



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No. 107 of 2021**

Naresh Gond, S/o Shyamlal Gond, aged about 48 years, R/o Village Kondegaon, Police Station: Arjuni, Tahsil Kurud, District Dhamtari (C.G.)

----- Petitioner**Versus**

1. State of Chhattisgarh, Through: Principal Secretary, Home, (Police) Department, Mantralaya Mahanadi Bhawan, New Raipur (C.G.)
2. Secretary, Department of Home Government of Chhattisgarh, Mantralaya Raipur (C.G.)
3. Director General (Prisons), Jail Headquarter Raipur, Chhattisgarh
4. Jail Superintendent of Police, Raipur, District Raipur (C.G.)
5. Secretary State Legal Aid Services Authority Bilaspur, Chhattisgarh

-----Respondents

For Petitioner	: Ms. Sangeeta Mishra, Advocate.
For Respondents	: Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****20.10.2022**

1. Present writ petition under Article 226 of the Constitution of India has been preferred by petitioner for grant of remission under Section 432 of the Code of Criminal Procedure, 1973 (henceforth "Cr.P.C."), who is undergoing sentence of life imprisonment upon being convicted for commission of offence under Section 302 of the IPC vide judgment dated 28.04.2006 passed by Upper Sessions



Judge, Dhamtari, District Dhamtari (C.G.) in Sessions Trial No. 70/2005.

2. Learned counsel for the petitioner would submit that petitioner is serving life imprisonment upon being convicted for the offence under Section 302 of the IPC vide judgment dated 28.04.2006 passed by Upper Sessions Judge, Dhamtari, District Dhamtari in Sessions Trial No. 70/2005. Criminal Appeal No.362/2006 preferred against that order has also been dismissed. It is further submitted that petitioner is in jail, for more than 20 years, hence, after fulfillment of eligibility criteria, he moved an application for grant of remission to respondents authorities, but the same has not been decided yet. It is further submitted that it seems that since the concerning Presiding Judge has not given positive opinion in respect of grant of remission to the petitioner, therefore, appropriate authority has not decided his application for grant of remission, hence, remission may be granted by this Court or respondents authorities/appropriate Government may be directed to decide remission application of the petitioner expeditiously.

3. Learned counsel for the State while referring the reply filed by him would submit that in light of provisions contained in Section 432 (2) of the Cr.P.C., an opinion of Presiding Judge was sought by Jail authorities, wherein, learned Presiding Judge considering the nature & gravity of the offences, has not recommended to grant remission to the petitioner, therefore, further letter has been sent to the learned Presiding Judge, but opinion has not been received and, therefore, case of the petitioner is still pending before the appropriate government, which will be considered and decided in accordance with law.

4. Considered the submissions made by counsel for the parties and perused the material available on record with utmost circumspection.



5. The question as to whether the Court can act directly for grant of remission to convicted person has been considered by the Supreme Court in the matter of Rajan v. Home Secretary, Home Department of Tamil Nadu & others¹ which have been referred again by the Hon'ble Supreme Court in the matter of Ram Chander v. State of Chhattisgarh and another² in which it has been observed by their Lordships that grant of remission is the exclusive prerogative of the executive and the court cannot supplant its view, however the Court can direct the authorities to re-consider the representation of the convict.

6. On a perusal of the record and as per submissions of counsel for the petitioner, it appears that the petitioner is serving life imprisonment for the offence under Section 302 of the IPC and he is languishing in jail for more than 20 years, despite that his remission application has not been decided by the appropriate authority.

7. In view of the foregoing discussion and the principles of law laid down by the Supreme Court in afore-cited cases (supra), the appropriate authority is directed to consider and decide the remission application filed by the petitioner expeditiously preferably within a period of three months from the date of receipt of certified copy of this order.

8. With the aforesaid observations & directions, the writ petition stands disposed of. However, it is made clear that, if required respondents authorities may further seek opinion from the Presiding Judge of the concerned Court under Section 432 (2) of the Cr.P.C. in view of the judgment rendered by Hon'ble Apex Court in the matter of Laxman Naskar v. State of West Bengal³, which has again been referred by the Supreme Court in the matter of Ram Chander v. State of Chhattisgarh and another⁴ and also in view of the judgment passed by this Court in the matter of Madari @ Abrar

1 (2019) 14 SCC 114

2 AIR 2022 SC 2017

3 (2000) 2 SCC 595

4 AIR 2022 Supreme Court 2017



Ahmad v. State of Chhattisgarh & others⁵ and in turn, the Presiding Judge may reconsider his opinion without being influenced by his earlier opinion, considering the observations made in the afore-cited cases.

Sd/-

(N.K. Chandravanshi)
Judge

D/-



5 W.P. (Cr.) No. 755 of 2021, decided on 21.07.2022

