IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD
CORAM:
*** HON'BLE SRI JUSTICE K. LAKSHMAN**
AND
HON'BLE SMT. JUSTICE P. SREE SUDHA
+ WRIT APPEAL No. 436 OF 2023

% Delivered on:05-08-2024

Between:

Joshi Madhavi, . appellant

Vs.

$ Union of India, through Secretary
Ministry of Home Affairs, New Delhi,
and others .. Respondents

! For the Appellant : Mr. B.Nalin Kumar, Ld.Senior Counsel representing Mr. T.Rahul, Ld counsel.

^ For Respondents : Sri Mukarjee, Ld. counsel representing Ld. Deputy Solicitor General of India for respondent No.1

Sri Samala Ravinder, Ld. Govt. Pleader for Home, appearing for respondent Nos.2, 3, 4, 6 and 7.

Ld.Spl.Public Prosecutor appearing for 5th respondent-CBI.

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> Head Note

[1] (2023) 8 SCC 257.
[2] (2016) 7 SCC 1.
[3] (2000) 2 SCC 595.
[4] (2022) 12 SCC 52

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE P. SREE SUDHA

WRIT APPEAL No. 436 OF 2023

JUDGMENT: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. B.Nalin Kumar, learned Senior Counsel representing Mr. T.Rahul, learned counsel for the appellant, Sri Mukarjee, learned counsel representing learned Deputy Solicitor General of India for respondent No.1 and Sri Samala Ravinder, learned Government Pleader for Home, appearing for respondent Nos.2, 3, 4, 6 and 7 and learned Spl. Public Prosecutor appearing for 5th respondent-CBI.

2. The present writ appeal is filed challenging the order dated 13.09.2022 passed by the learned Single Judge in W.P.No.15654 of 2019.

3. Facts of the case:

i. An FIR bearing Cr. No. 140 of 1995 was registered against the Appellant's husband under Sections 302, 449, 307, 147,148, 149, 506, 397 r/w 120-B of the IPC and Sections 25(1A) and 27(2) of Arms Act, 1959. It was alleged that the Appellant's husband along with the other accused murdered Mr. Magunta

Subbarami Reddy, a Member of Parliament and his Personal Security Officer Mr. Chappidi Venkatratnam. The investigation was entrusted to the Central Bureau of Investigation [hereinafter 'CBI'] by the State.

ii. On completion of investigation, the CBI laid charge sheet against the husband of the Appellant and the same was taken on file as S.C. No. 315 of 1997. The Sessions Court *vide* judgment dated 04.08.2000, convicted him for the offences under Sections 302, 449, 307, 149, 147, 148, 506 and 397 read with Section 120-B of IPC and Section 25(1A) of the Arms Act, 1959 and was sentenced to undergo life imprisonment for the offence under Section 302. Sentences for the other offences were directed to run concurrently.

iii. The criminal appeal filed by the appellant's husband was dismissed *vide* judgment dated 31.03.2003 in Criminal Appeal No. 1672 of 2000 by the High Court. A special leave petition was filed by the appellant's husband and the same was also dismissed *vide* order dated 23.07.2009. Therefore, the conviction and sentence of appellant's husband attained finality.

iv. Initially, the appellant's husband had applied for remission. As his application was not considered, he filed W.P. No. 20004 of 2011 before this Court. The same was dismissed on 05.09.2011. However, liberty was granted to the appellant's husband to make an application for remission under Article 161 of the Constitution of India.

v. The appellant's husband made an application to the State Government. *Vide* proceedings dated 20.12.2011, the Additional Director General of Police, Andhra Pradesh, Hyderabad, recommended grant of remission to the appellant's husband. Likewise, *vide* proceedings dated 24.01.2012, the Commissioner of Police, Cyberabad, Hyderabad also recommended that appellant's husband be released. Further, the Superintendent of Jail, Central Prison, Cherlapally, R.R. District addressed aletter dated 20.04.2012 to the Director General of Prisons and Inspector General of Prisons and Correctional Services, stating that appellant's husband be granted pardon and remission of his sentence. Further, the State Government had given no objection to the release of appellant's husband. *Vide* proceedings dated 16.04.2016, permission of the Central Government was sought

under Section 435 (1) of the Code of Criminal Procedure [hereinafter 'CrPC']. Subsequently, similar requests were made by the State Government on 11.01.2017 and 01.02.2018 seeking permission of the Central Government to grant remission to the appellant's husband.

Proceedings before the learned Single Judge:

vi. As he was in jail since 1995 and no action was being taken on her husband's remission application, the appellant filed W.P. No. 15654 of 2019. In the said writ petition, the appellant contended that her husband has been in jail since 01.12.1995. He has completely reformed himself and is repentant of his crime. Further, while in jail, he completed his education. He did his B.A., M.A. (Sociology), M.A. (Political Science) from Dr.B.R.Ambedkar Open University, Computer Fundamental and MS Office from National Council for Vocational Training and currently studying M.A. (Psychology) from Dr.B.R.Ambedkar Open University and he is a volunteer in a Prisoner Reformation Program named 'Unnathi' a Cognitive Behavioural Skill Development Program run by retired Professor Beena, Osmania

University. He was released on parole multiple times and has never jumped the parole.

vii. Before the learned Single Judge in the writ petition, the State Government filed its counter affidavit supporting the case of the appellant's husband. It was stated that the petitioner has undergone 28 years of sentence and has no link with the banned Naxalite organization of which he was a part. The State Government reiterated that appellant's husband is reformed and deserves to be granted remission. It was stated that as the investigation was conducted by the CBI, the Central Government's permission under Section 435(1) of the CrPC is required to grant remission. The State Government submitted that, despite repeated letters to the Central Government, no action was taken on the remission application of the appellant's husband.

viii. The learned Single Judge recorded that the CBI in its counter affidavit stated that the case does not involve complicated issues of law and has no interstate ramifications. They were willing to abide by the orders of the Court. Therefore, it is to be noted that

the CBI did not seriously oppose the appellant's husband's case for remission.

ix. Before the Single Judge, the Central Government, which till then failed to take any action on the appellant's husband's application, filed a counter affidavit stating that the appellant's husband cannot be released as he is a notorious criminal who was part of a banned Naxalite group. It was contended that, if the petitioner is released, he will rejoin the group and commit terrorist activities.

x. The learned Single Judge *vide* impugned order dated 13.09.2022 held that the Central Government's stand that the appellant's husband cannot be released on the ground that the offence is of heinous nature cannot be justified. The Single Judge directed the Central Government to decide on the remission application of the appellant's husband within one week from the date of receipt of the copy of the order. The relevant paragraphs of the impugned order passed by the learned Single Judge are extracted below:

> 7. Instead of considering the fact whether the petitioner's husband is entitled for the remission as per the report of the government wherein they have

in detail has stated about the conduct of the prisoner and how many years he has been behind bars, the Central Government has rejected stating that petitioner's husband has committed a heinous offence and he should not be released as it would set a very bad precedent. This Court is not able to appreciate the manner in which this issue is dealt with by the Central Government. The authorities while exercising the power of remission must not look at the same as a charity but as discharge of a legal duty which is required to be performed upon fulfillment of certain conditions as determined by the Authorities. Further, a prisoner is entitled for remission based on his conduct. In this, it is not the case of the Central Government that petitioner's husband has failed to fulfill the requisites for the purpose of remission. They even failed to examine in that line but focused on the nature ofoffence. At this stage, after 27 years in the prison when the prisoner is seeking remission, those are not the parameters to reject the request for remission. This kind of approach would be against the principles of reformation and will push the convict into a dark hole without there being a semblance of light at the end of the tunnel. There is no dispute about the fact that remission cannot be asked as of right or as a fundamental right. The Hon'ble Apex Court time and again observed that the State while exercising its executive power of remission shall assess each individual case bearing in mind the facts which are specific to that case. It can be looked at as a reward

> for the good conduct exhibited by the convict. This Court is conscious of the wide constitutional powers of the Executive in the cases of remission which is upheld by the Hon'ble Apex Court in several cases.
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> 12. In the light of the law laid down by the Hon'ble Apex Court in the above judgments, the conclusion arrived at by the Central Government in rejecting the accused case for remission cannot withstand the legal scrutiny. Hence, the 1st respondent shall consider the letter dated 01.02.2018 addressed by the 2nd respondent on the grounds whether he fulfills the policy of the Central Government on remission, the conduct and the relevant aspects but not on the ground that he has committed the heinous offence, within a period of one week from the date of receipt of the copy of the order.

4. Aggrieved by the Single Judge's order, the appellant has filed the present writ appeal.

Contentions of the Appellant:-

5. The main contention of the appellant is that the case of her husband does not fall under Section 435(1) of the CrPC. The case of her husband falls under Section 432 of the CrPC and the 'appropriate government' to grant remission is the State Government. It was contended that the Central Government has no role to play in the grant of remission to the appellant's husband. Reliance was placed on **A.G.**

Perarivalan v. State of T.N.[1] Further, it was contended that the decision in ***A.G. Perarivalan*** was brought to the learned Single Judge's notice. However, the same was not considered and the contention of the appellant was not dealt with.

Contentions of the Central Government/Respondent No.1:-

6. It was reiterated on behalf of the Central Government that the appellant's husband cannot be considered for remission as the offence committed was heinous in nature. It was contended that under Section 435(1) of the CrPC, the 'appropriate government' is the Central Government, as the investigation was conducted by the CBI.

Contentions of the State Government/Respnodent No.2:-

7. The State Government also reiterated its contentions as raised before the learned Single Judge. It was submitted that the appellant's husband is reformed and deserves remission.

Findings of the Court:-

8. From the contentions of the parties and the findings of the learned Single Judge, three issues fall for consideration before this Court which are as follows:-

[1](2023) 8 SCC 257.

i. Whether the State Government is the 'appropriate government' to decide the appellant's husband's case;

ii. Whether the concurrence of Central Government under Section 435 (1) of the CrPC is required in the present case; and

iii. Whether the application of appellant's husband for remission of sentence deserves to be considered.

9. For the sake of convenience, the relevant provisions of the CrPC dealing with remission are extracted below:

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

(*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.

434. Concurrent power of Central Government in case of death sentences.—The powers conferred by Sections 432 and 433 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government.

435. State Government to act after consultation with Central Government in certain cases.—(1) The powers conferred by Sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence—

(*a*) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or

(*b*) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(*c*) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

shall not be exercised by the State Government except after consultation with the Central Government.

(2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central

> Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends.

10. As can be seen from the above provisions, Section 432 provides that the 'appropriate government' has the power to remit a sentence of punishment. Section 432(7) defines which government will be treated as 'appropriate government'. It states that where sentence is imposed in relation to a matter where the law-making power vests in the Union, the Central Government will be the 'appropriate government' and in all other cases, the 'appropriate government' will be the State Government.

11. Explaining the test to determine 'appropriate government', the Supreme Court in **Union of India v. V. Sriharan**[2] held as follows:

> **133.** For the purpose of ascertaining which Government would be the appropriate Government as defined under Section 432(7), what is to be seen is the sentence imposed by the criminal court under the Criminal Procedure Code or any other law which restricts the liberty of any person or imposes any liability upon him or his property. If such sentence imposed is under any of the sections of the Penal Code, 1860, for which the Executive Power of the Central Government is specifically provided for under a parliamentary enactment or prescribed in the Constitution itself then the "appropriate Government" would be the Central Government. To understand this position more explicitly, we can make reference to Article 72(1)(*a*) of the

[2](2016) 7 SCC 1.

Constitution which while specifying the power of the Executive Head of the country, namely, the President it is specifically provided that the power to grant pardons, etc. or grant of remissions, etc. or commutation of sentence of any person convicted of any offence in all cases where the punishment or sentence is by a court martial, then it is clear to the effect that under the Constitution itself the Executive Power is specifically conferred on the Centre. While referring to various constitutional provisions, we have also noted such express Executive Power conferred on the Centre in respect of matters with reference to which the State is also empowered to make laws. If under the provisions of the Code the sentence is imposed, within the territorial jurisdiction of the State concerned, then the "appropriate Government" would be the State Government. Therefore, to ascertain who will be the appropriate Government whether the Centre or the State, the first test should be under what provision of the Criminal Procedure Code the criminal court passed the order of sentence. If the order of sentence is passed under any other law which restricts the liberty of a person, then which is that law under which the sentence was passed is to be ascertained. If the order of sentence imposed any liability upon any person or his property, then again it is to be verified under which provision of the Criminal Procedure Code or any other law under which it was passed will have to be ascertained. In the ascertainment of the above questions, if it transpires that the implication to the proviso to Article 73(1)(*a*) of the Constitution gets attracted, namely, specific conferment of Executive Power with the Centre, then the Central Government will get power to act and consequently, the case will be covered by Section

432(7)(*a*) of the Code and as a sequel to it, the Central Government will be the "appropriate Government" to pass orders under Sections 432 and 433 of the Criminal Procedure Code.

134. In order to understand this proposition of law, we can make a reference to the decision relied upon by the learned Solicitor General in *G.V. Ramanaiah* [*G.V. Ramanaiah* v. *Supt. of Central Jail*, (1974) 3 SCC 531 : 1974 SCC (Cri) 6 : AIR 1974 SC 31] . That was a case where the offence was dealt with and the conviction was imposed under Sections 489-A to 489-D of the Penal Code. The convicts were sentenced to rigorous imprisonment for a period of ten years. The conviction came to be made by the criminal court of the State of A.P. The question that came up for consideration was as to who would be the "appropriate Government" for grant of remission as was provided under Section 401 of the Criminal Procedure Code, 1898 which is the corresponding section for Section 432 of the Criminal Procedure Code, 1973. In that context, this Court noted that the four sections viz. Sections 489-A to 489-D were added to the Penal Code under the caption "Of currency notes and bank notes" by the Currency Notes Forgery Act, 1899. This Court noted that the bunch of those sections were the law by itself and that the same would be covered by the expression "currency coinage and legal tender" which are expressly included in Entry 36 of the Union List in the Seventh Schedule to the Constitution. Entry 93 of the Union List in the same Schedule conferred on Parliament the power to legislate with regard to offences against laws with respect to any of the matters in the Union List. It was, therefore, held that the offences for which those persons were convicted

were offences relating to a matter to which the Executive Power of the Union extended and the appropriate Government competent to remit the sentence would be the Central Government and not the State Government. The said decision throws added light on this aspect.

135. Therefore, whether under any of the provisions of the Criminal Procedure Code or under any special enactment enacted by the Central Government by virtue of its enabling power to bring forth such enactment even though the State Government is also empowered to make any law on that subject, having regard to the proviso to Article 73(1)(*a*) of the Constitution, if the conviction is for any of the offences against such provision contained in the Criminal Procedure Code or under such special enactments of the Centre if the Executive Power is specified in the enactment with the Central Government, then the appropriate Government would be the Central Government. Under Section 432(7)(*b*) barring cases falling under Section 432(7)(*a*) CrPC in all other cases, where the offender is sentenced or the sentence order is passed within the territorial jurisdiction of the State concerned, then alone the appropriate Government would be the State.

136. Therefore, keeping the above prescription in mind contained in Section 432(7) CrPC and Section 55-A IPC, it will have to be ascertained whether in the facts and circumstances of a case, where the criminal court imposes the sentence and if such sentence pertains to any section of the Penal Code, 1860 or under any other law for which the Executive Power of the Centre extends, then in those cases the Central Government would be the "appropriate Government". Again in respect of cases, where the sentence

is imposed by the criminal court under any law which falls within the proviso to Article 73(1)(*a*) of the Constitution and thereby the Executive Power of the Centre is conferred and gets attracted, then again, the appropriate Government would be the Central Government. In all other cases, if the sentence order is passed by the court within the territorial jurisdiction of the State concerned, the State Government concerned would be the appropriate Government for exercising its power of remission, suspension as well as commutation as provided under Sections 432 and 433 of the Criminal Procedure Code. Keeping the above prescription in mind, every case will have to be tested to find out which is the appropriate Government, State or the Centre.

137. However, when it comes to the question of primacy to the Executive Power of the Union to the exclusion of the Executive Power of the State, where the power is coextensive, in the first instance, it will have to be seen again whether, the sentence ordered by the criminal court is found under any law relating to which the Executive Power of the Union extends. In that respect, in our considered view, the first test should be whether the offence for which the sentence was imposed was under a law with respect to which the Executive Power of the Union extends. For instance, if the sentence was imposed under the TADA Act, as the said law pertains to the Union Government, the Executive Power of the Union alone will apply to the exclusion of the State Executive Power, in which case, there will be no question of considering the application of the Executive Power of the State.

138. But in cases which are governed by the proviso to Article 73(1)(*a*) of the Constitution, different situations may arise. For instance, as was dealt with by this Court in *G.V. Ramanaiah* [*G.V. Ramanaiah* v. *Supt. of Central Jail*, (1974) 3 SCC 531 : 1974 SCC (Cri) 6 : AIR 1974 SC 31] , the offence was dealt with by the criminal court under Sections 489-A to 489-D of the Penal Code. While dealing with the said case, this Court noted that though the offences fell under the provisions of the Penal Code, which law was covered by Schedule VII List III Entry 1, namely, the Concurrent List which enabled both the Centre as well as the State Government to pass any law, having regard to the special feature in that case, wherein, currency notes and bank notes to which the offences related, were all matters falling under Entries 36 and 93 of the Union List of the Seventh Schedule, it was held that the power of remission fell exclusively within the competence of the Union. Therefore, in such cases the Union Government will get exclusive jurisdiction to pass orders under Sections 432 and 433 of the Criminal Procedure Code.

139. Secondly, in yet another situation where the law came to be enacted by the Union in exercise of its powers under Articles 248, 249, 250, 251 and 252 of the Constitution, though the legislative power of the States would remain, yet, the combined effect of these Articles read along with Article 73(1)(*a*) of the Constitution will give primacy to the Union Government in the event of any laws passed by the Centre prescribes the Executive Power to vest with it to the exclusion of the Executive Power of the State then such power will remain with the Centre. In other words, here again, the coextensive power of the State to enact any

law would be present, but having regard to the constitutional prescription under Articles 248 to 252 of the Constitution by which if specific Executive Power is conferred then the Union Government will get primacy to the exclusion of the State.

140. Thirdly, a situation may arise where the authority to bring about a law may be available both to the Union as well as the State, that the law made by Parliament may invest the Executive Power with the Centre while, the State may also enjoy similar such Executive Power by virtue of a law which the State Legislature was also competent to make. In these situations, the ratio laid down by this Court in the decision in *G.V. Ramanaiah* [*G.V. Ramanaiah* v. *Supt. of Central Jail*, (1974) 3 SCC 531 : 1974 SCC (Cri) 6 : AIR 1974 SC 31] will have to be applied and ascertain which of the two, namely, either the State or the Union would gain primacy to pass any order of remission, etc. In this context, it will be relevant to note the proviso to Article 162 of the Constitution, which reads as under:

"**162.** ***Extent of Executive Power of State***.—***

Provided that in any matter with respect to which the legislature of a State and Parliament have power to make laws, the Executive Power of the State shall be subject to, and limited by, the Executive Power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

If the proviso applies to a case, the Executive Power of the State should yield to the Executive Power of the Centre expressly conferred by the Constitution or by any law made by Parliament upon the Union or its authorities.

> **141.** Therefore, the answer to the question should be to the effect that where the case falls under the first test noted herein, it will be governed by Section 432(7)(*a*) of the Criminal Procedure Code in which event, the power will be exclusive to the Union. In cases which fall under the situation as was dealt with by this Court in *G.V. Ramanaiah* [*G.V. Ramanaiah* v. *Supt. of Central Jail*, (1974) 3 SCC 531 : 1974 SCC (Cri) 6 : AIR 1974 SC 31] , there again the power would exclusively remain with the Centre. The cases falling under second situation like the one covered by Articles 248 to 252 of the Constitution, wherein, the competence to legislate laws was with the State, and thereby if the Executive Power of the State will be available, having regard to the mandate of these Articles which empowers the Union also to make laws and thereby if the Executive Power of the Union also gets extended, though the power is coextensive, it must be held that having regard to the special features set out in the Constitution in these situations, the Union will get the primacy to the exclusion of the State.

12. Now coming to the issue of 'appropriate government' in the present case, it is relevant to note that the appellant's husband was convicted for Section 302 along with other offences under the IPC. Further, he was also convicted under the Arms Act, 1959. A sentence of life imprisonment was imposed and the other sentences were directed to run concurrently. Applying the test laid down in ***V. Sriharan* (supra)**, this Court has to decide which government has

the law-making power in relation to an offence under Section 302 of the IPC. The said question was answered in ***V. Sriharan* (surpa)** itself. Justice U.U. Lalit in his separate concurring opinion held that Section 302 relates to Enty I of List II of the Seventh Schedule. Therefore, the 'appropriate government' for remission of a sentence in relation to an offence under Section 302 is the State Government. The relevant paragraph is extracted below:

> **219.** We are, however, concerned in the present case with offence under Section 302 IPC simpliciter. The respondent convicts stand acquitted insofar as offences under the TADA are concerned. We find force in the submissions of Mr Rakesh Dwivedi, learned Senior Advocate that the offence under Section 302 IPC is directly related to "public order" under Schedule VII List II Entry 1 to the Constitution and is in the exclusive domain of the State Government. In our view the offence in question is within the exclusive domain of the State Government and it is the Executive Power of the State which must extend to such offence. Even if it is accepted for the sake of argument that the offence under Section 302 IPC is referable to Entry 1 of List III, in accordance with the principles as discussed hereinabove, it is the Executive Power of the State Government alone which must extend, in the absence of any specific provision in the Constitution or in the law made by Parliament. Consequently, the State Government is the appropriate Government in respect of the offence in question in the present matter. It may be relevant to note that right from *K.M. Nanavati* v. *State of Bombay* [*K.M.*

> *Nanavati* v. *State of Bombay*, AIR 1961 SC 112 : (1961) 1 Cri LJ 173 : (1961) 1 SCR 497 at p. 516] in matters concerning offences under Section 302 IPC it is the Governor under Article 161 or the State Government as appropriate Government under the CrPC who have been exercising appropriate powers.

13. Therefore, we hold that the 'appropriate government' in the present case is the State Government. It is the State Government which was empowered to grant remission.

14. This brings us to the second issue i.e. whether the concurrence of the Central Government under Section 435 (1) of the CrPC is required in the present case. As can be seen from the provision itself, Section 435 provides that in certain cases where the 'appropriate government' is the State Government, consultation with the Central Government is necessary. These cases include where the offences were investigated by the Delhi Special Police Establishment which is the CBI or any other central agency; where the offence was in relation to the property of the Central Government; and where the offence is committed by a Central Government employee in discharge of his official duty.

15. It is pertinent to note that in ***V. Sriharan* (supra)**, the Supreme Court held that the requirement of consulting the Central Government under Section 435 of the CrPC is mandatory. Further, it was held that

the word 'consultation' has to be read to mean 'concurrence' of the Central Government. The relevant paragraphs are extracted below:

> **235.** In the light of the aforesaid principles, we now consider the object that clauses (*a*), (*b*) and (*c*) of Section 435(1) CrPC seek to achieve. Clause (*a*) deals with cases which are investigated by the Delhi Special Police Establishment i.e. the Central Bureau of Investigation or by any other agency empowered to make investigation into an offence under any Central Act.
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> **236.** The investigation by CBI in a matter may arise as a result of express consent or approval by the State Government concerned under Sections 5 and 6 of the Delhi Special Police Establishment Act or as a result of directions by a superior court in exercise of its writ jurisdiction in terms of the law laid down by this Court in *State of W.B.* v. *Committee for Protection of Democratic Rights* [*State of W.B.* v. *Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] . For instance, in the present case the investigation into the crime in question i.e. Crime No. 3 of 1991 was handed over to CBI on the next day itself. The entire investigation was done by CBI who thereafter carried the prosecution right up to this Court.
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> **237.** In a case where the investigation is thus handed over to CBI, entire carriage of the proceedings including decisions as to who shall be the Public Prosecutor, how the prosecution be conducted and whether appeal be filed or not are all taken by CBI and at no stage the State Government concerned has any role to play. It has been laid down by this Court in *Lalu Prasad Yadav* v. *State of Bihar* [*Lalu Prasad Yadav* v. *State of Bihar*, (2010) 5 SCC 1 : (2010) 2 SCC (Cri) 1215] that in

matters where investigation was handed over to CBI, it is CBI alone which is competent to decide whether appeal be filed or not and the State Government cannot even challenge the order of acquittal on its own. In such cases could the State Government then seek to exercise powers under Sections 432 and 433 on its own?

238. Further, in certain cases investigation is transferred to CBI under express orders of the superior court. There are number of such examples and the cases could be of trans-border ramifications such as Stamp Papers scam or Chit Fund scam where the offence may have been committed in more than one States or it could be cases where the role and conduct of the State Government concerned was such that in order to have transparency in the entirety of the matter, the superior court deemed it proper to transfer the investigation to CBI. It would not then be appropriate to allow the same State Government to exercise power under Sections 432 and 433 on its own and in such matters, the opinion of the Central Government must have a decisive status. In cases where the investigation was so conducted by CBI or any such Central investigating agency, the Central Government would be better equipped and likely to be more correct in its view. Considering the context of the provision, in our view comparatively greater weight ought to be attached to the opinion of the Central Government which through CBI or other Central investigating agency was in charge of the investigation and had complete carriage of the proceedings.

239. The other two clauses, namely, clauses (*b*) and (*c*) of Section 435(1) deal with offences pertaining to destruction of any property belonging to the Central Government or where the offence was committed by a person in the service of the Central

> Government while acting or purporting to act in the discharge of his official duty. Here again, it would be the Central Government which would be better equipped and more correct in taking the appropriate view which could achieve the purpose satisfactorily. In such cases, the question whether the prisoner ought to be given the benefit under Section 432 or 433 must be that of the Central Government. Merely because the State Government happens to be the appropriate Government in respect of such offences, if the prisoner were to be granted benefit under Section 432 or 433 by the State Government on its own, it would in fact defeat the very purpose.

16. It is clear from the above extracted portion of ***V. Sriharan* (supra)** that where the offence is investigated by the CBI, the consent of the Central Government is mandatory.

17. The appellant herein contended that as the 'appropriate government' is the State Government, Central Government has no role under Section 435 of the CrPC. The appellant relied on ***A.G. Perarivalan* (supra)**. According to this Court, the said contention is misconceived.

18. In ***A.G. Perarivalan* (supra)**, the Supreme Court mainly dealt with the issue whether Governor of a State is bound by the decision of the State Cabinet to grant remission to a convict. In ***A.G. Perarivalan***, the State Cabinet recommended grant of remission to the petitioner therein. The Governor instead of exercising his powers under Article

161 of the Constitution of India, kept the matter pending for over two years and referred the matter to the Central Government. The justification given by the Governor was that the matter was investigated by the CBI, therefore, he sought the opinion of Central Government under Section 435 of the CrPC. The Supreme Court negatived the justification of the Governor and held that he was bound by the decision of the State Cabinet. However, the Supreme Court did not hold that the concurrence of the Central Government was not required. Noting that the case of the convict therein was pending for over two years, the Court exercised powers under Article 142 of the Constitution of India and granted remission. Therefore, ***A.G. Perarivalan*** **(supra)**, does not hold that concurrence of the Central Government is not necessary even where the offence is investigated by the CBI.

19. In relation to the second issue, we hold that the concurrence/consent of the Central Government was required before granting remission to the appellant's husband as the case was investigated by the CBI. The State Government was justified in seeking concurrence of the Central Government.

20. Now coming to the final issue, whether the case is made out for the remission of the sentence imposed on appellant's husband. As can

be seen from the pleadings and various proceedings, all the authorities concerning the State Government have unequivocally recommended that the appellant's husband be granted remission. The jail authorities have stated that the appellant's husband showed remarkable reformation and has completed his education while in jail. He never jumped parole and never misused the liberties granted to him. Now after undergoing over 27 years in prison, he wants to lead a normal life and become part of the society. Despite multiple letters by the State Government to the Central Government to grant remission to the appellant's husband, no action was ever taken.

21. The Central Government, instead of deciding the appellant's husband's case on judicial parameters of reformation, has kept his application pending. Before the learned Single Judge and before us, the Central Government has taken a stand that the appellant's husband is dreaded Naxalite and does not deserve leniency. Nothing was placed on record by the Central Government on the aspect of his reformation.

22. In **Laxman Naskar v. Union of India**[3], the Supreme Court laid down the criteria to be considered while deciding a remission application. The Court also held that a remission application cannot be

[3](2000) 2 SCC 595.

dismissed based on irrelevant considerations. The relevant paragraphs are extracted below:

> **6.** This Court also issued certain guidelines as to the basis on which a convict can be released prematurely and they are as under: (SCC p. 598, para 6)
>
> "(*i*) Whether the offence is an individual act of crime without affecting the society at large.
>
> (*ii*) Whether there is any chance of future recurrence of committing crime.
>
> (*iii*) Whether the convict has lost his potentiality in committing crime.
>
> (*iv*) Whether there is any fruitful purpose of confining this convict any more.
>
> (*v*) Socio-economic condition of the convict's family."
>
> **7.** In the present case, the report of the jail authorities is in favour of the petitioner. However, the Review Committee constituted by the Government recommended to reject the claim of premature release of the petitioner for the following reasons:
>
> (1) that the police report has revealed that the two witnesses who had deposed before the trial court and the people of the locality are all apprehensive of acute breach of peace in the locality in case of premature release of the petitioner;
>
> (2) that the petitioner is a person of about 43 years and hence he has the potential of committing crime; and
>
> (3) that the incident in relation to which the crime had occurred was the sequel of the political feud affecting the society at large.
>
> **8.** If we look at the reasons given by the Government, we are afraid that the same are palpably irrelevant or devoid of substance.

Firstly, the views of the witnesses who had been examined in the case or the persons in the locality cannot determine whether the petitioner would be a danger if prematurely released because the persons in the locality and the witnesses may still live in the past and their memories are being relied upon without reference to the present and the report of the jail authorities to the effect that the petitioner has reformed himself to a large extent. Secondly, by reason of one's age one cannot say whether the convict has still potentiality of committing the crime or not, but it depends on his attitude to matters, which is not being taken note of by the Government. Lastly, the suggestion that the incident is not an individual act of crime but a sequel of the political feud affecting society at large, whether his political views have been changed or still carries the same so as to commit crime has not been examined by the Government.

9. On the basis of the grounds stated above the Government could not have rejected the claim made by the petitioner. In the circumstances, we quash the order made by the Government and remit the matter to it again to examine the case of the petitioner in the light of what has been stated by this Court earlier and our comments made in this order as to the grounds upon which the Government refused to act on the report of the jail authorities and also to take note of the change in the law by enacting the West Bengal Correctional Services Act 32 of 1992 and to decide the matter afresh within a period of three months from today. The writ petition is allowed accordingly. After issuing rule the same is made absolute.

23. Likewise, in **Ram Chander v. State of Chhattisgarh**[4], the Supreme Court held that the discretion to grant remission cannot be arbitrarily exercised. The decision of the Government is subject to judicial review and has to be determined on the anvil of fairness. The relevant paragraphs are extracted below:

> **13.** While a discretion vests with the Government to suspend or remit the sentence, the executive power cannot be exercised arbitrarily. The prerogative of the executive is subject to the rule of law and fairness in State action embodied in Article 14 of the Constitution. In *Mohinder Singh* [*State of Haryana* v. *Mohinder Singh*, (2000) 3 SCC 394 : 2000 SCC (Cri) 645] , this Court has held that the power of remission cannot be exercised arbitrarily. The decision to grant remission should be informed, fair and reasonable. The Court held thus : (SCC pp. 400-01, para 9)
>
> "*9.* The circular granting remission is authorised under the law. It prescribes limitations both as regards the prisoners who are eligible and those who have been excluded. Conditions for remission of sentence to the prisoners who are eligible are also prescribed by the circular. Prisoners have no absolute right for remission of their sentence unless except what is prescribed by law and the circular issued thereunder. That special remission shall not apply to a prisoner convicted of a particular offence can certainly be a relevant consideration for the State Government not to exercise power of remission in that case. Power of remission, however, cannot be exercised arbitrarily. Decision to grant remission has to be well informed, reasonable and fair to all concerned."

[4](2022) 12 SCC 52

> In *Sangeet* [*Sangeet* v. *State of Haryana*, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] , this Court reiterated the principle that the power of remission cannot be exercised arbitrarily by relying on the decision in *Mohinder*[*State of Haryana* v. *Mohinder Singh*, (2000) 3 SCC 394 : 2000 SCC (Cri) 645] .
>
> **14.** While the court can review the decision of the Government to determine whether it was arbitrary, it cannot usurp the power of the Government and grant remission itself. Where the exercise of power by the executive is found to be arbitrary, the authorities may be directed to consider the case of the convict afresh.

24. As stated above and as rightly held by the learned Single Judge, the Central Government kept the remission application pending and has taken a stand before this Court that the offence committed by the appellant's husband is grave and there is a likelihood of him committing the same again. This Court states that the stand taken by the Central Government is unjustified and is not supported by any material. The Central Government based its stand on the nature of the offence and has not stated if the appellant's husband is not reformed. A bald statement that the appellant's husband is still connected to the Naxalite movement and will join the same cannot justify the stand of the Central Government. The State Government has reiterated that the appellant's husband has no links with the Naxalite movement and is now reformed.

The Central Government without considering the opinion of the State Government cannot arbitrarily withhold its consent.

25. Under Section 435 of the CrPC, if the State Government recommends remission and seeks concurrence of the Central Government, the Central Government cannot keep such an application pending and also cannot withhold its consent arbitrarily. A duty is cast upon the Central Government to give cogent reasons for differing from the recommendation of the State Government to grant remission. A bald statement that the offender/convict will commit the offence again is not sufficient.

26. We reiterate that the considerations to decide a remission application is whether the convict/offender is reformed and is ready to start a new life as a member of the society. There is overwhelming material produced by the appellant and the State Government stating that the appellant's husband is reformed and wants to start a new life. It is for the Central Government to decide the remission application based on the aspect of reformation and to give reasons differing from the recommendation of the State Government.

27. In ***Ram Chander*** **(supra)**, the Supreme Court held that while the validity of the rejection of a remission application can be decided by

courts, the courts cannot usurp the power of the Central Government and grant remission themselves. The relevant paragraph is extracted below:

> **18.** The above discussion makes it clear that the court has the power to review the decision of the Government regarding the acceptance or rejection of an application for remission under Section 432CrPC to determine whether the decision is arbitrary in nature. The court is empowered to direct the Government to reconsider its decision.

28. Therefore, in the present case, the learned Single Judge was justified in directing the Central Government to consider the remission application for the appellant's husband within one week. Even then, it was not considered.

29. In view of the above discussion, the present appeal is disposed of holding:-

i. State Government is the appropriate Government to decide appellant's husband's case seeking remission;

ii. Concurrence/consent of Central Government in terms of Section 435(1) of Cr.P.C. is required before granting remission to the Appellant's husband;

iii. The Central Government is directed to consider the remission application of the appellant's husband afresh in terms of the

applicable law and keeping the object of reformation in mind and shall complete the said exercise within a period of two months from the date of receipt of copy of this order;

iv. Till the remission application of the appellant's husband is decided, interim bail granted to the husband of the Appellant vide order dated 04.07.2023 is extended.

As a sequel, the miscellaneous petitions, if any, pending in the writ appeal shall stand closed.

JUSTICE K. LAKSHMAN

JUSTICE P. SREE SUDHA

Date:05.08.2024.

Note: L.R.Copy to be marked.
(B/o) Vvr