

**(2024) 06 BOM CK 0010**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 4958 Of 2022**

Satish Ramji Chaurasiya

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

**Date of Decision :** 11-06-2024

**Acts Referred:**

Constitution of India, 1950 — Article 72  
Code of Criminal Procedure, 1973 — Section 432, 432(7), 433, 433A  
Indian Penal Code, 1860 — Section 302, 307, 311, 313, 314, 364, 376

**Citation :** (2024) 06 BOM CK 0010

**Hon'ble Judges :** Bharati Dangre, J; Manjusha Deshpande, J

**Bench :** Division Bench

**Advocate :** Dr.Yug Mohit Chaudhry, Anush Shetty, Hasan Nizami, J.P.Yagnik

**Final Decision :** Allowed

## Judgement

1. The Petitioner-Satish Ramji Chaurasiya was found guilty of committing the offence of rape punishable under Section 376 of the Indian Penal Code (for short, "IPC") and on conviction, he was sentenced to suffer Rigorous Imprisonment (R.I.) for life and to pay fine of Rs.5,000/-, in default to undergo further imprisonment for four months by the Additional Sessions Judge, Vasai, who tried him in Sessions Case No.242 of 2007.

The judgment delivered on 11/12/2009 was assailed before the High Court of Judicature at Bombay in Criminal Appeal No.643 of 2010 and by judgment delivered on 25/09/2013, the Division Bench, on finding no merit in the Appeal, dismissed the same, thereby upholding the finding of conviction and the sentence imposed by the Additional Sessions Judge, Vasai.

2. The Petitioner was arrested in the crime registered against him on 09/08/2006 and it is his case that he has completed 15 years 8 months and 23 days of actual imprisonment and has earned remission of 4 years 1 month and 5 days.

The Petition has set out the break-up of the period of incarceration undergone by

the Petitioner in the following manner :-

1

Set off period from 9.8.2006- 11.12.2009

3 years, 4 months and 3 days

2

The period since conviction till present

11.12.2009-30.4.2022

12 years, 4 months and 20 days

3

Ordinary remission earned

4 years, 1 month and 5 days

4

Remission for good conduct

30 days

TOTAL PERIOD INCLUSIVE OF REMISSION

19 years 10 months and 28 days.

3. In the wake of the aforesaid period of imprisonment undergone, the Petitioner being desirous of availing the benefit of the guidelines for premature release formulated by the Government of Maharashtra through Home Department in exercise of power conferred under Section 432 of the Code of Criminal Procedure, 1973 (for short, "Code of 1973"), initiated the process for premature release and this was placed for consideration before the State Government, but the relief of premature release was refused to him on 11/11/2020, when the Home Department of the State Government, declined to extend the benefit of premature release policy to him, by considering the heinousness of the offence committed by him, as he was found guilty of sexually assaulting his own 14 year old daughter, by threatening her not to disclose about the incident to any person and by impregnating her.

Recording that the act committed by the prisoner is despicable and he is blot on the civilized Indian society, as being a father, he had sexually assaulted his own daughter repeatedly and the possibility of he indulging into a similar act, on being prematurely released could not be denied, the benefit was declined to him.

It is for this reason, by relying upon the decision of the Apex Court in the case of State of Haryana Vs. Jagdish, by exercising the discretion vested in the State Government, the request made by the Petitioner was rejected.

It is this order, which is assailed in the present Writ Petition and a direction is sought that the Petitioner be categorised under category 8(b) of Annexure II of the 2010 Guidelines, formulated by the State Government and he shall be released prematurely, considering that he has undergone 19 years 9 months and 28 days of sentence, including the remission earned by him.

4. We have heard learned counsel Dr.Yug Mohit Chaudhry for the Petitioner, who is assisted by Advocate Anush Shetty and Advocate Hasan Nizami.

The State Government is represented by the learned Additional Public Prosecutor, Mr.J.P.Yagnik, who would justify the decision of the State Government, by inviting our attention to the finding rendered in the judgment dated 11/12/2009, passed by the Additional Sessions Judge, Vasai, which is upheld by the High Court.

On referring to the evidence adduced, a conclusion was derived by the Additional Sessions Judge that the father was repeatedly committing rape and threatening his daughter not to talk about the act committed by him and it is categorically inferred that victim had no reason to falsely implicate her father and her evidence was found to be reliable and trustworthy. Considering the said finding and the sentence imposed, Mr.Yagnik would submit that by paragraph 4 of the Resolution dated 15/03/2010, the State Government has reserved its rights and if the offence is heinous, brutal or regressive, it can exercise the discretion and refuse the premature release of a convict, serving life imprisonment under "14 Year Rule".

Per contra, Dr.Chaudhry would assertively submit that it is the power vested in the appropriate Government to suspend, remit and commute the sentence imposed by virtue of Section 432 of the Code of 1973 and Section 433-A is the restriction on powers of remission or commutation, applicable only in certain cases.

According to him, in exercise of this power, the Government has formulated guidelines for premature release of prisoners undergoing life sentences from time to time and they are applicable to the prisoners committing the crimes mentioned in the Indian Penal Code, with an exception that the guidelines shall not cover grave offences, as life imprisonment under stringent laws like TADA, MCOCA, POTA etc. Further as per Dr.Chaudhry, the earlier policy of the State Government was contained in the Resolutions dated 11/04/2008 and 13/06/2008, which is modified by the subsequent Government Resolution dated 15/03/2010, which is applicable to life convicts covered under the guidelines, where the State Government has contemplated that the process of review shall commence after completion of 12 years of actual imprisonment for review under "14 Year Rule" to which provision of Section 433-A of the Code of Criminal Procedure is applicable.

By inviting our attention to the Annexure appended to the Government Resolution, Mr.Chaudhry has submitted that there are two categories under which the convicts are bifurcated; Annexure I, being classifying the crimes where

the period of imprisonment to be undergone, including remission subject to a minimum of 14 years of actual imprisonment including set off and this has included distinct categories of offences relating to crime by women, against women and minors, murders arising out of land dispute, family feuds, family prestige and superstition, murder for other reasons, murder for political reasons and murder for serious offences. Whereas under Annexure II, the persons guilty of offences not involving murder, but who are sentenced to life imprisonment where Section 433-A of the Code of Criminal Procedure is not applicable, are covered i.e. where the period of imprisonment to be undergone, including remission subject to the minimum of 10 years of actual imprisonment and set off are included. This category include the persons guilty of homicides not amounting to murder, attempt to murder, causing death by negligence, offences under Section 311, 313/314, 364, 376 etc.

5. According to Dr.Chaudhry, the Petitioner falls within category 8(b) of Annexure II, where the nature of offence is described as, 'where victim is minor' and the period of imprisonment to be undergone, including remission is prescribed to be 20 years.

According to him, the Additional Sessions Judge, Vasai has classified him in category 8(b) of Annexure II of both the Government Resolutions, where the term of 20 years is prescribed, where the victim is a minor and it is opined by the learned Judge that benefit of category 8(b) as per the Resolution dated 15/03/2010 be granted to him. Similarly, even the Advisory Board and the Jail Superintendent, according to Mr.Chaudhry, have classified him in category 8(b), but the Special IG Prisons and Reformation, Maharashtra State, Pune, while forwarding his report to the Home Department, has opined that in the wake of the decision of the Apex Court in the case of Dalbir Singh & Ors. Vs. State of Punjab AIR 1979 SC 1384, where it is held that life imprisonment means imprisonment for the whole of the man's life, the State Government may take appropriate decision for premature release of the Petitioner, as it deem fit. Accompanied with the said communication, the details of the Petitioner, including the period of sentence undergone, Furlough/Parole leave availed by him, his medical reports, police report, remarks from the Advisory Board, were also forwarded.

In this background, the State Government for the reasons mentioned above, on 11/11/2020, refused the premature release of the Petitioner.

6. At this stage, it is necessary to refer to the relevant provisions contained in Chapter XXXII of the Code of Criminal Procedure, 1973, which pertains to remission and commutation of sentences.

Section 432 is the power to suspend or remit sentences and the Section reads thus :-

"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.

(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.

(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) ... ..”

7. Section 433 is the power to commute sentence, which empower the appropriate Government to commute the sentence of death, sentence of imprisonment for life and the sentence of R.I./simple imprisonment, without consent of the person sentenced. Section 433-A is the restriction on powers of remission or commutation in certain cases and it reads thus:-

"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 punishment 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 at least fourteen years of imprisonment."

Reading of the aforesaid provision would make it evident that when an application is made to the appropriate Government, which is defined in sub-section (7) of Section 432, for remission of a sentence, the Government may require the presiding Judge of the Court before or by which the conviction was imposed or confirmed to give his opinion as to whether the application should be granted or refused.

The above provision empowers the State Government to permit premature release of the prisoners sentenced to imprisonment for life, on undergoing the prescribed number of years and in exercise of this power, the Home Department of the Government of Maharashtra framed the guidelines and revised the same for premature release of the prisoners undergoing life sentences from time to time.

The existing guidelines dated 15/03/2010 are annexed alongwith the Petition at Exhibit E.

8. These guidelines are applicable to the prisoners committing the crimes mentioned in IPC, but do not cover sentences imposed for stringent offences.

The guidelines stipulate that in case of life convicts, process of review shall commence after completion of 12 years of actual imprisonment for review under "14 Year Rule" to which provision of Section 433-A of the Code of 1973 is applicable and after completion of 8 years, where the provision of Section 433-A of the Code of 1973 is not applicable.

Admittedly, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which the death is one of the punishment provided by law, Section 433-A provides that no such person shall be released from the prison unless he has served atleast 14 years of imprisonment.

9. The State Government has thereafter categorised the crimes/offences, the first category being 14 years of minimum actual imprisonment and this include the most serious offences like murder with rape, murder with premeditation, murder committed with exceptional violence/brutality/ kidnapping, murder committed by dacoits and robbers while committing dacoities and robberies, murder committed by bootleggers, gamblers, flesh traders etc., murder out of political rivalry and political interest, murder by Gangsters, Contract Killers etc. In the second category, the offences where the period of imprisonment to be undergone, including remission, subject to minimum of 10 years of actual imprisonment i.e. where Section 433-A is not applicable, are categorised and this

include the offence of rape, which has further categorised into three heads the persons guilty in rape cases, where the victim is minor, rape on a physically handicapped or mentally retarded girl, pregnant woman, gang rape or custodial rape.

In the first category, where the person is guilty in rape case, the sentence required to be undergone, including remission and set off period, is prescribed as 18 years. In case, where the victim is minor, the period of imprisonment to be undergone is prescribed as 20 years, whereas in the third category, where rape is committed on physically handicapped or mentally retarded girl, pregnant woman, gang rape or in case of a custodial rape, the period of imprisonment to be undergone when a person is sentenced to suffer imprisonment for life, is set out to be 22 years.

As far as the Petitioner is concerned, he is found guilty of committing rape on a minor girl and that too on his own daughter and he has been rightly classified in category 8(b) by the Sessions Court, the Advisory Committee and by the Jail Superintendent.

10. Perusal of the policy of the Government would reveal that there is no other category in which the Petitioner could be placed, as Annexure I to the Government Resolution covers a category of murder with rape, but rape on minor is covered under category 8(b) of Annexure II.

At the end of Annexure I and Annexure II, one finds a specific category, which can be said to be a residual one, where it is left to the State Government to decide individual cases on merit and this is category No.8 in Annexure I and category No.21 in Annexure II.

11. Ascertaining the scope of the power under Section 432 of the Code of 1973 and its exercise through the Government Resolution by the State of Maharashtra, it is evident that the various offences have been categorised and this include the offences, where the sentence of imprisonment for life is imposed on conviction of a person, for an offence for which death is one of the punishment prescribed by law or where a sentence of death is imposed on a person is commuted under Section 433 into imprisonment for life then such a person shall not be released from prison unless he has served atleast 14 years of imprisonment. However, the State Government has determined as to what would be the maximum period of imprisonment with or without remission, which would be required to be undergone in distinct categories of offences and in case of offence of rape on a minor, the period of imprisonment to be undergone, including remission and set off would be period of 20 years.

12. Though Mr.Yagnik has attempted to justify the power of the State Government in the residuary clauses of Annexure I and Annexure II, it should be borne in mind that discretion of the State Government is vested only in such offences, which are not covered in the categories set out therein. But in the present case, the Petitioner is classified in category 8(b), as he is found guilty of

committing rape on a victim, a minor. There is no further classification in the offence of rape, dependent upon its frequency, whether it has resulted in impregnating the victim, the relationship of the rapist with the victim, but the only categorisation in rape cases is, either 8(a), 8(b) or 8(c), where the period of imprisonment to be undergone is the highest i.e. 22 years, as the rape is committed on a physically handicapped or mentally retarded girl, pregnant woman or when it is a gang rape or custodial rape.

The submission of Mr.Yagnik that the discretion vests in the State Government and, therefore, when it found that the Petitioner is convicted for committing rape on his own daughter and impregnated her, the State Government is empowered to exercise its discretion is a misleading argument.

13. Dr.Chaudhry has relied upon a recent decision of the Apex Court in the case of Rajkumar Vs. The State of Uttar Pradesh 2023 SCC OnLine SC 990, where, by referring to its earlier judgment in the case of Rashidul Jafar @ Chota Vs. State of Uttar Pradesh & Anr. 2022 SCC OnLine SC 1201, directions were issued for premature release of a person sentenced for imprisonment for life and the question came of implementing the guidelines formulated by the State of Uttar Pradesh, the grievance made by 50 persons who were subjected to a pick and choose policy, Dr.Chandrachud, the Hon'ble The Chief Justice of India, has specifically held as under :-

"13. The State having formulated Rules and Standing Policy for deciding cases of premature release, it is bound by its own formulations of law. Since there are legal provisions which hold the field, it is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release. It must strictly abide by the terms of its policies bearing in mind the fundamental principle of law that each case for premature release has to be decided on the basis of the legal position as it stands on the date of the conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination. The provisions of the law must be applied equally to all persons. Moreover, those provisions have to be applied efficiently and transparently so as to obviate the grievance that the policy is being applied unevenly to similarly circumstanced persons. An arbitrary method adopted by the State is liable to grave abuses and is liable to lead to a situation where persons lacking resources, education and awareness suffer the most."

14. In the case of State of Haryana & Ors. Vs. Jagdish (2010) 4 SCC 216 , when a question arose before the Apex Court, as to whether the policy which makes a provision for remission of sentence, should be that which was existing on the date of the conviction of the accused or it should be the policy that exists on the date of consideration of his case for premature release by the appropriate authority, while holding that the case of the accused/respondent was to be considered on the strength of policy that was existing on the date of his conviction, it is categorically observed as under :-

"...State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for pre-mature release would be considered after serving the sentences, prescribed in the short sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "lifer" for pre-mature release, he should be given benefit thereof."

On the basis of the information furnished by the State of Haryana, recording that respondent Jagdish has served more than 14 years, he falling in category 3 of the prisoners, was held entitled for premature release.

In another decision delivered by the Apex Court in the case of Rajan Vs. The Home Secretary, Home Department of Tamil Nadu & Ors. (2019) 14 SCC 114, where the Petitioner sought premature release on having undergone over 30 years of actual imprisonment and with remission, 36 years of imprisonment, on recording that the Petitioner was convicted on three counts for the offence under Section 302 and on four counts for the offence under Section 307 and in relation to which he has been given life imprisonment on each count, the matter was left for the competent authority to decide upon his representation.

15. The decision of the Division Bench in the case of Sunil B. Pingale Vs. The State of Maharashtra (Cri. Writ Petition No.4428 of 2017 decided on 05/04/2018), on which reliance is placed, is also perused by us.

In the said petition, the petitioner prayed for premature release under Section 433-A of the Code of Civil Procedure and the facts would reveal that on being found guilty of the offence punishable under Section 302 of IPC, for causing death of his mother-in-law and also of his sister-in-law, the petitioner was sentenced to death on two counts. In addition, he was also convicted under the offence under Section 307 and was sentenced to seven years imprisonment again on two counts. He preferred an appeal against the conviction and sentence, which was dismissed by the High Court and the Hon'ble Supreme Court confirmed the conviction and sentence. He, thereafter, filed Mercy Petition under Article 72 of the Constitution of India to the President of India, who on 21/03/2011, commuted the sentence of death awarded, but specifically directed that he shall remain in prison for the whole of remainder of his natural life and there shall be no remission of the term of imprisonment. It is in this background, the Division Bench of this Court headed by the then Chief Justice, refused remission.

16. Since in light of the guidelines framed by the State in form of Government Resolution for determining the period of imprisonment to be undergone by the prisoners serving life sentence and formulating the guidelines for premature

release under "14 Year Rule", the Petitioner would fit into category 8(b) of Annexure II of the said Government Resolution and since, it is his specific case that he has undergone 19 years 10 months and 28 days of imprisonment, including remission on the date of filing of the Petition i.e. 20/06/2022, which apparently is almost 22 years.

Since there is no discretion left in the State Government to further categorise him and refuse him premature release on the pretext that he is found guilty of a heinous offence hit by immorality, as he has committed rape on her own daughter and impregnated her, the refusal by the State Government to release him on completion of more than 20 years of actual imprisonment, including remission is in utter violation of its own policy framed in exercise of power under Section 432 of the Code of 1973. Since, the Petitioner has already undergone 22 years of actual imprisonment, including remission, he is entitled for premature release, by declaring that he has undergone the sentence awarded to him, on finding him guilty of committing an offence of rape.

The Writ Petition is allowed in terms of prayer clause (a), which reads thus :-

"(a) Direct the Respondent to categorise and release the Petitioner under category 8(b) of Annexure-II of the 2010 Guidelines for his life sentence u/s 376 IPC."

The Petitioner is directed to be released forthwith on receipt of the writ from this Court by the Jail Superintendent of the concerned jail where he is presently housed, if he is not to be kept incarcerated for undergoing sentence/imprisonment, in any other case.