that the directions of the Division in ***Ganesh*** (Supra) are not as per law.

23. Office is directed to place the record of this petition before the Division Bench for further orders.

(Saurabh Lavania, J.) (Abdul Moin) (Vivek Chaudhary)

Order Date:- 25.05.2024
Arun/-