

ITEM NO.10 + 11 Court 6 (Video Conferencing)

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 529/2021

(Arising out of impugned final judgment and order dated 19-10-2012 in CRA No. 118/2008 passed by the High Court Of Chhatisgarh At Bilaspur)

SONADHAR

Petitioner(s)

VERSUS

THE STATE OF CHHATTISGARH

Respondent(s)

(FOR ADMISSION AND I.R AND MR. NEERAJ KUMAR JAIN, SR. ADVOCATE (A.C.), MR. GAURAV AGRAWAL, ADVOCATE FOR NATIONAL LEGAL SERVICES AUTHORITY, MR. DEVANSH A. MOHTA, ADVOCATE (A.C.), MR. ABHIMANYU TEWARI, ADVOCATE FOR STATE OF ARUNACHAL PRADESH, DR. JOSEPH ARISTOTLE S., ADVOCATE FOR STATE OF TAMIL NADU, MR. CHANCHAL K. GANGULI, Advocate for STATE OF WEST BENGAL, MRS. NIRANJANA SINGH Advocate for State of Bihar, MR. MILIND KUMAR, ADVOCATE FOR STATE OF RAJASTHAN, MR. NIKHIL GOEL, ADVOCATE FOR HIGH COURT OF GUJRAT
IA No. 103097/2021 - APPLICATION SEEKING MODIFICATION OF ORDER DATED 07.07.2021

IA No. 103084/2021 - APPLICATION FOR PERMISSION TO FILE APPLICATION FOR IMPLEADMENT

IA No. 103086/2021 - IMPLEADMENT

IA No. 103094/2021 - PERMISSION TO FILE APPLICATION FOR MODIFICATION OF COURT ORDER DATED 07.07.2021)

AND

SLP(CRL.) NO. 514/2021

(Mr. Devansh A. Mohta, Advocate(Amicus Curiae)

Mr. Nikhil Goel, Advocate for High Court of Gujarat

IA No. 10234/2021 - PERMISSION TO FILE ADDITIONAL

DOCUMENTS/FACTS/ANNEXURES, IA No. 110932/2021 - PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS)

Date : 06-10-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE M.M. SUNDRESH

Mr. Neera Kumar Jain, Sr. Adv./A.C.

Mr. Devansh A Mohta, Adv. (AC)

Ms. Liz Mathew, Adv. (A.C.)

For Petitioner(s)	Ms. Liz Mathew, AOR
For Respondent(s) NALSA	Mr. Gaurav Agrawal, AOR
Chhattisgarh	Mr. Sumeer Sodhi, AOR Mr. Gaurav, Adv.
Arunachal Pradesh	Mr. Abhimanyu Tewari, AOR Ms. Eliza Bar, Adv.
Tamil Nadu	Dr. Joseph Aristotle, AOR Ms. Preeti Singh, Adv. Ms. Ripul Swati Kumari, Adv.
West Bengal	Mr. Soumitra G. Chaudhuri, Adv. Mr. Chanchal K. Ganguli, AOR
Bihar	Mrs. Niranjana Singh, AOR
Rajasthan	Mr. Vishal Meghwal, Adv. Mr. Milind Kumar, AOR
HC of Gujarat	Mr. Nikhil Goel, AOR Ms. Naveen Goel, Adv. Mr. Vinay Mathew, Adv. Mr. Rakesh Khanna, Sr. Adv. Ms. Nidhi, AOR (SCLSC) Ms. Suvarna S Ganu, Adv. Mr. Jaidip Pati, Adv. Mr. K.V. Jagdishvaran, Adv. Mrs. G. Indira, AOR Ms. Haibila Nana, Adv.

UPON hearing the counsel the Court made the following
O R D E R

IA No. 103094/2021 - PERMISSION TO FILE APPLICATION FOR
MODIFICATION OF COURT ORDER DATED 07.07.2021

Application for permission to file
application for modification of order dated
07.07.2021 is allowed.

IA No. 103097/2021 - APPLICATION SEEKING MODIFICATION OF
ORDER DATED 07.07.2021

It appears that the SCLSC expresses its inability to perform what is required by order dated 07.07.2021 in direction No. (ii) at page 3 and seeks to submit that the Supreme Court Registry should be substituted in place of SCLSC.

Mr. Gaurav Agrawal, learned counsel for NALSA submits that in fact SCLSC may be deleted and the NALSA will perform the task.

Ordered accordingly and impleadment of SCLSC is not required.

The application stands disposed of accordingly.

IA No. 103084/2021 - APPLICATION FOR PERMISSION TO FILE APPLICATION FOR IMPLEADMENT, IA No. 103086/2021 - IMPLEADMENT

In view of the order passed above, applications for permission to file application for impleadment and impleadment are dismissed.

SLP(CRL.) NO. 529/2021

RE: JAIL PETITIONS :

Mr. Gaurav Agrawal, learned counsel for NALSA has submitted a note seeking further directions qua jail petitions. The note states that Mr. Gaurav Agrawal, Ms. Liz Mathew and Mr. Devansh A. Mohta, went through the case status and orders in each of the cases and categorized the same in

various categories and have interacted with the personnels of the Registry. In fact, in some of the cases, records were called and reminders sent to the Amicus Curiae and as a result a number of cases were got ready, listed and disposed of. That is something which we commend.

However, coming to the pending problems, which need attention, the Amicus Curiae working *in tandem* sought records of 'after notice' matters and they were made available. It appears there were 17 such cases and records in 10 cases were available. In those cases an indexing of documents has been done. It was found in four cases, records were already available and in two cases, the convicts have been released while in one case the convict has died in custody. We may only say this is an important exercise as it brings forth the deficiencies, if any, to enable hearing in the matter and whether the matter is alive at all. It appears that in five cases the documents are yet to be received by the Registry. The indexing which has been done, the format has been submitted, which facilitates the hearing before the Court.

We now turn to the 'leave granted' matters where the accused are in jail. What has been found is that in some cases, translated copies are available while in others, translations are still

required to be done. It is also not known whether, with the passage of time, the accused may or may not have been released in some cases. In view of this position certain directions are sought.

We issue the following directions:

- a) The Registry should obtain the current status of the convicts, i.e., whether they are still in custody or have been released.
- b) If the accused are still in custody, custody certificate(s) be called for and be shared with NALSA.
- c) On sharing of such custody certificate(s) the NALSA would examine the same and if the convict is entitled for consideration of pre-mature release, the matter would be taken up by the jail authorities with NALSA.
- d) In other cases NALSA would get the documents ready and the Amicus Curiae would move jail petitions in appropriate cases.

The report informs that in death cases (4 in number) records have not been received and as soon as the records are received, the Registry may inform NALSA to take up the task of indexing of documents.

A list has been prepared of all 'leave granted' cases where accused are in custody as also where they have been granted bail, pending appeal. It is found that in some 'after notice' matters,

records are not called for by this Court. A separate list has been prepared of fresh matters which were adjourned and yet to be listed before the Court. In some cases, papers have been given to the Amicus Curiae for preparation of the paper book, while in certain other matters, orders of the trial Court/High Court are awaited before the same are assigned to the Amicus Curiae for drafting of the special leave petition.

It is in the latter cases that a direction is sought for ensuring that the requisite papers are made available and the Registry is stated to have sent reminders to the Trial Court on 04.08.2021. If such records are not received by the end of November, 2021, it is prayed that the Registry should take up the matter with the learned Registrars General of each High Courts.

We are in agreement with the aforesaid suggestions and order accordingly.

There are also another category of matters where documents are awaited from the petitioners or some clarification is sought. The Registry is stated to have written letters to such petitioners in jail on 05.08.2021 and if suitable clarification is not received by the end of November, 2021, the Registry may inform NALSA, the requisite details and the NALSA assures that it will take up the matter with

the concerned jail authorities. We may only add that the list of such cases has also been prepared. The aforesaid shows that a comprehensive exercise has been undertaken of the matters pending before this Court and there are 300 cases where convicts in judicial custody have approached this Court directly against conviction through jail petitions.

The aforesaid is a continuing exercise and we appreciate the efforts put in by all the three learned counsels as Amicus Curiae as also the proactive stand of the Registry.

RE: PRE-MATURE RELEASE OF LIFE CONVICTS :

Ms. Liz Mathew has taken us to note regarding pre-mature release of life convicts.

In terms of order dated 07.07.2021, a pilot project was undertaken to be implemented in the States of U.P., Bihar and Chhattisgarh qua the aspect of pre-mature release of life convicts.

The report suggests that it is an on-going project but at least so far as the State of Chhattisgarh is concerned, an exercise is on for pre-mature release of prisoners on remission of their remaining sentence, keeping in mind those who would be eligible between 01.08.2021 to 31.01.2022. The outcome of this exercise would be available by the first week of February, 2022, as per the report

and the State of Chhattisgarh would furnish the outcome to the NALSA.

As far as the State of Bihar is concerned, the information has been received only two days ago and thus NALSA would need some time to carry out the exercise.

The State with the maximum problem, the State of UP does not seem to have responded. This is despite the fact that in a different petition we have carried out an exercise of 'life convict' cases pending in the High Court for long period of time and where large incarceration they have already undergone; for consideration of bail in case No. SLP(CrI.) No. 4633/2021 and connected matters which are now directed to be registered as a *suo moto* case in view of all those cases being remitted for consideration by the High Court at an early date on the pleas of bail. Mr. Gaurav Agrawal, may contact the Advocate General appearing in the matters and it shall be ensured by the State of UP that necessary information is forthcoming. If despite this, information is not forthcoming to the NALSA within a month from today, the liberty is granted to Mr. Gaurav Agrawal to mention the matter and we will be left with little option but to ask the Chief Secretary to appear to ensure that our directions are complied with.

The last aspect forming subject matter of the suggestions is for directions to the State of Maharashtra, Madhya Pradesh, Andhra Pradesh and Karnataka to carry out the similar exercise w.e.f. 01.11.2021 and to furnish a report by February, 2022.

We direct accordingly and the NALSA will contact the relevant State Governments to enable the exercise to be carried out.

List for further directions on 09.02.2022.

SLP(CRL.) NO. 514/ 2021

APPEALS PENDING BEFORE THE HIGH COURTS WHICH ARE BEING LOOKED AFTER BY THE HIGH COURT LEGAL SERVICES COMMITTEES :

Mr. Devansh A. Mohta, learned Amicus Curiae presented the aspects arising from appeals pending before the High Courts which are being looked after by the High Court Legal Services Committee. A detailed exercise was undertaken with the Secretary, Delhi High Court Legal Services Committee on account of data and proximity and a list of all criminal appeals, whether accused is in custody, pending in the Delhi High Court and being looked after by the High Court Legal Services Committee was prepared and a chart shared with the NALSA.

What emerges from the chart is that in 232 such cases fixed term sentences have been imposed ranging from 3 years to 20 years while the remaining

129 cases are life sentence cases. In fixed term sentences, the accused in some cases has undergone more than half the sentence, if not more, similarly in some life sentence cases, the accused has undergone custody for more than 10 years.

The other High Court where this aspect has been explored is the Chhattisgarh High Court, more so, in the context of the reliance placed by Mr. Mohta on rule 149 of the High Court of Chhattisgarh as recorded in the Order dated 07.07.2021. It is in view thereof certain suggestions have been made and we have heard learned counsel for parties. We are in broad agreement with these suggestions and would seek to expand on the same.

We thus issue the following directions:

- a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.
- b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of

filing bail applications before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.

c) We are of the view that in fixed term sentence cases, an endeavor be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone.

d) A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts.

Our aforesaid additional directions are based on a premise that at times if a convict has actually done of what he is accused of and he is remorseful, he may be willing to accept his acts and suffer a lesser sentence. We make it clear that the objective is not to compel or extract acceptance from such convicts depriving of the right of appeal.

**Re: HEARING OF THE SLP (CRL.) No. 514/2021 ON
MERITS OF THE CASE :**

Insofar as the hearing of the petition is concerned, adjournment slip has been circulated.

List on a non-miscellaneous Tuesday in the month of January, 2022.

**[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS**

**[POONAM VAID]
COURT MASTER (NSH)**