IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

WPA 2738 of 2025
Md. Amjad @ Md. Amzad @ Amjed
Vs.
The State of West Bengal & Ors.

For the Petitioner	: Mr. Pinak Kumar Mitra, Adv. Ms. Sampurna Ghosh, Adv. Ms. Sananda Bhattacherjee, Adv. Mr. Debendra Nath Saha, Adv.
For the Respondent No. 7	: Mr. Pantu Deb Roy, Ld. AGP. Mr. Pannalal Bandyopadhyay, Adv. Mr. Sayan Ganguly, Adv.
For the State	: Mr. Sk. Md. Galib, Ld. Sr. Govt. Adv. Ms. Sujata Mukherjee, Adv.
Hearing Concluded on	: 27.01.2026
Judgment on	: 11.02.2026

Om Narayan Rai, J.:-

1. This writ petition is at the instance of a life convict. He assails an order dated December 24, 2024 passed by the Principal Secretary, Judicial Department, Government of West Bengal whereby his prayer for premature release upon remission of his sentence of life imprisonment has been rejected.

FACTS OF THE CASE:

2. The petitioner was arrested on May 02, 2003 in connection with New Market Police Station Case No. 113 initiated on April 12, 2003 under Sections 302/34 of the Indian Penal Code, 1860 (hereafter "IPC"). He and his co-accused were

thereafter committed for trial in S.T. No. 2 of November 2003/S.C. No. 80/2003.

3. Ultimately, the petitioner and his co-accused were convicted under Sections 302/34 IPC by a judgment and order dated March 19, 2005 passed by the Learned Judge, XIIth Bench, City Civil and Sessions Court, Calcutta, in S.C. No. 80/2003 and both the accused persons were sentenced to life imprisonment along with fine of Rs.5000/- each. In default of payment of fine they were sentenced to undergo further simple imprisonment for a period of two years.

4. Feeling aggrieved by the said judgment and order of conviction the petitioner approached this Court by filing an appeal being CRA No. 309 of 2005. The said appeal was dismissed by the Hon'ble Division Bench of this Court by a judgment and order dated December 17, 2013. The petitioner carried the matter to the Hon'ble Supreme Court by way of a Special Leave Petition which too was dismissed by an order dated July 07, 2014. The petitioner has thereafter remained in custody.

5. The petitioner's case for premature release (along with several others) was considered by the State Sentence Review Board (hereafter "SSRB") in its 69th meeting held on September 02, 2022 and the petitioner's case was recommended for premature release.

6. As the petitioner was not released despite the recommendation, the petitioner's wife followed up with a representation dated February 23, 2024 to the respondent no. 2 i.e. the Principal Secretary to the Government of West Bengal requesting for the petitioner's premature release. The said representation too could not lead to a release order. The petitioner's wife therefore approached

this Court by filing a writ petition being WPA 16927 of 2024 praying *inter alia*, for a direction upon the respondent to take steps and to act on the basis of the recommendation of the 69th Meeting of the SSRB.

7. The said writ petition was disposed of by this Court by an order dated November 20, 2024 thereby directing the Judicial Secretary to take steps to consider and dispose of the prayer of the petitioner in line with the recommendation made by the SSRB at the earliest.

8. Pursuant to the said order dated November 20, 2024, the Principal Secretary, Judicial Department, Government of West Bengal passed the order impugned thereby holding that the petitioner was not entitled to remission and premature release. The order indicates that upon the SSRB's recommendations being communicated to the Judicial Department, the said Department had forwarded the same to this Court for obtaining the opinion of the presiding Judge of either the convicting Court or the conforming Court and that the convicting Court had thereupon rendered a negative opinion which has been accepted by the Principal Secretary, Judicial Department, Government of West Bengal.

9. The said order is undated. However, the same was communicated to the petitioner's learned Advocate under the cover of a letter dated December 24, 2024. Feeling aggrieved by the said order the petitioner has approached this Court by way of the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

10. Mr. Mitra, learned Advocate appearing for the petitioner has submitted that the order impugned is wholly unreasoned inasmuch as the same has been passed

by mechanically relying on the opinion of the respondent no. 7 being the Learned Chief Judge, City Sessions Court, Calcutta.

11. It was submitted that the said order has been passed in total disregard of the comments of the other authorities and the recommendation of the SSRB.

12. It was next submitted that the opinion of the respondent no. 7 could not be termed as an opinion of the presiding Judge of the Court before or by which the petitioner had been convicted. Asserting that the provisions of Section 432 of the Code of Criminal Procedure, 1973 (hereafter "the Code") are clear and specific, Mr. Mitra argued that the opinion must be had from the presiding Judge of the very Court which either passed the order of conviction or confirmed the same and not from any other person.

13. He contended that since in the case at hand opinion had been taken from the Learned Chief Judge of the City Sessions Court, Calcutta, who was/is not the presiding Judge of the Court which passed the order of conviction of the petitioner, such opinion could not at all have been taken into consideration by the respondent no. 2 while passing the order impugned.

14. In support of his contention, that in terms of Section 432 (2) of the Code, the opinion of presiding Judge of the Court by which the order of conviction was passed alone is important, Mr. Mitra relied on a judgment of the Hon'ble Supreme Court in the case of ***Bilkis Yakub Rasool vs. Union of India & Others***[1].

15. Attention of this Court was then drawn to the judgment of the Hon'ble Supreme Court in the case of ***Jaswant Singh & Others vs. State of***

[1] (2024) 5 SCC 481

Chhattisgarh & Another[2] for the proposition that when a co-accused has been treated in a particular way, the other co-accused should also be similarly treated. It was submitted that there should be parity in treatment of one co-accused with the other.

16. Another judgment of the Hon'ble Supreme Court in the case of ***Ram Chander vs. State of Chhattisgarh & Another***[3] was relied on for the proposition that the opinion of the presiding Judge was only a guiding factor but the same would not be binding.

17. A judgment of the Hon'ble Supreme Court in the case of ***Joseph vs. State of Kerala & Others***[4] was relied on for the proposition that a life convict could be released directly without remanding the matter to the State Government. For the same proposition, another judgment of the Hon'ble Supreme Court in the case of ***Bhagwat Saran & Others vs. State of Uttar Pradesh & Others***[5] was also relied on.

18. Mr. Mitra also pressed into service a judgment of the Hon'ble Supreme Court in the case of ***Satish alias Sabbe vs. State of Uttar Pradesh***[6] for the proposition that where the authorities had failed to discharge their statutory obligations despite judicial directions, a constitutional Court while exercising its power of judicial review could itself take up the task and ensure compliance through a Writ of Mandamus.

19. A judgment of the Co-ordinate Bench of this Court in the case of ***Sri Gopal Sarkar vs. State of West Bengal & Others***[7] was also cited to demonstrate

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[2] (2023) 17 SCC 297
[3] (2022) 12 SCC 52
[4] 2023 SCC OnLine SC 1211; MANU/SC/1049/2023
[5] (1983) 1 SCC 389
[6] (2021) 14 SCC 580
[7] WPA 17248 of 2021, decided on August 30, 2022

that this Court can also direct premature release of the petitioner, in exercise of its writ jurisdiction under Article 226 of the Constitution of India even where the opinion of the presiding Judge is not available.

20. Another judgment of a Co-ordinate Bench of this Court in the case of ***Aniruddha Halder & Another vs. State of West Bengal***[8] was relied on for the proposition that this Court can direct the release of a convict while exercising to its power under Section 432 of the Code read with Article 227 of the Constitution of India even in cases where the opinion of the presiding Judge is not available.

21. Mr. Mitra also submitted that when this Court had by its order dated November 20, 2024 directed the Judicial Secretary to take steps to consider and dispose of the prayer for the petitioner's premature release *"in line with the recommendation made by SSRB"*, it was not open to the Judicial Secretary to take a contrary view and reject the request by accepting an opinion which had (has) no value at all. Mr. Mitra sought for directions for premature release of the petitioner upon quashing of the order impugned.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

22. Mr. Galib, learned Advocate appearing for the State respondent vehemently opposed the prayer of Mr. Mitra. It was submitted that the opinion of the presiding Judge of the Court which passed the order of conviction is mandatory and an order of remission and premature release could not be passed in the absence of such opinion. In support of his submission, he relied on the judgment of the Hon'ble Supreme Court in the case of ***Ram Chander*** (supra), ***Bilkis Yakub Rasool*** (supra) and ***Jaswant Singh*** (supra).

[8] 2023 (3) AICLR 664 (Cal.)

23. Mr. Galib next submitted that the petitioner has confounded the expression "Bench of a Court" with the expression "Court" while interpreting the provisions of Section 432 of the Code. It was submitted that the opinion of the Learned Chief Judge, City Sessions Court, Calcutta has been obtained in the case at hand in the peculiar facts of the case where the XIIth Bench of the Sessions Court which passed the order of conviction is no longer in existence. It was submitted that since the Bench which passed the order of conviction (was) is no longer in existence, therefore, in order to ensure substantial compliance with the provisions of Section 432 of the Code, opinion of the Learned Chief Judge of the City Sessions Court was obtained.

24. In order to demonstrate that the expression "Court" must be interpreted in a wide and generous sense and not in a narrow and pedantic sense, he relied on a judgment of the Hon'ble Supreme Court in the case of ***Trans Mediterranean Airways vs. Universal Exports & Another***[9]. In order to differentiate the expression "Court" from "Bench" and to assert that the expressions "Court" and "Judge" though used interchangeably are actually not synonymous, Mr. Galib relied on a judgment of the Hon'ble Supreme Court in the case of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India & Others***[10].

25. Mr. Galib strenously asserted that remission of sentence and premature release of a convict must not be granted lightly and that in case it is found that the order under judicial review is flawed or infirm, the Court can always send the matter back to the relevant State authority for reconsideration.

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[9] (2011) 10 SCC 316
[10] (1994) 6 SCC 731

26. Mr. Galib also cited two orders passed by the Hon'ble Supreme Court in the case of ***Sonadhar vs. The State of Chhattisgarh*** in order to demonstrate that the entire process of granting remission and premature release in terms of Section 432(2) of the Code has been streamlined. The first is the order dated July 7, 2021 in ***Sonadhar vs. State of Chhattisgarh***[11], which was cited to assert that the Hon'ble Supreme Court has directed that remission applications should be dealt with in a time bound manner. The next order is dated September 15, 2022 whereby the Hon'ble Supreme Court has directed the State of West Bengal to take note of the anomaly, in the manner of processing remission applications by the State Government, to the effect that requirement for obtaining opinion of the concerned Judge was prior to the recommendation and upon the recommendation being made, there was no need to refer it to the Court again.

27. He also cited a Notification dated December 21, 2022 published by the Government of West Bengal, Judicial Department and submitted the anomaly indicated in the order dated September 15, 2022 passed by the Hon'ble Supreme Court in the case of ***Sonadhar*** (supra) has been addressed and it has been specified that the SSRB would recommend the case of a life convict for premature release upon considering the opinion of the convicting or confirming Courts. It was submitted that presently the said procedure is being followed.

28. Mr. Deb Roy learned Advocate appearing for the respondent No.7 adopted the submissions made by Mr. Galib appearing on behalf of the State.

[11] 2021 SCC OnLine SC 3544

ANALYSIS & DECISION:

29. Heard learned Advocates for the respective parties and considered the material on record.

30. The present proceeding falls to be decided on the following questions:-

(i) Whether in absence of the presiding Judge of the Court before or by which conviction was had, the Learned Chief Judge of the City Sessions Court was competent to render an opinion under Section 432(2) of the Code?

(ii) Whether the opinion rendered by the Learned Chief Judge in the instant case conforms to the statutory requirements and the settled principles of law?

(iii) Whether the impugned order passed by the Judicial Secretary is legally sustainable and justified?

(iv) Whether it was open to the Judicial Secretary to reject decline the request for the petitioner's premature release upon remission of his sentence after the order dated November 20, 2024 was passed in WPA 16927 of 2024 whereby the Judicial Secretary had been directed to take steps to consider and dispose of the prayer for the petitioner's premature release *"in line with the recommendation made by SSRB"*?.

(v) Whether this Court should grant remission and direct premature release of the petitioner?

As Regards Question No. (i):-

31. Since the petitioner has questioned the competence and authority of the Learned Chief Judge, City Sessions Court, Calcutta to render the opinion under Section 432(2) of the Code, instead of the presiding Judge of the Court

before or by which conviction was had, therefore, the said provision should be noticed first:-

> *"**432. Power to suspend or remit sentences. –***
>
> *(1) ***********
>
> *(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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> ******************************* ****************************** ******************************"*

32. After the pronouncement of the Hon'ble Supreme Court in the case of ***Union of India vs. V. Sriharan alias Murugan & Others***[12] which has been relied on in ***Ram Chander*** (supra), it is now well established that the procedure stipulated in Section 432(2) of the Code is mandatory. The question is what would happen in case the presiding Judge is not available.

33. The respondent no.7 has, in its affidavit in opposition to the writ petition, indicated the reasons for the Learned Chief Judge rendering the opinion under Section 432(2) of the Code instead of the presiding Judge of the convicting Court. It has been asserted that at the time when the petitioner's case was tried, City Sessions Court, Calcutta did not have independent existence and as such the petitioner's case was tried by the Judge XIIth Bench, City Civil and City Sessions Court, Calcutta. The said opposition further reveals that City Civil Court and City Sessions Court started functioning independently from August 11, 2005 and the XIIth Bench, City Civil and City Sessions Court, Calcutta ceased to exist. It has thus been contended that since the relevant

[12] (2016) 7 SCC 1

Bench that passed the order of conviction was no longer in existence, therefore, the Learned Chief Judge, City Sessions Court rendered the opinion.

34. It is not in dispute (and it cannot be) that on and from August 11, 2005 both City Civil Court and City Sessions Court started functioning independently. There is no reason to disbelieve or discard the statement of the respondent no.7 that with the separation of the two Courts, XIIth Bench, City Sessions Court no longer remained in existence. In cases such as the present one, would it mean that opinion under Section 432(2) of the Code would not be obtained at all? In the considered view of this Court, a negative answer to the question posed would trample the avowed objective of the provision; therefore, opinion must be obtained.

35. In such a situation, a combined reading of the provisions of Section 5 of the City Sessions Court Act, 1953 and Section 35 of the Code can show the path forward. The aforesaid provisions may first be noticed. Section 5 of the City Sessions Court Act, 1953 reads thus:-

> *"**5. City Sessions Court to be a Court of Session and the Code to apply to such Court**.—For the purposes of the Code, the Presidency-town of Calcutta shall be deemed to be a sessions division and a district, the City Sessions Court shall be deemed to be a Court or Session established for such sessions division, and the Chief Judge and the other Judges of the City Sessions Court shall be deemed respectively to be the Sessions Judge and the Additional Sessions Judges appointed for such Court of Session; and save as otherwise provided in this Act all the provisions of the Code shall apply accordingly."*
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> [Emphasis Supplied]

36. Section 35 of the Code provides as follows:-

> *"**35. Powers of Judges and Magistrates exercisable by their successors-in-office.—***
>
> *(1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office.*

(2) When there is any doubt as to who is the successor-in-office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Additional or Assistant Sessions Judge.

(3) When there is any doubt as to who is the successor-in-office of any Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, shall determine by order in writing the Magistrate who shall, for the purpose of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate."

[Emphasis Supplied]

37. The underscored provisions of the two Sections extracted hereinabove read cumulatively would lead to the following conclusions:-

a) The Chief Judge of the City Sessions Court is the Sessions Judge and the other Sessions Judges would be Additional Sessions Judges;

b) In case of doubt as to who shall be the successor-in-office of any Additional Sessions Judge, the Chief Judge shall be the authority to decide;

c) Axiomatically, the Chief Judge can himself also take up the task that he could assign to any other Additional Sessions Judge.

38. Although the aforequoted provisions pertain to the judicial power and duties' domain of the Chief Judge/Sessions Judge, the Additional Sessions Judges and the Magistrates, yet, there is no reason why the spirit thereof cannot be invoked in situations where a Judge is required to render a valuable opinion and provide a *"procedural safeguard"* in the decision making process of the executive as regards the remission and premature release of a convict.

39. In such view of the matter, this Court does not find any illegality in the Learned Chief Judge, City Sessions Court, Calcutta, rendering opinion in absence of the presiding Judge of the Court before or by which conviction was

had. The provisions of Section 432(2) cannot be rendered fatuous and unworkable by imposing such a strict interpretation on it that absent the *presiding officer of the Court before or by which conviction was had*, no opinion can be had at all. The first question thus stands answered in the affirmative.

As Regards Question No. (ii):-

40. In the case at hand, the Learned Chief Judge, City Sessions Court, Calcutta has rendered the following opinion:-

> *"In this juncture, the case record is put up before me for forming conclusive opinion in respect of the concerned life convict namely, Md. Amjad S/O Late Sagir Ahmed at present suffering life sentence at Midnapore Central Correctional Home. It appears from the case record that the life imprisonment of the convict Md. Amjad passed by the Ld. Sessions Judge, XIIth Bench, City Sessions Court, Calcutta in C/W Sessions Case No. 80 of 2003, U/S. 302/34 I.P.C. was affirmed by the Hon'ble High Court, Calcutta on 17.12.2013 in c/w CRA No. 309 of 2005.*
>
> *In this pretext, it would be appropriate to reproduce the observation of the Ld. Court as it is reflected in the judgment dated 19.03.2005. Page No. 59 of the judgment reflects that convict, Md. Amjad along with another convict Md. Kallu were not in good terms with victims and that both convicts threatened both victims prior to the incident, occasionally on two occasions and thereby it can be safely said that both the convicts assaulted both the victims with proper plan, rather their plan was prepared prior to the incident having common intention to kill the victims and the convicts fulfilled their intention by killing the victims with deadly weapons. Thus it can be safely said that both the victims were murdered by both the convicts, which is cold blooded and brutal without any provocation from the end of the victims.*
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> *In this regard, it is submitted that this Court is not aware whether this convict namely Md. Amjad has lost his potentiality about his criminal act further or he still maintains relationship with his old criminal associates or there is any possibility of his inclination to commit criminal acts.*
>
> *In such a situation the conduct of this convict suggests that he deserves no mercy. When we propose to establish a society founded on the principal of welfare state, we should endeavour to engender in the minds of the common people not only the feeling but assurance too that rule of law is in force to protect the lives and properties of the people.*
>
> *Having thus, based upon the delineation made above and also regard being given to the materials on the case record, I am of the opinion that premature release of such*

convict would not only cause threat to the society but encourage the convict to commit such heinous crime again also.

Therefore, premature release of the concerned convict namely, Md. Amjad S/O Late Sagir Ahmed at present suffering life sentence in Midnapore Central Correctional Home should not be done in the interest of justice and public safety."

41. The Hon'ble Supreme Court has in the case of ***Ram Chander*** (supra) considered the earlier judgments in the cases of ***Laxman Naskar vs. Union of India & Others***[13] and ***Laxman Naskar vs. State of West Bengal & Another***[14], and reiterated the significant factors which are required to be considered by the presiding Judge of the Court before whom the order of conviction was passed or confirmed in paragraph 15 of the said judgment. The said paragraph is extracted herein below:-

*"**15.** In Laxman Naskar v. State of W.B. [Laxman Naskar v. State of W.B., (2000) 7 SCC 626 : 2000 SCC (Cri) 1431] , while the jail authorities were in favour of releasing the petitioner, the review committee constituted by the Government recommended the rejection of the claim for premature release on the grounds that : (i) the two witnesses who had deposed during the trial and people of the locality were apprehensive that the release of the petitioner will disrupt the peace in the locality; (ii) the petitioner was 43 years old and had the potential of committing a crime; and (iii) the crime had occurred in relation to a political feud which affected the society at large. The Court while placing reliance on Laxman Naskar v. Union of India [Laxman Naskar v. Union of India, (2000) 2 SCC 595 : 2000 SCC (Cri) 509] stipulated the factors that govern the grant of remission, namely : (Laxman Naskar case [Laxman Naskar v. State of W.B., (2000) 7 SCC 626 : 2000 SCC (Cri) 1431] , SCC p. 598, para 6)*

"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."

[13] (2000) 2 SCC 595
[14] (2000) 7 SCC 626

42. In the case of ***Bilkis Yakub Rasool*** (supra) too the Hon'ble Supreme Court after considering a number of authorties and earlier judgments of the Hon'ble Supreme Court observed as follows:-

> *"**205.** Thus, the consistent view of this Court which emerges is that the expression "may" has to be interpreted as "shall" and as a mandatory requirement under sub-section (2) of Section 432CrPC. The said provision has sufficient guidelines as to how the opinion must be provided by the Presiding Judge of the court which has convicted the accused inasmuch as—*
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> *(i) the opinion must state as to whether the application for remission should be granted or refused and for either of the said opinions, the reasons must be stated;*
>
> *(ii) naturally, the reasons must have a bearing on the facts and circumstances of the case;*
>
> *(iii) the reasons must be in tandem with the record of the trial or of such record thereof as exists;*
>
> *(iv) the Presiding Judge of the court before or by which the conviction was had or confirmed, must also forward along with the statement of such opinion granting or refusing remission, a certified copy of the record of the trial or of such record thereof as exists."*

43. On perusing the opinion of the Learned Chief Judge, City Sessions Court, Calcutta in the light of the judgment of the Hon'ble Supreme Court in ***Ram Chander*** (supra), it will be clear that none of the factors listed at serial nos. (ii) to (v) in paragraph 15 of the said judgment have received appropriate consideration of the said Learned Judge. The opinion has only tangentially touched upon the aspects of *chance of future recurrence of crime* and *loss of potentiality of crime*, sans an informed deduction. It exhibits a wholly uncalibrated approach and is strongly suggestive of lack of requisite material to arrive at the proper conclusion.

44. Similarly the opinion also falls short of fulfilling the requirements of Section 432(2) of the Code as enunciated by the Hon'ble Supreme Court in the case of ***Bilkis Yakub Rasool*** (supra).

45. Since the relevant factors have not been appropriately considered and the requisite requirements have not been fulfilled by the Learned Chief Judge, City Sessions Court, Calcutta in rendering the opinion in terms of Section 432(2) of the Code, it fails to serve the purpose wherefor it was sought. The second question is thus answered in the negative.

As Regards Question No. (iii):-

46. The impugned order passed by the Judicial Secretary declining remission of the petitioner's sentence and his premature release, indicates that the same has been passed on the misconception that the opinion of the Learned Chief Judge of the City Sessions Court, Calcutta is binding on him and must be accepted. The same would be evident from the following extract of the order impugned:-

> *"Considering all documents placed in those two files, I am of the view that positive 'Recommendation' of the presiding Judge of the confirming/convicting Court is sine qua non for premature release of the convict, in pursuance of the Order dtd. 20.11.2012 of the Hon'ble Supreme Court in Crl. Appeal No.-491 of 2011, in the matter of Sangeet & Anr. –vs- State of Haryana and in case of the life convict Md. Amjad, the presiding Judge of the convicting Court has been categorically negate the premature release of the instant life convict in the interest of justice and public safety.*
>
> *Accordingly, the opinion of 'Non-recommendation' of the presiding Judge of the convicting Court in respect of the life convict, namely, Md. Amjad @ Md. Amzad @ Md. Amjed, shall be accepted in view of the observation of the Hon'ble Supreme Court in Sangeet & Anr. –vs- State of Haryana and necessary Govt. Order for release in favour of the life convict, namely, Md. Amjad @ Md. Amzad @ Md. Amjed, shall not be issued at this stage.*
>
> *Non-recommendation by the convicting Court of the case of the life convict Md. Amjad @ Md. Amzad @ Md. Amjed, shall be communicated to the SLSA, WB, in view of the observation of the Hon'ble Apex Court in SLP (CRL) No. 529/21, in the matter of Sonadhar –vs- State of Chhattisgarh.*
>
> *The prayer of the petitioner, namely, Asghari Begum is hereby disposed of."*

47. The Judicial Secretary has clearly misinterpreted the ratio of the judgment of the Hon'ble Supreme Court in the case of ***Sangeet & Another vs. State of Haryana***[15], to mean that the opinion of the presiding Judge of the Court before or by which conviction was had or confirmed must be given precedence over everything else without independent application of mind. In fact ***Sangeet*** (supra) did not mandate that the opinion of the presiding Judge must be accepted in all cases. Paragraph 77.7 of the said judgment may be noticed in this context:-

> *"**77.7.** Before actually exercising the power of remission under Section 432 CrPC the appropriate Government must obtain the opinion (with reasons) of the Presiding Judge of the convicting or confirming Court. Remissions can, therefore, be given only on a case-by-case basis and not in a wholesale manner."*
>
> [Emphasis Supplied]

48. The Hon'ble Supreme Court has clearly explained the importance and effect of the opinion of the presiding Judge of the Court before or by which conviction was had or confirmed in the case of ***Ram Chander*** (supra) after considering a number of authorities including ***Sangeet*** (supra) and ***V. Sriharan*** (supra) in the following words:-

> *"**25.** In Sriharan, the Court observed that the opinion of the Presiding Judge shines a light on the nature of the crime that has been committed, the record of the convict, their background and other relevant factors. Crucially, the Court observed that the opinion of the Presiding Judge would enable the Government to take the "right" decision as to whether or not the sentence should be remitted. Hence, it cannot be said that the opinion of the Presiding Judge is only a relevant factor, which does not have any determinative effect on the application for remission. The purpose of the procedural safeguard under Section 432(2) CrPC would stand defeated if the opinion of the Presiding Judge becomes just another factor that may be taken into consideration by the Government while deciding the application for remission. It is possible then that the procedure under Section 432(2) would become a mere formality.*

[15] (2013) 2 SCC 452

26. *However, this is not to say that the appropriate Government should mechanically follow the opinion of the Presiding Judge. If the opinion of the Presiding Judge does not comply with the requirements of Section 432(2) or if the Judge does not consider the relevant factors for grant of remission that have been laid down in Laxman Naskar v. Union of India , the Government may request the Presiding Judge to consider the matter afresh."*

[Emphasis Supplied]

49. In the case at hand the respondent State has accepted the opinion of the Learned Chief Judge of the City Sessions Court, Calcutta as a binding verdict without ascertaining as to whether the opinion fulfilled the requirements of Section 432(2) of the Code and as to whether the relevant factors for grant of remission indicated in ***Laxman Naskar*** (supra) have been considered or not. If the State authority had followed the ruling, ratio and ordainment of the Hon'ble Supreme Court in the case of ***Ram Chander*** (supra), the matter may not have walked up to this Court. The respondent State authority would then itself have requested the Learned Chief Judge of the City Sessions Court, Calcutta to consider the matter afresh as observed by the Hon'ble Supreme Court in ***Ram Chander*** (supra). The respondent State authority has not done so. For all the reasons aforesaid, the impugned decision taken by the State authority (Judicial Secretary) is clearly unsustainable. The third question is thus also answered in the negative.

As Regards Question No. (iv):-

50. By the order dated November 20, 2024 passed in WPA 16927 of 2024 the order dated November 20, 2024 directed the Judicial Secretary to take steps to consider and dispose of the prayer for the petitioner's premature release *"in line with the recommendation made by SSRB"*.

51. It was submitted by Mr. Mitra that after the said order, the Judicial Secretary was no longer authorised to take a view contrary to the recommendation of the SSRB. Although a cursory reading of the order may at the first blush precipitate such an inference but the same would at once perish on a meaningful reading of the said order dated November 20, 2024.

52. The said order clearly records in paragraph 4 that *"The remission cum release order is to be issued by the Judicial Department on getting approval from the Government."* The Court therefore clearly did not hold the recommendation of the SSRB to be binding. Anything that needs "*approval*" is by nature not binding. In such cases, the final decision rests with the approving authority i.e. the State Government which has the discretion to accept or reject the recommendation based on legally acceptable and sound reasons. The Court cannot and did not supplant such statutory mechanism provided for grant of remission and premature release.

53. In such view of the matter the expression *"in line with the recommendation made by SSRB"* cannot be treated to be a mandate to bypass the statutory or procedural requirements as suggested by the petitioner. All that it meant was that the Judicial Secretary would give a sincere consideration to the SSRB recommendation. It is settled that an order or a judgment of Court is not to be read like a statute. It is equally trite that the text of an order must be read in the context of the facts and the law applicable. The order dated November 20, 2024 should also be read in the context of the facts as well as the context of entire administrative scheme for remission and premature release of convicts.

54. It must not be lost sight of that SSRB itself made its recommendation subject to approval by the State Government and therefore even if the expression *"in*

line with the recommendation made by SSRB" used in the order is read to best suit the petitioner's arguments, as insisted by Mr. Mitra, it would only mean - to follow the recommendation through its natural legal life cycle including final approval.

55. In such view of the matter there is no reason to hold that the Judicial Secretary was bound to give effect to the recommendation without application of mind. The fourth question stands answered accordingly.

As Regards Question No. (v):-

56. It was submitted by Mr. Mitra that this Court itself should grant remission and order premature release of the petitioner in exercise of its power under Article 226 of the Constitution of India. There is no dispute on the aspect that this a constitutional Court can in appropriate cases certainly grant remission of sentence and direct premature release of a life convict. However, in order to exercise such power, the Court must have sufficient material before it to be satisfied that in the given case direction for remission of sentence and premature release is warranted and justified. In the present case there is precious little before the Court to go ahead and pass such orders. To wit, there is a "Detention Certificate" issued by the Superintendent, Midnapore Correctional Home containing his remarks that - the petitioner's behaviour inside the correctional home is good; that he performs the allotted task satisfactorily and that there is no complaint received against him till date. Then there is the bare recommendation of SSRB without the preceding discussion or the detailed minutes of the 69th meeting of the SSRB. The same is extracted hereinbelow:-

*"**(Sl. No. 035) (Reg. No. 6-156-2018-CT)** **Md Amjad** S/o – Late Sagir Ahamed (57yrs) S of Midnapore Central Correctional Home. He was convicted for life imprisonment on 19 – March – 2005 by Ld. City Sessions Court, 12th Bench, Calcutta in c/w ST No. 2(11)2003, u/s- 302/34 IPC and has undergone more than 19 years of actual imprisonment. His case for premature release has been recommended by all concerned.*

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5. Now, further action with regard to approval of the competent authority in the Government of West Bengal, maintaining all formalities considering existing rules in force and judicial pronouncements relevant to the issue be taken up by the Judicial Department, Government of West Bengal. The Remission cum Release Orders in respect of life convicts shall be issued subsequently by the Judicial Department on getting approval of the Government for premature release u/s- 432 of CrPc. Reasoned Order in respect of cases "not recommended" are to be communicated to the State Legal Services Authority by the Judicial Department. But such orders are to be communicated to the respective convicts by the Directorate of Correctional services through the Superintendent of Correctional Homes."

57. The only other material available is the opinion of the Learned Chief Judge of the City Sessions Court, Calcutta and the order impugned. While it is true that this Court can direct all the material to be produced before it, analyse the same and then pass an order but then this Court would not be justified in doing so unless the circumstances of the case are compelling enough to take up the executive function and grant remission and premature release. In fact all the high authorities cited by the petitioner in such context clearly instruct in the same tone. The same may be noticed one by one.

58. In the case of ***Satish alias Sabbe*** (supra) relied on by Mr. Mitra the Hon'ble Supreme Court had observed that it would not be inappropriate for constitutional Court while exercising its powers of judicial review to assume the task (of passing an order of remission and premature release of a convict) on itself and direct compliance through a writ of mandamus, in a case where the authorities are found to have failed to discharge their statutory obligations

despite judicial directions. Such observations were made in the facts of the said case as the relevant State authorities before the Hon'ble Supreme Court had acted in defiance of the order of the Hon'ble Supreme Court on two occasions, by rejecting the petitioner's prayer for remission arbitrarily. Paragraphs 10, 11 and 17 of the report may be noticed in such regard:-

*"**10.** It was brought to the notice of this Court on the next date of hearing that the respondent State had, without due application of mind, passed an unreasoned order dated 13-7-2020 rejecting premature release of Satish based on an earlier evaluation conducted on 29-1-2018. This was contended to be in contravention of the directions issued by this Court as well as on a misconceived notion of individual dignity. Similar allegations of evasive compliance and mechanical rejection of Vikky's case for premature release vide Government Order dated 29-7-2020, despite his long incarceration and good conduct, were reiterated. Restricting their prayer(s) in terms of the order dated 6-9-2019 [Satish v. State of U.P., 2019 SCC OnLine SC 1892] of this Court, the learned counsel for Satish and Vikky have cited some judgments, and relied upon various remission guidelines; to substantiate their plea to set aside the orders rejecting petitioner's prayer for premature release.*

***11.** Finding that earlier orders directing fresh consideration of petitioners' cases for premature release had not been faithfully complied with, this Court on 25-8-2020 [Satish v. State of U.P., 2020 SCC OnLine SC 814] , once more directed the respondent State to consider both the cases afresh and pass appropriate reasoned orders within a week. Since the petitioner's prayer for premature release has again been declined vide Government Orders dated 1-9-2020, hence the learned counsel for the parties have been heard on the aforestated limited issue.*

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***17.** It is no doubt trite law that no convict can claim remission as a matter of right. However, in the present case, the circumstances are different. What had been sought and directed by this Court through repeated orders was not premature release itself, but due application of mind and a reasoned decision by executive authorities in terms of existing provisions regarding premature release. Clearly, once a law has been made by the appropriate legislature, then it is not open for the executive authorities to surreptitiously subvert its mandate. Where the authorities are found to have failed to discharge their statutory obligations despite judicial directions, it would then not be inappropriate for a*

constitutional court while exercising its powers of judicial review to assume such task onto itself and direct compliance through a writ of mandamus."

[Emphasis Supplied]

59. It would be evident upon perusal of the aforequoted paragraphs that in the said case too, the Hon'ble Supreme Court did not direct premature release at the very first or even second instance. The matter had been remitted to the State authorities twice by the Hon'ble Supreme Court itself but even then the State authorities failed to perform their duties.

60. The case of ***Bhagwat Saran*** (supra) was one where the Hon'ble Supreme Court had passed the order for premature release on a petition under Article 32 of the Constitution of India where although the recommendation of the committee was favourable, the State had rejected the petitioner's prayer for release only *"in view of the law and order situation"*.

61. The case of ***Joseph*** (supra) was again considered by the Hon'ble Supreme Court in the context of a person who had been in jail for 26 years after having served sentence for 35 years including 8 years of remission earned. Paragraphs 38 and 39 of the said judgment deserve notice in such regard:-

*"**38.** In the petitioner's case, the 1958 Rules are clear - a life sentence, is deemed to be 20 years of incarceration. After this, the prisoner is entitled to premature release. The guidelines issued by the NHRC pointed out to us by the counsel for the petitioner, are also relevant to consider - that of mandating release, after serving 25 years as sentence (even in heinous crimes). At this juncture, redirecting the petitioner who has already undergone over 26 years of incarceration (and over 35 years of punishment with remission), before us to undergo, yet again, consideration before the Advisory Board, and thereafter, the state government for premature release - would be a cruel outcome, like being granted only a salve to fight a raging fire, in the name of procedure. The grand vision of the rule of law and the idea of fairness is then swept away, at the altar of procedure - which this court has repeatedly held to be a "handmaiden of justice".*

***39.** Rule 376 of the 2014 Rules prescribes that prisoners shall be granted remission for keeping peace and good behaviour in jail. As per the records produced by the State,*

the petitioner has earned over 8 years of remission, thus demonstrating his good conduct in jail. The discussions in the minutes of the meetings of the Jail Advisory Board are also positive and find that he is hardworking, disciplined, and a reformed inmate. Therefore, in the interest of justice, this court is of the opinion, that it would be appropriate to direct the release of the petitioner, with immediate effect. It is ordered accordingly."

[Emphasis Supplied]

62. The aforequoted extract of ***Joseph*** (supra) would reveal that in the said case the Kerala Prison Rules, 1958 were applicable whereunder *a life sentence, is deemed to be 20 years of incarceration.* Furthermore the Hon'ble Supreme Court had enough material before it as would be evident from the underscored portion of paragraph 39 extracted hereinabove to consider grant of remission.

63. Insofar as the co-ordinate Bench judgment of this Court in the case of ***Sri Gopal Sarkar*** (supra) is concerned, the same again turned on its peculiar facts. Paragraphs 23, 25, 27 to 31 and 43 of the said judgment deserve notice in such regard:-

*"**23.** Upon hearing learned counsel appearing for the parties, a salient feature which catches the eye is that the petitioner, who is in his late fifties, has been in custody for more than 23 years. Out of the said period, for about eight years, he was on bail (March 26, 1998 to September 10, 2006), till his sentence was affirmed. During the entire period, the petitioner's records stand unblemished. About thirty local residents filed joint petition indicating their view that they had no objection if the petitioner was rehabilitated in normal life upon remission.*

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***25.** That apart, the two brothers of the petitioner, namely Nepal and Kamal, affirmed affidavits on several occasions to say that they are willing to take responsibility of the petitioner upon remission. It is to be noted that the affidavit in support of the present writ petition has been affirmed by the wife of one of such brothers. Hence, the ground cited in the refusal of remission to the petitioner, that the petitioner does not have the potential to earn livelihood and does not have anyone to go back to, apart from one brother who has been visiting him, is perverse on the face of it. That apart, it cannot be expected that the convict, even after incarceration for almost a quarter of a century, would be proficient in*

some vocation. Adverse inference drawn against the convict on such ground would be entirely counter-productive to the concept of remission and negate the reformative purpose of punishment.

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27. *Surprisingly, the report of the Probation-cum-After-care Officer dated September 9, 2021, which has been annexed to the present writ petition, was never considered. The report of the Superintendent of the Dum Dum Correctional Home dated January 23, 2021, which was sent to the respondent-authorities, clearly reflects the impeccable records of the petitioner. It is clearly evident from the same that the petitioner had all along shown good and respectful attitude to the administration as well as his co-inmates. Not only that, the petitioner, according to the said report, also undertook nursing activities and looked after mentally unsound prisoners.*

28. *Such acts of the petitioner clearly speak out loud in favour of his remission.*

29. *That apart, the petitioner has had no crminla antecedent otherwise than the present conviction.*

30. *Such documents and factors were utterly overlooked in refusing the petitioner's remission.*

31. *During his entire jail tenure of 23 years, the petitioner was never castigated even by a single adverse report by the jail authorities. Apart from the eight years while he was on bail, the petitioner had obtained five paroles for a total of 42 days during the pandemic period. During this entire period when the petitioner roamed free, he does not have even a single incident reported against his from any quarter of society.*

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43. *In any event, since the above discussion shows that there are overwhelming materials-on-record unerringly indicating towards remission of the petitioner, there is no justifiable cause to violate the petitioner's right of equality as enshrined in Article 14 of the Constitution of India in discriminating against the petitioner to refuse such remission. Since the respondents, including the SSRB (which was not validly constituted as per the NHRC guidelines), shirked their responsibility to adhere to the law and relevant criteria, further remand would unnecessarily rob the petitioner of his personal liberty for a further inordinate period, for which this Court cannot be pardoned by its own judicial conscience."*

[Emphasis Supplied]

64. The underscored portions of the judgment would clearly indicate the peculiarity of the case of ***Sri Gopal Sarkar*** (supra) before the co-ordinate Bench. As already indicated hereinabove, there is lack of adequate material before this Court to direct premature release of the writ petitioner in exercise of its powers under Article 226 of the Constitution of India.

65. The case of ***Aniruddha Halder*** (supra) was yet another case where the Court took a decision based on its peculiar facts and the prime considerations were that the *"entire case was based on circumstantial evidence"*; that the petitioners were *"aged about 73 years and 84 years"* and that *"At the fag end of life they will get mental peace if they are allowed to lead last few years of their life with their family members"*.

66. In the present case the opinion of the Learned Chief Judge of the City Sessions Court, Calcutta falls short of fulfilling the requirement of Section 432(2) of the Code and has been passed without considering the relevant factors as enunciated by the Hon'ble Supreme Court in the case of ***Laxman Naskar*** (supra) and reiterated in ***Ram Chander*** (supra). The Judicial Secretary has acted on the basis of the negative opinion of the said Learned Judge of the by treating the same as binding. In a similar situation, the Hon'ble Supreme Court had in ***Ram Chander*** (supra) remitted the mater back for fresh consideration observing as follows:-

> *"**28.** In his opinion dated 21-7-2021 the Special Judge, Durg referred to the crime for which the petitioner was convicted and simply stated that in view of the facts and circumstances of the case it would not be appropriate to grant remission. The opinion is in the teeth of the provisions of Section 432(2) CrPC which require that the Presiding Judge's opinion must be accompanied by reasons. Halsbury's Laws of India (Administrative Law) notes that the requirement to give reasons is satisfied if the authority concerned has*

provided relevant reasons. Mechanical reasons are not considered adequate. The following extract is useful for our consideration:

*"**[005.066] Adequacy of reasons** Sufficiency of reasons, in a particular case, depends on the facts of each case. It is not necessary for the authority to write out a judgment as a court of law does. However, at least, an outline of process of reasoning must be given. It may satisfy the requirement of giving reasons if relevant reasons have been given for the order, though the authority has not set out all the reasons or some of the reasons which had been argued before the court have not been expressly considered by the authority. A mere repetition of the statutory language in the order will not make the order a reasoned one.*

Mechanical and stereotype reasons are not regarded as adequate. A speaking order is one that speaks of the mind of the adjudicatory body which passed the order. A reason such as 'the entire examination of the year 1982 is cancelled', cannot be regarded as adequate because the statement does explain as to why the examination has been cancelled; it only lays down the punishment without stating the causes therefor." [Halsbury's Laws of India (Administrative Law) (Lexis Nexis, Online Edition).]

***29.** Thus, an opinion accompanied by inadequate reasoning would not satisfy the requirements of Section 432(2) CrPC. Further, it will not serve the purpose for which the exercise under Section 432(2) is to be undertaken, which is to enable the executive to make an informed decision taking into consideration all the relevant factors.*

***30.** In view of the above discussion, we hold that the petitioner's application for remission should be reconsidered. We direct the Special Judge, Durg to provide an opinion on the application afresh accompanied by adequate reasoning that takes into consideration all the relevant factors that govern the grant of remission as laid down in Laxman Naskar v. Union of India [Laxman Naskar v. Union of India, (2000) 2 SCC 595 : 2000 SCC (Cri) 509] . The Special Judge, Durg must provide his opinion within a month of the date of the receipt of this order. We further direct the State of Chhattisgarh to take a final decision on the petitioner's application for remission afresh within a month of receiving the opinion of the Special Judge, Durg."*

67. At this juncture the following extract from the judgment of the Hon'ble Supreme Court in the case of ***Rajo alias Rajwa alias Rajendra Mandal vs. State of Bihar & Others***[16] may also be noticed:-

*"**19.** In this court's considered view, overemphasis on the presiding judge's opinion and complete disregard of comments of other authorities, while arriving at its conclusion, would render the appropriate government's decision on a remission application,*

[16] 2023 SCC OnLine SC 1068

unsustainable. The discretion that the executive is empowered with in executing a sentence, would be denuded of its content, if the presiding judge's view - which is formed in all likelihood, largely (if not solely) on the basis of the judicial record - is mechanically followed by the concerned authority. Such an approach has the potential to strikes at the heart, and subvert the concept of remission - as a reward and incentive encouraging actions and behaviour geared towards reformation - in a modern legal system.

20. *All this is not to say that the presiding judge's view is only one of the factors that has no real weight; but instead that if the presiding judge's report is only reflective of the facts and circumstances that led to the conclusion of the convict's guilt, and is merely a reiteration of those circumstances available to the judge at the time of sentencing (some 14 or more years earlier, as the case may be), then the appropriate government should attach weight to this finding, accordingly. Such a report, cannot be relied on as carrying predominance, if it focusses on the crime, with little or no attention to the criminal. The appropriate government, should take a holistic view of all the opinions received (in terms of the relevant rules), including the judicial view of the presiding judge of the concerned court, keeping in mind the purpose and objective, of remission.*

21. *The views of the presiding judge, are based on the record, which exists, containing all facts resulting in conviction, including the nature of the crime, its seriousness, the accused's role, and the material available at that stage regarding their antecedents. However, post-conviction conduct, particularly, resulting in the prisoner's earned remissions, their age and health, work done, length of actual incarceration, etc., rarely fall within the said judge's domain. Another factor to bear in mind, is that the presiding judge would not be the same presiding judge who had occasion to observe the convict (at a much earlier point in time) and thus form an opinion. The presiding judge, at this stage, would only look into the record leading to conviction. This judicial involvement in executive decision making is therefore, largely limited to the input it provides regarding the nature of the crime, its seriousness, etc. Undoubtedly, even at the stage of sentencing, the judge ideally is to exercise discretion after looking at a wide range of factors relating to the criminal and not just the crime; but as noticed in numerous precedents that have dealt with sentencing in the commission of heinous crimes, this is unfortunately, often not the reality. Guidance has been offered by this court on how to mitigate this in recent years, but in this court's considered view, it is pragmatic to acknowledge that it will require time for our criminal justice system to incorporate, and uniformly reach such standards. In fact, earlier cases of conviction (such as the present one - in 2001), have an even lesser probability of a judicial record which reflects consideration of such multi-dimensional factors at the sentencing stage; the lack of which should not serve as an obstacle to the convict seeking release (after serving almost two decades, or more),*

erasing the reformative journey they may have undertaken as a result of their long incarceration.

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30. *In light of these findings and the precedents discussed above, it would be appropriate if the Remission Board reconsidered the petitioner's application for remission afresh, considering the reports of the police and other authorities, the post-prison record of the petitioner, the remissions earned (including that which is earned for good conduct) his age, health condition, family circumstances, and his potential for social engagement, in a positive manner. The concerned presiding judge is hereby directed to provide an opinion on the petitioner's application for premature release, by examining the judicial record, and provide adequate reasoning, taking into account the factors laid down in Laxman Naskar (supra), within one month from the date of this judgment. With the benefit of this new report, the Remission Board may reconsider the application - without entirely or solely relying on it, but treating it as valuable (maybe weighty) advice that is based on the judicial record. Given the long period of incarceration already suffered by the writ petitioner and his age, the Remission Board should endeavour to consider the application at the earliest and render its decision, preferably within three months from the date of this judgment. A copy of this judgment shall be marked by the Registry of this Court, to the Home Secretary, Government of Bihar, who is the chairperson of the Remission Board, as well as the concerned Presiding Judge, through the Registrar, High Court of Judicature at Patna High Court."*

[Emphasis Supplied]

68. Here too the Hon'ble Supreme Court ultimately sent the matter back to the State authorities for fresh consideration in accordance with the law obtaining.

69. In such view of the matter, this Court is of the view that the course indicated by the Hon'ble Supreme Court in the cases of ***Ram Chander*** (supra); ***Jaswant Singh*** (supra) and ***Rajo*** (supra) should be followed and the matter should be remitted to the Learned Chief Judge of the City Sessions Court, Calcutta for rendering a fresh opinion which shall then be considered by the appropriate State authority while passing the ultimate order. This answers the fifth question that had fallen for consideration of the Court.

70. Insofar as the petitioner's contention of parity on the ground of his co-accused being prematurely released is concerned, the said argument should not detain this Court for long. It is now well settled that parity cannot be claimed as matter of absolute right and all the more so in cases of sentence remission and premature release. In order to claim parity it should either be demonstrated with an acceptable degree of certainty that the petitioner's behavioural and other requisite parameters in terms of remission policy match those of the co-accused who was granted remission and premature release. Conversely, it should be shown that the State authorities have applied the remission policy unequally thereby depriving the petitioner of its benefits despite eligibility while allowing the same to the co-accused. In both the situations there should be enough material before the Court to first assess the situational and other equivalence or similarity between the petitioner and his co-accused in order to grant parity. There is too scanty material insofar as the petitioner is concerned and almost nothing insofar as his co-accused is concerned. In such view of the matter reliance in the case of ***Jaswant Singh*** (supra) is misplaced.

71. ***Trans Mediterranean Airways*** (supra) has observed that the expression "court" must be understood in the context of a body that is constituted in order to settle disputes and decide rights and liabilities of the parties before it.

72. ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners*** (supra) has emphasised that "court" is an agency created by the sovereign for the purpose of administering justice. It has clarified that the words "court" and "Judge" are often used interchangeably but they are strictly not synonymous.

CONCLUSION:

73. In view of the discussion made hereinabove, the order impugned herein passed by the Judicial Secretary, State of West Bengal and communicated to the petitioner's learned Advocate under the cover of a letter dated December 24, 2024 is set aside. The Learned Chief Judge, City Sessions Court, Calcutta is requested to render a fresh opinion taking into account the factors specified in the case of ***Laxman Naskar*** (supra) and reiterated in the case of ***Ram Chander*** (supra) as well as the statutory criteria explained in ***Bilkis Yakub Rasool*** (supra) by the Hon'ble Supreme Court, within a period of one month from the date of receipt of a copy of this order and forward the same forthwith to the respondent State authority. The respondent State authority shall thereafter take a fresh decision on the basis of the fresh opinion provided by the Learned Chief Judge, City Sessions Court, Calcutta within a month from receipt thereof. It is clarified that while taking the fresh decision, the respondent State authority shall keep in mind the caution sounded by the Hon'ble Supreme Court in the case of ***Ram Chander*** (supra) and ***Rajo*** (supra) especially to the effect that the State Government is not supposed to "*mechanically follow the opinion of the Presiding Judge"* and that the decision should not be taken by "*entirely or solely relying on it, but treating it as valuable (maybe weighty) advice that is based on the judicial record*".

74. It is further clarified that this Court has taken note of the submissions made by Mr. Galib on behalf of the State that remission applications in the State are presently being processed in accordance the subsequent notification dated December 21, 2022 published by the Government of West Bengal, Judicial Department. However, since the petitioner's case had been considered by the

SSRB prior to the said notification being issued and published therefore directing the opinion of the Learned Chief Judge, City Sessions Court, Calcutta to be placed before the SSRB first for a fresh recommendation upon consideration of the said opinion which would then fall for the consideration of the State Government is being consciously avoided in order to expedite the process which has already come a long way.

75. WPA 2738 of 2025 stands disposed of with the above observations. No costs.

76. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.)