

No. V-17013/2/2013-PR
Government of India
Ministry of Home Affairs
(CS Division)

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5th Floor, NDCC-II Building
Jai Singh Road, New Delhi
the 1st February 2013

To

The Home Secretaries
of all States/UTs

Sub: Section 433 A of Cr.P.C and "Restriction on powers of remission or commutation in certain cases"

Sir/Ma'am,

The power of remission of sentences has been give under Article 161 of the Constitution and sections 432, 433 and 433A of the Criminal Procedure Code, 1973. The Supreme Court after hearing the Criminal Appeal Nos 490-91 of 2011¹ related to Sangeet and another vs. State of Haryana in its order dated 20th November 2012 had addressed the issue of remission of sentences and also examined the procedural check on arbitrary remissions given under section 433 A of the Cr. P.C.

Section 433 A of the Cr. P. C reads as follows:

433-A. Restriction on powers of remission or commutation in certain cases.
Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served atleast fourteen years of imprisonment.

The Supreme Court decided that:

"There is a misconception that a prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years or twenty years imprisonment. The prisoner has no such right. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under section 432 of the Cr. P. C which in turn is subject to the procedural checks in that Section and the substantive check in Section 433-A of the Cr. P. C.

¹ <http://judis.nic.in/supremecourt/helddis3.aspx>

The grant of remission is statutory. However to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced.

Remission can be granted under section 432 of the Cr. P. C in the case of a definite term of sentence. The power under this Section is available only for granting “additional” remission, i.e. for a period over and above the remission granted or awarded to a convict under the Jail Manual or other statutory rules. If the term of sentence is indefinite (as in life imprisonment), the power under section 432 of the Cr. P. C can certainly be exercised but not on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.

Before actually exercising the power of remission under Section 432 of the Cr. P. C the appropriated Government must obtain the opinion (with reasons) of the presiding judge of the convicting or confirming Court. Remission can, therefore, be given only on a case-by-case basis and not in a wholesale manner”.

It is hence requested that States/UTs while considering the grant of remission in cases where a death sentence has been commuted to imprisonment of life or where a sentence of imprisonment for life is imposed for which death is one of the punishments prescribed by law, it should scrupulously follow the check prescribed u/s 433 A of the Cr. P. C and also not grant remission in a wholesale manner.

The receipt of the advisory may be acknowledged.

Yours faithfully,

Sd/-

(S. Suresh Kumar)

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