2026 INSC 667

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO..... OF 2026**
(@Special Leave Petition (Criminal) No.9920 of 2026)

**PARVEEN KUMAR@ PARVEEN CHAUHAN … APPELLANT(S)**

**Versus**

**STATE OF HARYANA & ORS. … RESPONDENT(S)**

**J U D G M E N T**

**SANJAY KAROL, J.**

**1.** Leave Granted.

**2.** The question to be considered in this appeal is whether the appellant's application for grant of remission to the State of Haryana will be governed by the '*Policy Regarding Release of Life Convicts 2002*[1]' dated 12th April 2002 or the subsequent Policy dated 13th August 2008 termed as '*Premature Release of Life Convicts 2008*[2]' as notified by the Jails and Judicial Department, Government of Haryana.



[1] 2002 Policy
[2] 2008 Policy

**3.** Since we are only concerned with the question of applicability of a policy, the facts in which the question arose has limited relevance, save and except to note that the appellant stood convicted for murder of a 12 year old child, on 3rd January 2009 in connection with FIR No.670 of 2007 dated 25th September 2007 lodged at PS City, Gurgaon. He was sentenced to undergo life imprisonment under Section 302 Indian Penal Code, 1860[3], five years of imprisonment under Section 365 IPC and two years under Section 201 IPC. The High Court by judgment[4] dated 16th July 2013 partly allowed the appeal setting aside the conviction under Section 365 IPC. Appeal against the said judgment to this Court was dismissed[5] by an order dated 15th September 2015 which has attained finality.

**4.** On 26th May 2022, the appellant filed a representation seeking release on the basis of 2002 Policy, having served 14 years of actual imprisonment; however, no response was received. Thereafter, he filed a writ petition[6] against his pending representation, which was disposed on 16th August 2022, directing the prison authorities to decide the same within a period of three months. The said representation eventually came to be decided on 20th October 2022 and concluded in a rejection on two grounds – ***(i)*** that the appellant would be governed by the 2008 Policy and not the 2002 Policy; ***(ii)*** that as per the former he had completed only 13 years 7 months and 16 days of actual imprisonment and 16 years five months and 16 days of total imprisonment as on 21st September 2022 and as such was not eligible for not having completed the requisite period of *twenty* years of actual sentence and *twenty five* years of total sentence. He then filed another writ petition[7] challenging the aforesaid decision by placing reliance on ***State of***

[3] IPC
[4] CRA No.198 of 2009
[5] SLP (Crl.) No.2128 of 2014
[6] CRWP No.7465 of 2022
[7] CRWP no.12409 of 2024

***Haryana v. Jagdish***[8]. By an order dated 27th January 2025, this writ petition came to be dismissed. Hence this appeal.

**5.** The substance of the appellant's case as it appears, is that since the 2002 Policy had been brought in exercise of Article 161 of the Constitution of India, the coming into force of the subsequent 2008 Policy which was explicitly under the exercise of power bestowed by Section 432 and 433 of the Code of Criminal Procedure 1973[9], would not denude him of the benefits thereunder. Further, the beneficial remission policy would apply instead of policy relevant on the date of conviction. One more aspect of his submission is that the judgment in ***State of Haryana v. Raj Kumar***[10] would not have precedential value on account of the fact that ***Jagdish supra*** is rendered by a larger Bench.

**6.** The State, on the other hand, submits that a policy which is referable to Article 161/72 of the Constitution would override that enacted under the CrPC. But in view of the holding in ***Raj Kumar supra*** which observed that both the 2002 Policy and the 2008 Policy were, in fact, in exercise of power traceable to the provisions of the CrPC. Further, that since the 2008 Policy superseded the earlier one and as on the date of conviction only the 2008 Policy was in force, no question would arise of the applicability of the 2002policy to the appellant.

**7.** Heard learned counsel for the parties.

**8.** Hereinbelow is a chart referencing different remission policies issued by Haryana, including the erstwhile State of Punjab, till 2008, particularly regarding the power under which the same have been issued and the issuing authority.

---

[8] (2010) 4 SCC 216
[9] CrPC
[10] (2021) 9 SCC 292

| **Sr.No** | **Date of Policy** | **Provision read therewith** |
|---|---|---|
| 1 | 10.11.1971 (Memo No.13311-6JJ-71/39656)<br><br>Amended by:<br>- 28.11.1977: (para 3)<br>(Letter No.7843/2JJ/77/30099)<br><br>- 09.06.1978: (pertaining of female and juvenile prisoners)<br>(Memo No.8530-6JJ-78/21318)<br><br>- 27.02.1984 (Clarification on 28.11.1977 memo)<br>(Letter No.43/19/83-JJ) | Section 432 CrPC read with para 516-B of the Punjab Jail Manual |
| 2 | 23.04.1987 (Memo No.36/11/86-JJ(2)<br><br>Amended by:<br>- 01.02.1988 (Upon announcement by CM)<br>(Circular No.1190-1209/GI/G-3) | Section 433 of CrPC |
| 3 | 28.09.1988 (Memo No.38/11/86-JJ(2))<br><br>Amended by:<br>- 17.05.1989 (para 2(d))<br>(Memo No.36/48/89-JJ(2))<br><br>- 29.05.1990 (para 2(d))<br>(Memo No.36/155/89-1J) | Section 433-A CrPC |
| 4 | 13.08.2008 (Memo No.36/135/91-1JJ(II) | Section 432 and 435 of CrPC |

| Sr.No | Date of Policy | Provision read therewith |
|---|---|---|
| 1. | 19.11.1991 (Memo No.36/135/91-1JJ(II)<br><br>- 04.02.1993 (para 2(c))<br>(Memo No.36/135/91-1JJ(II)<br><br>- 22.02.1996 (adding to 1993 amendment)<br>(Memo No.43/20/93-1JJ(II) | Article 161 of the Constitution of India |

| | | |
|---|---|---|
| | - 17.07.1997 (further amending para 2(a) of 1993 amendment) (Memo No.36/135/91-1JJ(II)<br><br>- 16.03.1999(further amending para 2(a) and 2(b) of 1993 and 1997 amendments) (Memo No.36/135/91-1JJ(II) | |
| 2. | 04.02.1993 | Article 161 of the Constitution of India |
| 3. | 08.08.2000 (Memo No.36/135/91-1JJ(II) | Article 161 of the Constitution of India |
| 4. | 12.04.2002 (Memo No.36/135/91-1JJ(II) | Article 161 of the Constitution of India |

**9.** We have perused all the policies in detail, including the earlier policy of the year 2000. It appears that the policies of the year 2000 and 2002 clearly state that for orders to be passed under these policies, the papers are to be placed before the Hon'ble Governor of the State for soliciting orders under Article 161 of the Constitution of India. However, the later 2008 Policy specifically states that papers shall be put up before the Chief Minister for orders under Section 432 of CrPC. This clearly shows the constitutional ambit of the former and statutory ambit of the latter. It need not be said that a statutory policy, even if it may be so, cannot override a exercise of power under Article 161, for that power is distinct and independent, uninfluenced by any other power, more so statutory in nature.

**10.** In ***Jagdish supra*** the question before the three-judge Bench was for resolving the inconsistency between ***State of Haryana v. Balwan***[11], and ***State of Haryana v. Mahender Singh***[12]**,** on the one hand; and ***State of Haryana v. Bhup Singh***[13], on the other. In doing so, the Court has discussed, extensively – ***(i)*** earlier judgments on sentencing; ***(ii)*** scope of power under Article 161 of the Constitution of India; ***(iii)*** the purpose of criminal justice and punishment, and;

[11] (1999) 7 SCC 355
[12] (2007) 13 SCC 606
[13] (2009) 2 SCC 268

***(iv)*** also the remission policies. It held that the 1993 remission Policy was in exercise of Article 161 powers of the Governor, whereas the 2008 Policy (which is also in issue before us) is a statutory policy, and as such, cannot override the former. It has also been held that if on the date of consideration for remission, a more liberal policy was in effect, then the prisoner should be given the benefit thereof. In deciding the issue, the benefit of the 1993 Policy was given to the respondent therein, Jagdish**.** The relevant paragraphs of the judgment are:

> "52. We have already noticed that the earlier policies including the policy dated 4-2-1993 refer to the exercise of powers under Article 161 of the Constitution whereas the policy dated 13-8-2008 is in exercise of the powers under Section 432 read with Sections 433 and 433-A CrPC. The restriction under Section 433-A is only to the extent of the powers to be exercised in respect of offences as referred to under Section 432 CrPC. The Notification dated 13-8-2008 is, therefore, under a rule of procedure, which is subordinate to the Constitution. The power exercised under Article 161 of the Constitution is obviously a mandate of the Constitution and, therefore, the policy dated 13-8-2008 cannot override the policy dated 4-2-1993.
> …
> 54. The 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 premature release would be considered after serving the sentence, 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 premature release, he should be given benefit thereof.**"**
>
> *(emphasis supplied)*

**11.** In ***Raj Kumar supra*** the question that arose was similar to this case i.e., the application of 2002 Policy or the 2008 Policy. It has been observed that none of the policies apart from the one framed in 2008, after 1974 mention the power under which the same have been brought in. Thereafter, with reference to para 9 of ***N. Mani v. Sangeetha Theatre***[14], it is concluded that the policy instructions

[14] (2004) 12 SCC 278

would be statutory instructions framed either under the Prisons Act 1894 or Section 432 CrPC. This is the background in which the Court holds the 2002 Policy also to be having statutory origins and not a constitutional one. Paras 17 and 18 of the judgment read as under:

> "**17.** The policy of premature release dated 13-8-2008 was issued in the name of the Governor and was published in the Official Gazette. Such notification is said to have been issued in exercise of the powers conferred under sub-section (1) of Sections 432 and 433 of the Code. Keeping in view the principles of law enunciated above, such policy is in exercise of the powers conferred on the appropriate Government in terms of the provisions of the Code and is thus statutory in nature. The other Policy dated 12-4-2002 is in fact a memo issued by the Financial Commissioner and Secretary to Government, Haryana, Jails Department, Chandigarh to the Director General of Prisons, Haryana, Chandigarh. Such policy of premature release would again be traceable to the provisions of the Code.
>
> **18.** Mr Nikhil Goel, learned Additional Advocate General for the State of Haryana, submitted that different policies have been issued from time to time and the later policy has superseded the earlier one, so there was no hiatus when a policy of premature release was not in operation or at any given point of time, the two polices were operational. The argument of Mr Goel merit acceptance inasmuch as the Policy dated 12-4-2002 is in supersession of earlier policy circulated on 8-8-2000 substituted later on 23-2-2001. The Policy dated 13-8-2008 has substituted the earlier Policy dated 12-4-2002 and such policy has been published on behalf of the Governor of the State. The Policy dated 13-8-2008 has been issued in exercise of powers conferred by sub-section (1) of Section 432 read with Section 433 of the Code and in supersession of Government Memorandum dated 12-4-2002 and all other policies. The Policy dated 13-8-2008 is a statutory policy. The said policy cannot and has not tried to take over the discretion vested in the Hon'ble Governor to grant pardons, remissions or commute sentence in exercise of powers conferred under Article 161 of the Constitution but it is the policy issued under a statute and therefore, such policy has a statutory force. The Policy dated 12-4-2002 is again a statutory policy and cannot be put at a higher pedestal than the Policy dated 13-8-2008 for the reason that it seeks approval from the Hon'ble Governor. Such policy has been specifically superseded on 13-8-2008, ceases to be operative for the convicts who are convicted after 13-8-2008."
>
> (Emphasis supplied)

The co-ordinate Bench held that the respondent therein was not entitled to the benefit under the 2008 Policy since he had not completed the requisite time period thereunder, considering his case. It was observed that both 2002 and 2008 Policies were statutory in nature with the latter superseding the former. Significantly it is observed that the remedy under Article 161 of the Constitution remained open for the respondent therein to be pursued.

**12.** ***Jagdish supra*** had clearly observed that the power under 161 of the Constitution is untrammeled and unaffected by the provisions of CrPC. The 1993 Policy was held to be in exercise of this power. The 2002 Policy, in our view, is similar to the 1993 Policy, for it too contemplates orders to be passed by the Governor under this power though it does not specifically states the source of the exercise of such power. If we follow the *dictum* in ***Raj Kumar supra*** then despite this, it would be deemed to be statutory since the provision under which the policy has been brought in has not been mentioned. Hence, taking further, we endeavour to juxtapose the two policies-specifically on the points of power being exercised and the authority under whose signature, the notification was issued, in a tabular form:

| **Date of Issue** | **04.02.1993** | **12.04.2002** |
|---|---|---|
| **Policy Letter** | **From:** The Commissioner & Secy. to Govt., Haryana, Jails Department<br><br>**To:** The Addl. Director General of Prisons, Haryana, Manimajra, Chandigarh<br><br>Memo. No. 36/135/91-1JJ(II) Dated Chandigarh, the 4-2-1993 | **From:** The Financial Commissioner & Principal Secretary to Govt., Haryana, Jails Department<br><br>**To:**The Director General of Prisons, Haryana, Manimajra, Chandigarh<br><br>Memo No. 36/135/91-1JJ(II) Dated, Chandigarh the 12-4-2002 |

| | | |
|---|---|---|
| **Subject:** | Policy regarding premature release of life convicts. | Policy regarding premature release of life convicts. |
| **Relevant paragraph** | "4. … Additional Director General/Inspector General of Prisons, Haryana, who will place the matter before the State Level Committee alongwith his comments for consideration. He will very clearly indicate the category under which each case is covered. The Committee will meet once in 3 months according to the convenience of the Minister of Jails, Haryana so that cases of review under this policy are not delayed. The Additional Director General/Inspector General of Prisons, Haryana, will forward a copy of the decision taken by the State Level Committee alongwith the roll of each of the life convicts to the Government within one week for further action.<br><br>5. **Such cases will be put up to the Governor through the Minister for Jails and the Chief Minister, with full background of the prisoner and recommendations of the State Level Committee, alongwith the copy of judgement etc., for orders under article 161 of the Constitution of India**." | "5. The Director General of Prisons, Haryana shall put up all such premature release cases to the State Level Committee for consideration. The committee will meet once in three months according to the convenience of the Minister for Jails, Haryana so that cases of review under this policy are not delayed. The Director General of Prisons, Haryana further will forward a copy of the decision taken by the committee alongwith the roll of each of the life convict to the State Government within one week for further action. **Such cases will be put up to the Governor through the** Minister for Jails and the Chief Minister, Haryana **with full background of the prisoner and recommendations of the committee alongwith the copy of judgement etc. for orders under article 161 of the Constitution of India**." |
| **Undersigned Official** | **Superintendent, Jails & Judicial,** | **Under Secretary Jails & Judicial,** |

| | | |
|---|---|---|
| | **for Commissioner & Secretary to Govt., Haryana, Jails Department.**<br>No. 36/135/91-1JJ(II)<br>Dated 4-2-1993, Chandigarh. | **for Financial Commissioner & Principal Secretary to Govt., Haryana, Jails Department.**<br>Endst. No. 36/135/91-1JJ(II)<br>Dated 12-04-02. Chandigarh. |

The effect of the discussion referred to *above* in ***Rajkumar supra*** would be that despite clear observations by ***Jagdish supra,*** both 1993 and 2002 policies will be treated as statutory. This clearly would be in the teeth of the decision in ***Jagdish***. Given its identical nature on the above counts, the 2002 Policy in our view is under the provisions of the Constitution.

**13.** We now compare the 2002 and 2008 Policies by way of a tabular chart:

| **Date of Issue** | **12.04.2002** | **13.08.2008** |
|---|---|---|
| **Policy Letter** | **From:** The Financial Commissioner & Principal Secretary to Govt., Haryana, Jails Department<br><br>**To:** The Director General of Prisons, Haryana, Manimajra, Chandigarh<br><br>Memo No. 36/135/91-1JJ(II) Dated, Chandigarh the 12-4-2002 | No. 36/135/91-1JJ(II).— **In exercise of the powers conferred by Sub-section (1) of Section 432 read with Section 433 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) and in supersession of Haryana Government Memo No. 36/135/91-1JJ(II), dated the 12th April, 2002** and all other earlier policies, **the Governor of Haryana hereby frames the following policy regarding** |

| | | |
|---|---|---|
| | | **premature release of life convicts…** |
| **Subject:** | Policy regarding premature release of life convicts. | ----- |
| **Relevant paragraph** | "5. The Director General of Prisons, Haryana shall put up all such premature release cases to the State Level Committee for consideration. The committee will meet once in three months according to the convenience of the Minister for Jails, Haryana so that cases of review under this policy are not delayed. The Director General of Prisons, Haryana further will forward a copy of the decision taken by the committee along with the roll of each of the life convict to the State Government within one week for further action. Such cases will be put up to the Governor through the Minister for Jails and the Chief Minister, Haryana with full background of the prisoner and **recommendations of the committee along with the copy of judgement etc. for orders under article 161 of the Constitution of India**." | "8. The Director General of Prisons, Haryana shall put up all such premature release cases to the State Level Committee for consideration. The Committee will meet once in three months, so that cases of review under this policy are not delayed. The Director General of Prisons, Haryana will forward a copy of the decision taken by the Committee along with the commutation roll of each of the life convict to the State Government within one week for further action. Such cases will be put up to the Chief Minister, Haryana along with full background of the convicts and recommendations of the Committee and a copy of the Court judgement etc. for orders under Section 432 Cr. P.C. It is reiterated that no convict has fundamental right of remission or shortening of sentence. The State Government in exercise of its executive/discretionary power of remission is to consider each individual case keeping in view all the relevant factors. This policy is issued in exercise of the power of the State in such a way that no discrimination is made while considering |

| | | |
|---|---|---|
| | | the case of life convicts for premature release. This policy shall be applicable to all premature release cases of life convicts with effect from date of notification irrespective of their date of conviction.<br>The date for consideration of premature release of a convict would be the date of completion of his requisite sentence mentioned in the policy.<br>**However, the powers of pre-mature release of a life convict in cases covered under Section 435 of the Cr. P.C. shall not be exercised by the State Government except after consultation with the Central Government**." |
| **Undersigned Official** | **Under Secretary Jails & Judicial,**<br>**for Financial Commissioner & Principal Secretary to Govt., Haryana, Jails Department.**<br>Endst. No. 36/135/91-1JJ(II)<br>Dated 12-04-02.<br>Chandigarh. | **Financial Commissioner and Principal Secretary to Government Haryana, Jails Department.** |

It appears quite plainly that the 2002 Policy, as already observed *supra* banks on Article 161 while the 2008 Policy makes the Chief Minister, the deciding authority under Section 432 CrPC. Only the latter specifically states the origin of power. Though both the 2002 Policy and the latter were issued under

the signature of the 'Financial Commissioner, Government of Haryana', but for ***Rajkumar supra*** to observe that the former Policy was merely a memo, perhaps may be a mistaken position.

**14.** We have to specifically deal with a submission on behalf of the appellant that the judgment in ***Rajkumar supra*** does not have value as precedent. When '*does*' or '*does not*' in a decision become *per incuriam,* is a question that has been discussed in various judgments. Certain facets emerge from these discussions as follows:

14.1 It is an exception to the rule of *stare decisis* and must be applied sparingly;

14.2 A judgment is *per incuriam:*

(a) when its ratio is not reconcilable with an earlier decision rendered by a Bench of equal or higher strength; or

(b) when a particular provision or a statute or a rule or a regulation has not been brought to the attention of the Court;

14.3 It applies only to the *ratio decidendi* of a judgment and not to *obiter dicta;*

14.4 Judicial discipline requires that if a bench disagrees with another bench of co-equal strength the matter should be referred to a bench of three judges to decide the issue;

14.5 The decision rendered by the Bench of largest strength binds any subsequent Bench of co-equal or lesser strength. A Bench of lesser strength cannot dissent from the view already taken by a Bench of larger strength;

14.6 A judgment cannot be said to be *per incuriam:*

(a) if it makes reference to an earlier decision and then concludes correctly or incorrectly; or

(b) if the ordinary reading of the judgment does not on the face of it show it to be in conflict with earlier decisions, the court should refrain adopting such an interpretation.

14.7 It is not the numerical strength of judges taking a particular view that is relevant but it is instead the strength of the Bench, which is the determinative factor of the binding nature of a particular view.

[See: ***Sundeep Kumar Bafna v. State of Maharashtra***[15]; ***Shah Faesal v. Union of India***[16]; ***Pradip Chandra Parija v. Pramod Chandra Patnaik***[17]; ***Central Board of Dawoodi Bohra Community v. State of Maharashtra***[18]**;** ***Trimurthi Fragrances (P) Ltd., v. State (NCT of Delhi)***[19]**.**

**15.** Applying the facets as culled out above to the present case, we are of the view that the submission of the appellant holds water. This is for the reason that the Policies of 1993 and 2002 are, as already observed above, identical in terms of their source of power under Article 161, and since the former has been declared by a Bench of three judges to be an exercise under the constitutional power, the inescapable conclusion would be that the identical later policy would also be the same. But for reasons discussed above, the judgment in ***Rajkumar supra*** held the 2002 Policy to be of statutory origin. This would fall foul of the reasoning in ***Jagdish supra*** and hence be rendered *per incuriam*. It may be noted here itself that a reference to a larger Bench would have been the available course before us, had it been that we differed with the learned judges in ***Rajkumar*** without there

[15] (2014) 16 SCC 623
[16] (2020) 4 SCC 1
[17] (2002) 1 SCC 1
[18] (2005) 2 SCC 673
[19] (2024) 20 SCC 709

being a controlling precedent in the form of ***Jagdish supra***. Since the latter is already there, in our view, there is no conflict that needs deciding.

**16.** In light of the discussion as aforesaid, we proceed to decide the question as has arisen in this case. Since the 2002 Policy stood framed under the Constitution and such power is to be exercised by the Governor himself, the subsequent Policy of 2008, cannot deter the effect of the former and the observation that it supersedes the 2002 Policy, is untenable in law. In respect of the appellant herein, it can be said that the 2002 Policy would still have its effect. The holding in ***Jagdish supra*** would operate, and the appellant would be entitled for the benefit of the lesser time served thereby making him eligible for remission.

**17.** It is clarified that the findings in this case shall apply prospectively and shall not operate to reopen any applications for remissions that already stood decided. In effect, now the respondent State shall have two distinct and separate policies functioning. How is it that the State want to proceed further is for them to decide.

**18.** The State shall take a decision regarding the remission application of the appellant consistent with this judgment within four weeks from the date of this judgment. Let a copy be sent to the Chief Secretary, Government of Haryana, by the Registry of this Court within four days for onward action to be taken by the appropriate authority.

Appeal is accordingly allowed and pending applications if any are disposed of.

**……J.**
**(SANJAY KAROL )**

**……J.**
**(NONGMEIKAPAM KOTISWAR SINGH)**

New Delhi;
July 1, 2026