

**GOVERNMENT OF KERALA****Abstract**

Prisons – Premature release of C.No. 2761 Rajan, inmate of Open Prison & Correctional Home, Nettukaltheri and C.No. 321 Prakasan, inmate of Open Prison & Correctional Home, Cheemeni - Judgment dated 11.04.2025 of Hon'ble High Court in W.A 1245/2024 and W.A.2137/2024 filed by Smt. Prasanna and Smt. Bindu Prakasan respectively – Complied with - Orders issued.

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**HOME (B) DEPARTMENT**

G.O.(Ms)No.171/2025/HOME Dated,Thiruvananthapuram, 15-09-2025

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- Read: 1. Judgment dated 01.08.2023 of Hon'ble High Court in W.P (Crl) 973/2022 filed by Smt. Bindu Prakasan.
2. Judgment dated 07.09.2023 of Hon'ble High Court in W.P(Crl) 320/2023 filed by Smt. Prasanna.
3. G.O.(Ms) No. 247/2023/Home, dated 04.12.2023.
4. G.O.(Ms) No.15/24/Home, dated 11.01.2024.
5. Judgment dated 14.08.2024 of Hon'ble High Court in W.P (Crl.) 90/24,filed by Smt. Prasanna.
6. Judgment dated 03.12.2024 of Hon'ble High Court in W.P (Crl.) 79/2024, filed by Smt. Bindu Prakasan.
- Judgment dated 11.04.2025 of Hon'ble High Court in W.A 1245/2024 and W.A.2137/2024, filed by Smt. Prasanna and Smt. Bindu Prakasan respectively.

**ORDER**

The Hon'ble High Court, as per the judgment read as 2nd paper above, directed Government to consider the release of the petitioner Smt. Prasanna's husband, C.No. 2761 Rajan, inmate of Open Prison, Nettukaltheri, in the light of the recommendation of the Jail Advisory Board. The recommendation was rejected by Government as per the order read as 4th paper above. Smt. Prasanna filed W.P.(Crl.) No. 90/2024 before the Hon'ble High Court against the said Government order, and the same was dismissed by the Hon'ble Court as per the judgment read as 5th paper above.

2. As per the order read as 1st paper above, the Hon'ble High Court directed Government to consider and pass appropriate orders on the recommendation

of the Jail Advisory Board relating to the petitioner Sri. Prakasan (Convict No. 321), an inmate of Open Prison & Correctional Home, Cheemeni. Government, after examining the recommendation of the Jail Advisory Committee of Open Prison & Correctional Home, Cheemeni, rejected the same as per the order read as 3rd paper above. Smt. Bindu Prakasan filed W.P.(Crl.) No. 79/2024 before the Hon'ble High Court against the said order, and the same was dismissed as per the judgment read as 6th paper above.

3. Smt. Prasanna and Smt. Bindu Prakasan filed W.A. Nos. 1245/2024 and 2137/2024 respectively against the judgments read as 5th and 6th papers above. The Hon'ble Court jointly heard W.A. No. 1245/2024 and W.A. No. 2137/2024 and disposed of them as per the judgment read as 7th paper above, directing Government to consider afresh the last among the recommendations made by the Advisory Committees for the premature release of the prisoners involved in these cases, within a period of one month. Extract of the same is as follows:

“ .....  
.....

21. Let us now consider the arguments advanced by the learned Special Government Pleader. True, in Joseph, it was observed by the Apex Court that grouping types of convicts based on the offenses they were found to have committed, as a starting point, may be justified. But, in the light of the propositions laid down in the said case as contained in paragraphs 32 and 37 of the judgment, the said observation cannot be understood as one permitting grouping of convicts based on the offenses they were found to have committed in such a manner as to exclude certain offenses from the scope of grant of remission as done by the State Government.....

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Needless to say, we accept the decision of the Apex Court in Joseph as the binding precedent. We are inclined to hold that long-term convicted prisoners, especially those who are deemed to have completed the entire term of imprisonment in terms of the provisions contained in the Act and 2014 Rules, other than those who were sentenced by the convicting courts for imprisonment for a period exceeding 20 years, cannot be denied the benefit of remission having regard to the nature of the offence committed by them in the distant past.

23. We take this view for yet another reason also. Granting early release to prisoners is a matter related to their fundamental human rights. The National Human Rights Commission has received a number of representations pointing out that the State Governments are applying differing standards in the matter of premature release of prisoners undergoing life imprisonment. After considering the response received from a number of States/Union Territories, the Commission fixed guidelines and the same were communicated to all the State Governments/Union Territories on 26.09.2003. The Apex Court has made a reference to these guidelines also in Joseph. In the said communication, even though it is provided that there can be a classification among the life convicts having regard to the magnitude, brutality and gravity of the offence for which the convict was sentenced to imprisonment, the period of incarceration inclusive of remission even in worst of the worst situation should not exceed 25 years.
24. On an evaluation of the totality of the facts and circumstances of the cases on hand, especially the finding rendered by us that the prisoners involved in these cases were entitled to be released prematurely on completion of imprisonment for a period of 20 years in terms of the 1958 Rules, we are of the view that these are apt cases where this Court should direct the Government to release the prisoners with immediate effect, as done by the Apex Court in Joseph. However, inasmuch as the grant of remission is a prerogative of the Government, although the power conferred on the Government for the said purpose is a power coupled with duty to be exercised after taking into account all the relevant factors, we set aside the impugned judgments as also the orders of the Government impugned in the writ petitions and dispose of the writ appeals directing the Government to consider afresh, the last among the recommendations made by the Advisory Committee for the premature release of the prisoners involved in these cases, within a period of one month, in the light of the findings and observations made by the Apex Court in Joseph, as referred to by us in this judgment, untrammelled by the nature of the offences for which they were convicted.....

.....”

4. Government examined the matter in detail. In a similar case, as per judgment dated 03.04.2025 in W.P.(Crl.) No. 1215/2024 filed before the Hon'ble High Court by C.No. 6036 Balu, an inmate of Central Prison & Correctional Home, Viyyur, the Hon'ble Court observed that premature release should not be denied to prisoners considering the nature of the crime alone. The Hon'ble Supreme Court, in its judgment dated 21.09.2023 in W.P.(Crl.) No. 520/2022 (*Joseph v. State of Kerala*), also made observations against denying release solely on the basis of the nature of the crime.

5. Convict No. 2761 Rajan, inmate of Open Prison & Correctional Home, Nettukaltheri, has completed 22 years, 3 months, and 10 days of actual imprisonment as on 31.05.2024 and 28 years, 7 months, and 2 days including remission. Convict No. 321 Prakasan, inmate of Open Prison & Correctional Home, Cheemeni, has completed 20 years, 3 months, and 27 days of actual imprisonment as on 31.12.2023 and 26 years, 2 months, and 7 days including remission. Hence, they have already completed the minimum period of sentence prescribed under Section 433A CrPC. Furthermore, the respective Jail Advisory Committees have recommended their release.

6. In the above circumstances, Government are pleased to grant premature release to the following prisoners after remitting their remaining period of substantive sentence, in exercise of the powers conferred by Article 161 of the Constitution and subject to the provisions of Rule 470 of the Kerala Prisons and Correctional Services (Management) Rules, 2014:

1) C.No. 2761 Rajan, inmate of Open Prison & Correctional Home, Nettukaltheri.

2) C.No. 321 Prakasan, inmate of Open Prison & Correctional Home, Cheemeni.

7. The judgment dated 11.04.2025 read as 7th paper above is complied with accordingly.

(By order of the Governor)  
**BISHWANATH SINHA**

**ADDITIONAL CHIEF SECRETARY**

Smt. Prasanna, W/o Rajan, Vellamathukudi House, Keezhillam P. O.  
Perumbavoor, Ernakulam- 683541

Smt. Bindu Prakasan, W/o Prakasan, Parambil House, Brothers Road,  
Kandanassery PO, Thrissur- 680102

Additional Chief Secretary to Hon'ble Governor, Raj Bhavan,  
Thiruvananthapuram.

Advocate General, Kerala, Ernakulam (with C/L).

The State Police Chief, Thiruvananthapuram

Director General of Prisons and Correctional Services, Thiruvananthapuram  
(with case files).

Superintendent, Open Prison & Correctional Home, Nettukaltheri.

Superintendent, Open Prison & Correctional Home, Cheemeni.

General Administration (SC) Department (Vide item No.3178 dated  
13.08.2025)

Law (Opinion E) Department (for information)

Information Officer, Web & New Media division, I&PRD  
Stock file.

Forwarded /By order

Signed by

Amina B

Section Officer

Date: 15-09-2025 11:18:25

Copy to:- PS to Chief Minister



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രഹസ്യം

കേരള സർക്കാർ

(90)

മന്ത്രിസഭായോഗത്തിന്റെ നടപടിക്കുറിപ്പുകൾ

തീയതി : 13-08-2025

ഫയൽ നം. ബി1/136/2023/ആഭ്യന്തരം.

ഇനം നം: 3178

വിഷയം : ആഭ്യന്തര വകുപ്പ് - ജയിലുകൾ - ബഹുഹൈക്കോടതി മുമ്പാകെ ശ്രീമതി. പ്രസന്ന, ശ്രീമതി. ബിന്ദു പ്രകാശൻ എന്നിവർ യഥാക്രമം ഫയൽ ചെയ്ത WA 1245/2024, WA 2137/2024 എന്നിവയിന്മേലുള്ള ബഹു. കേരളാ ഹൈക്കോടതി ഡിവിഷൻ ബെഞ്ചിന്റെ വിധിന്യായത്തിന്റെ അടിസ്ഥാനത്തിൽ നേട്ടുകാൽത്തേരി തുറന്ന ജയിലിലെ അന്തേവാസിയാ യ സി.നം.2761 രാജൻ, ചീമേനി തുറന്ന ജയിലിലെ അന്തേവാസിയാ യ സി.നം.321 പ്രകാശൻ എന്നിവർക്ക് അകാലവിടുതൽ അനുവദിക്കുന്നത് പരിഗണിക്കുന്നത്.

തീരുമാനം : കുറിപ്പിലെ നിർദ്ദേശം അംഗീകരിച്ചു.

(ഒപ്പ്)

പിണറായി വിജയൻ  
മുഖ്യമന്ത്രി

(ശരിപ്പകർപ്പ്)

*[Handwritten signature]*

*[Handwritten signature]*

ഡോ. എ. ജയതിലക്  
ചീഫ് സെക്രട്ടറി

അഡീഷണൽ ചീഫ് സെക്രട്ടറി, ആഭ്യന്തര വകുപ്പ്.



14/8/25

കേരള സർക്കാർ  
(ശ്രീ. പിണറായി വിജയൻ മന്ത്രിസഭ)  
മന്ത്രിസഭാ യോഗത്തിനുള്ള കുറിപ്പ്

1. ഫയൽ നമ്പർ	ബി/136/2023/ആഭ്യന്തരം
2. വകുപ്പ്	ആഭ്യന്തര (ബി) വകുപ്പ്
3. വിഷയം	ആഭ്യന്തര വകുപ്പ് - ജയിലുകൾ- ബഹു. ഹൈക്കോടതി മുമ്പാകെ ശ്രീമതി പ്രസന്ന, ശ്രീമതി ബിന്ദു പ്രകാശൻ എന്നിവർ യഥാക്രമം ഫയൽ ചെയ്ത WA 1245/2024, WA 2137/2024 എന്നിവയിന്മേലുള്ള ബഹു. കേരളാ ഹൈക്കോടതി ഡിവിഷൻ ബെഞ്ചിന്റെ വിധിന്യായത്തിന്റെ അടിസ്ഥാനത്തിൽ നെട്ടുകാൽത്തേരി തുറന്ന ജയിലിലെ അന്തേവാസിയായ സി.നം. 2761 രാജൻ, ചിമേനി തുറന്ന ജയിലിലെ അന്തേവാസിയായ സി.നം. 321 പ്രകാശൻ എന്നിവർക്ക് അകാലവിടുതൽ അനുവദിക്കുന്നത് പരിഗണിക്കുന്നത് - സംബന്ധിച്ച്
4. മന്ത്രിസഭാ യോഗത്തിൽ സമർപ്പിക്കാനുള്ള മുഖ്യമന്ത്രിയുടെ ഉത്തരവ് തീയതി	16.07.2025
5. (i) ഇത് സാമ്പത്തിക ബാധ്യതയുള്ളതാണോ ? (ii) ഇത് സാമ്പത്തിക ബാധ്യതയുള്ളതാണെങ്കിൽ ധനവകുപ്പിന്റെ അഭിപ്രായം മന്ത്രിസഭാ യോഗത്തിനുള്ള കുറിപ്പിൽ ഉൾക്കൊള്ളിച്ചിട്ടുണ്ടോ	അല്ല  ബാധകമല്ല
6. മറ്റേതെങ്കിലും വകുപ്പുമായി ആലോചിച്ചിട്ടുണ്ടോ, ഉണ്ടെങ്കിൽ അവരുടെ അഭിപ്രായം മന്ത്രിസഭാ യോഗത്തിനുള്ള കുറിപ്പിൽ ഉൾക്കൊള്ളിച്ചിട്ടുണ്ടോ?	ഉണ്ട്, നിയമവകുപ്പിന്റെ അഭിപ്രായം ഉൾക്കൊള്ളിച്ചിട്ടുണ്ട്.
7. കുറിപ്പ് സമർപ്പിച്ച ജോയിന്റ് സെക്രട്ടറിയുടെ പേര്	ശ്രീമതി സിന്ധു. ടി. എസ്
8. കുറിപ്പ് അംഗീകരിച്ച അഡീഷണൽ ചീഫ് സെക്രട്ടറിയുടെ പേര്	ശ്രീ. ബിശ്വനാഥ് സിൻഹ
9. മന്ത്രിസഭയ്ക്കുള്ള കരട് കുറിപ്പ് അഡീഷണൽ ചീഫ് സെക്രട്ടറി അംഗീകരിച്ച തീയതി	02.08.2025
10. കുറിപ്പ് അംഗീകരിച്ച ചീഫ് സെക്രട്ടറിയുടെ പേര്	ഡോ. എ. ജയതിലക്
11. മന്ത്രിസഭയ്ക്കുള്ള കരട് കുറിപ്പ് ചീഫ് സെക്രട്ടറി അംഗീകരിച്ച തീയതി	05.08.2025
12. കുറിപ്പ് അംഗീകരിച്ച മന്ത്രിയുടെ പേര്	ശ്രീ. പിണറായി വിജയൻ
13. മന്ത്രിസഭയ്ക്കുള്ള കരട് കുറിപ്പ് മന്ത്രി അംഗീകരിച്ച തീയതി	09.08.2025
14. കുറിപ്പിന്റെ പകർപ്പുകൾ സമർപ്പിച്ച തീയതി	11.08.2025
15. മന്ത്രിസഭാ യോഗം തീരുമാനമെടുത്ത തീയതി	
16. തീരുമാനം പുറപ്പെടുവിച്ച സർക്കാർ ഉത്തരവ് / കത്തിന്റെ നമ്പരം തീയതിയും	

മന്ത്രിസഭാ യോഗത്തിനുള്ള കറിപ്പ്

ശ്രീമതി പ്രസന്ന, ശ്രീമതി ബിന്ദു പ്രകാശൻ എന്നിവർ യഥാക്രമം ഫയൽ ചെയ്ത WA 1245/2024, WA 2137/2024 എന്നിവയിന്മേലുള്ള ബഹു. കേരളാ ഹൈക്കോടതി ഡിവിഷൻ ബെഞ്ചിന്റെ വിധിന്യായത്തിന്റെ അടിസ്ഥാനത്തിൽ നെട്ടുകാൽത്തേരി തുറന്ന ജയിലിലെ അന്തേവാസിയാ യ സി.നം. 2761 രാജൻ, ചീമേനി തുറന്ന ജയിലിലെ അന്തേവാസിയാ യ സി.നം. 321 പ്രകാശൻ എന്നിവർക്ക് അകാലവിടുതൽ അനുവദിക്കുന്നത് പരിഗണിക്കുന്നത് സംബന്ധിച്ചുള്ളതാണ് ഈ കറിപ്പ്.

2. മുൻ ഖണ്ഡികയിൽ പരാമർശിച്ചിട്ടുള്ള കേസുകൾ ഫയൽ ചെയ്തുവാനുണ്ടായ സാഹചര്യം ചുവടെ ചേർക്കുന്നു:

നെട്ടുകാൽത്തേരി തുറന്ന ജയിലിലെ അന്തേവാസിയാ യ സി.നം.2761 രാജൻ അകാലവിടുതൽ അനുവദിക്കുന്നതിനായി ശ്രീമതി പ്രസന്ന ബഹു. ഹൈക്കോടതി മുമ്പാകെ ഫയൽ ചെയ്ത WP(Crl) 320/2023-നമ്പർ കേസിൽ ബഹു. കോടതി 07.09.2023 തീയതിയിലെ വിധിന്യായത്തിൽ താഴെപ്പറയും പ്രകാരം ഉത്തരവ് പുറപ്പെടുവിച്ചിരുന്നു:

1. The 1<sup>st</sup> respondent is directed to consider the question of release of the petitioner's husband, after remission, in the light of Ext.P4 recommendation, as expeditiously as possible, at any rate, within one month from the date of receipt of a certified copy of this judgment.
2. The petitioner will produce a stamped certified copy of this judgment together with a copy of this writ petition before the 1<sup>st</sup> respondent for compliance.

ഈ സമയം സി.നം. 2761 രാജൻ ഉൾപ്പെടെയുള്ള അന്തേവാസികളുടെ അകാലവിടുതലിനുള്ള നെട്ടുകാൽത്തേരി തുറന്ന ജയിലിലെ 29.06.2023 ലെ ജയിൽ ഉപദേശകസമിതി ശുപാർശ സർക്കാർ പരിശോധിച്ച് വന്നിരുന്നതാണ്. സ്ത്രീയുടെ കൊലപാതകത്തിൽ ഉൾപ്പെട്ടിരുന്ന രാജന്റെ അകാല വിടുതൽ ശുപാർശ, 03.01.2024 തീയതിയിലെ മന്ത്രിസഭാ യോഗ തീരുമാന പ്രകാരം 11.01.2024 തീയതിയിലെ G.O(Ms) 15/24/Home നമ്പർ ഉത്തരവ് പ്രകാരം നിരസിക്കുകയുണ്ടായി. ബഹു. ഹൈക്കോടതിയുടെ WP (Crl) 320/2023 നമ്പർ കേസിലെ 07/09/2023 തീയതിയിലെ വിധിന്യായം അപ്രകാരം നടപ്പിലാക്കുകയും ചെയ്യുകയുണ്ടായി. പ്രസ്തുത സർക്കാർ ഉത്തരവിനെതിരെ ശ്രീമതി പ്രസന്ന ബഹു. ഹൈക്കോടതിയെ വീണ്ടും സമീപിക്കുകയും കോടതി മുമ്പാകെ WP (Crl) 90/24 നമ്പർ കേസ് ഫയൽ ചെയ്യുകയും പ്രസ്തുത കേസ് 14.08.2024 ലെ വിധിന്യായ പ്രകാരം തള്ളുകയും ചെയ്തിട്ടുള്ളതാണ്.

ചീമേനി തുറന്ന ജയിലിലെ അന്തേവാസിയാ യ സി.നം. 321 പ്രകാശൻ അകാലവിടുതൽ അനുവദിക്കുന്നതിനായി ശ്രീമതി ബിന്ദു പ്രകാശൻ ബഹു. ഹൈക്കോടതി മുമ്പാകെ WP (Crl) 973/2022 നമ്പർ കേസ് ഫയൽ ചെയ്യുകയും പ്രസ്തുത കേസിൽ 01.08.2023 ൽ വിധിന്യായം പ്രസ്താവിക്കുകയുണ്ടായി. ഈ സമയം തന്നെ ചീമേനി തുറന്ന ജയിലിലെ 02.05.2023 തീയതിയിലെ ജയിൽ ഉപദേശകസമിതി സി.നം 321 പ്രകാശനെ അകാലവിടുതലിന് പരിഗണിക്കുന്നത് ശുപാർശ ചെയ്തിരുന്നത് സർക്കാരിന്റെ പരിഗണനയിലുണ്ടായി. മേൽപ്പറഞ്ഞ വിധിന്യായത്തിന്റെ കൂടി അടിസ്ഥാനത്തിൽ സർക്കാർ ഈ വിഷയം പരിശോധിക്കുകയും, സ്ത്രീകളെയും കൂട്ടികളെയും കൊല ചെയ്ത കുറ്റകൃത്യത്തിൽ ഏർപ്പെട്ടവർക്ക് അകാലവിടുതൽ അനുവദിക്കേണ്ടതില്ലായെന്ന നിലപാടിന്റെ അടിസ്ഥാനത്തിൽ സി.നം. 321 പ്രകാശന്റെ അകാലവിടുതലിനുള്ള ജയിൽ ഉപദേശകസമിതി ശുപാർശ 04.12.2023 തീയതിയിലെ G.O(Ms) 247/23/ആഭ്യന്തരം നമ്പർ ഉത്തരവ്



പ്രകാരം നിരസിക്കുകയും ചെയ്തിരുന്നു. പ്രസ്തുത സർക്കാർ ഉത്തരവിനെതിരായി ശ്രീമതി ബിനു പ്രകാശൻ വീണ്ടും ബഹു. ഹൈക്കോടതിയെ സമീപിച്ച് ഫയൽ ചെയ്ത WP (Crl) 79/2024 നമ്പർ കേസ് 03.12.2024 തീയതിയിലെ വിധിനൂയ പ്രകാരം കോടതി തള്ളിക്കളഞ്ഞിട്ടുള്ളതാണ്.

3. മേൽപ്പറഞ്ഞ WP (Crl) No. 90/2024, WP(Crl) No. 79/2024 എന്നീ കേസുകളിലെ വിധിനൂയങ്ങൾക്കെതിരെ ശ്രീമതി പ്രസന്ന, ശ്രീമതി ബിനു പ്രകാശൻ എന്നിവർ ഫയൽ ചെയ്ത WA 1245/2024, WA 2137/2024 എന്നീ കേസുകൾ ബഹു. കോടതി ഒരുമിച്ച് കേൾക്കുകയും 11.04.2025 തീയതിയിൽ വിധിനൂയം പുറപ്പെടുവിക്കുകയും ചെയ്യുകയുണ്ടായി. ബഹു. ഡിവിഷൻ ബെഞ്ച് പുറപ്പെടുവിച്ച് വിധിനൂയത്തിന്റെ പ്രസക്ത ഭാഗം ചുവടെ ചേർക്കുന്നു:

**WA.No.1245/2024, WA.No2137/2024**

“ 21. Let us now consider the arguments advanced by the learned Special Government Pleader. True, in Joseph, it was observed by the Apex Court that grouping types of convicts based on the offences they were found to have committed, as a starting point, may be justified. But, in the light of the propositions laid down in the said case as contained in paragraphs 32 and 37 of the judgment, the said observation cannot be understood as one permitting grouping of convicts based on the offences they were found to have committed in such a manner as to exclude certain offences from the scope of grant of remission as done by the State Government.....

Needless to say, we accept the decision of the Apex Court in Joseph as the binding precedent. We are inclined to hold that long-term convicted prisoners, especially those who deemed to have completed the entire term of imprisonment in terms of the provisions contained in the Act and 2014 Rules, other than those who were sentenced by the convicting courts for imprisonment for a period exceeding 20 years, cannot be denied the benefit of remission having regard to the nature of the offence committed by them in the distant past.

23. We take this view for yet another reason also. Granting early release to prisoners is a matter related to their fundamental human rights. The National Human Rights Commission has received a number of representations pointing out that the State Governments are applying differing standards in the matter of premature release of prisoners undergoing life imprisonment. After considering the response received from a number of States/Union Territories, the Commission fixed guidelines and the same were communicated to all the State Governments/Union Territories on 26.09.2003. The Apex Court has made a reference to these guidelines also in Joseph. In the said communication, even though it is provided that there can be a classification among the life convicts having regard to the magnitude, brutality and gravity of the offence for which the convict was sentenced to imprisonment, the period of incarceration inclusive of remission even in worst of the worst situation should not exceed 25 years.

24. On an evaluation of the totality of the facts and circumstances of the cases on hand, especially the finding rendered by us that the prisoners involved in these cases were entitled to be released prematurely on completion of imprisonment for a period of 20 years in terms of the 1958 Rules, we are of the view that these are apt

cases where this Court should direct the Government to release the prisoners with immediate effect, as done by the Apex Court in Joseph. However, inasmuch as the grant of remission is a prerogative of the Government, although the power conferred on the Government for the said purpose is a power coupled with duty to be exercised after taking into account all the relevant factors, we set aside the impugned judgments as also the orders of the Government impugned in the writ petitions and dispose of the writ appeals directing the Government to consider afresh, the last among the recommendations made by the Advisory Committee for the premature release of the prisoners involved in these cases, within a period of one month, in the light of the findings and observations made by the Apex Court in Joseph, as referred to by us in this judgment, untrammelled by the nature of the offences for which they were convicted.”

പ്രസ്തുത വിധിന്യായത്തിന്റെ പകർപ്പ് അനുബന്ധം I ആയി ചേർത്തിട്ടുണ്ട്.

4. സ്പെഷ്യൽ ഗവൺമെന്റ് പ്ലീഡർ ടു ഡയറക്ടർ ജനറൽ ഓഫ് പ്രോസിക്യൂഷൻ നൽകിയ നിയമോപദേശത്തിൽ, W.A.Nos.1245/24 & 2137/24 നമ്പർ കേസുകളിലെ വിധിക്കെതിരെ അപ്പീൽ ഫയൽ ചെയ്താൽ വിജയസാധ്യതയില്ലായെന്ന് അഭിപ്രായപ്പെടുകയും, വിധി നടപ്പാക്കാൻ കോടതി അനുവദിച്ച സമയം ഇതിനകം അവസാനിച്ചതിനാൽ കോടതിയലക്ഷ്യ നടപടികൾ ഒഴിവാക്കാൻ ബഹു. ഹൈക്കോടതിയുടെ ഡിവിഷൻ ബെഞ്ചിന്റെ നിർദ്ദേശങ്ങൾ എത്രയും വേഗം നടപ്പിലാക്കുവാനും ഉപദേശിച്ചിട്ടുണ്ട്. പ്രസ്തുത നിയമോപദേശത്തിന്റെ പകർപ്പ് അനുബന്ധം II ആയി ചേർത്തിട്ടുണ്ട്. വിധിന്യായം നടപ്പിലാക്കാത്തതിനെതിരെ ശ്രീമതി പ്രസന്ന ബഹു. ഹൈക്കോടതി മുമ്പാകെ Contempt case (C) No. 1203/2025 ഫയൽ ചെയ്തിട്ടുണ്ട്. ഈ കേസ് കോടതിയുടെ പരിഗണനയിലാണ്.

5. കുറ്റകൃത്യത്തിന്റെ സ്വഭാവം മാത്രം പരിഗണിച്ച് തടവുകാർക്ക് അകാലവിടുതൽ നിഷേധിക്കാൻ പാടില്ലായെന്ന് അകാലവിടുതൽ അനുവദിക്കുന്നതുമായി ബന്ധപ്പെട്ട് വിയ്യൂർ സെൻട്രൽ ജയിലിലെ അന്തേവാസിയായ സി.നം.6036 ബാലു ബഹു. ഹൈക്കോടതി മുമ്പാകെ ഫയൽ ചെയ്ത WP(CrI)No.1215/24 കേസിലെ 03.04.2025 തീയതിയിൽ പുറപ്പെടുവിച്ച വിധിന്യായത്തിലും, ബഹു.ഹൈക്കോടതി ഉത്തരവായിട്ടുണ്ട്. പ്രസ്തുത കോടതി ഉത്തരവിന്റെ പ്രസക്ത ഭാഗം ചുവടെ ചേർക്കുന്നു:

#### WP(CrI)No.1215/24

“ 15. Premature release has been recognized as one of the facets of the human rights of prisoners. The remission policy manifests a process of reshaping a person who, under certain circumstances, has indulged in criminal activity and is required to be rehabilitated. It is based on the principles of reformation and intended to bring the convict back to society as a useful member. It was specifically mentioned in the probation report that the convict could lead a normal life after release by doing agricultural labour work in his own village. The murder was committed when the petitioner was only 18 years of age, and he is now around 42 years. The police authorities, the probation officer and the Superintendent of Prisons have recommended the premature release of the petitioner. The Jail Advisory Committee

has also recommended the premature release of the petitioner. These factors that have a bearing on the concept of reformation cannot be ignored on the bare premise that persons who have committed the murder of women will not be given remission of sentence. The grant of premature release is the power coupled with duty conferred on the appropriate Government in terms of Section 432 of Cr.P.C, and under the provisions of State Laws which is to be exercised by it after taking into account all the relevant factors. Considering the entire facts and circumstances of the case, I am of the view that it is a fit case where the Government ought to have considered the plea of the petitioner for premature release favourably. However, it is well settled that this Court cannot direct the respondents to release the prisoner forthwith or to remit the remaining sentence [See Rajan (supra) and Bilkis Yakub Rasool (supra)]

16. For the reasons stated above, Ext.P4 order is not sustainable, and accordingly, it is set aside. In the counter affidavit filed by the 1st respondent, it is stated that in the course of routine consideration for recommending premature release during the first half of the year 2024, the Director General of Prisons and Correctional Services, has forwarded the recommendation of the Jail Advisory Committee, which was convened on 15/07/2024, by which four prisoners, including the petitioner, were recommended for the grant of premature release and the file pertaining to it is under process. Hence, the 1st respondent is directed to consider the recommendation of the Jail Advisory Committee relating to the premature release of the petitioner in the light of the observations made in this judgment, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment, The writ petition is disposed of as above. "

6. മേൽപ്പറഞ്ഞ 3 കേസുകളിലും ബഹു. ഹൈക്കോടതി വിധിനൂയം പുറപ്പെടുവിച്ചിട്ടുള്ളത് ബഹു. സുപ്രീംകോടതിയുടെ WP(Crl) 520/2022 നമ്പർ കേസിലെ Joseph Vs State of Kerala, 21.09.2023 തീയതിയിലെ വിധിനൂയം അടിസ്ഥാനപ്പെടുത്തിയിട്ടുള്ളതാണ്. പ്രസ്തുത വിധിനൂയത്തിന്റെ പ്രസക്തഭാഗം ചുവടെ ചേർക്കുന്നു:

".....33. Classifying to use a better word, typecasting convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real danger of overlooking the reformatory potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed, as a starting point, may be justified. However, the prison laws in India - read with Articles 72 and 161 encapsulate a strong underlying reformatory purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, based entirely on the nature of crime committed in the distant past, would be to crush the life force out of such individual, altogether. Thus, for instance, a 19 or 20 year old individual convicted for a crime, which finds place in the list which bars premature release, altogether, would mean that such person would never see freedom, and would die within the prison walls. There is a peculiarity of continuing to imprison one who committed a crime years earlier who might well have changed totally since that time. This is the condition of many people serving very long sentences. They may have

killed someone (or done something much less serious, such as commit a narcotic drug related offences or be serving a life sentence for other non-violent crimes) as young individuals and remain incarcerated 20 or more years later. Regardless of the morality of continued punishment, one may question its rationality. The question is, what is achieved by continuing to punish a person who recognises the wrongness of what they have done, who no longer identifies with it, and who bears little resemblance to the person they were years earlier? It is tempting to say that they are no longer the same person. Yet, the insistence of guidelines, obdurately, to not look beyond the red lines drawn by it and continue in denial to consider the real impact of prison good behavior, and other relevant factors (to ensure that such individual has been rid of the likelihood of causing harm to society) results in violation of Article 14 of the Constitution. Excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies society's resolve to be harsh and unforgiving. The idea of rewarding, a prisoner for good conduct is entirely negated.

34. 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. 28 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".

35. 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.

36. The writ petition, thus, stands allowed in the above terms. Pending applications, if any, are disposed of.

7. സി.നം. 2761 രാജന്റെ അകാലവിടുതൽ നെട്ടുകാൽത്തേരി തുറന്ന ജയിലിലെ 16.08.2024 ലെ ജയിൽ ഉപദേശകസമിതിയും സി.നം. 321 പ്രകാശന്റെ അകാലവിടുതൽ ചീമേനി തുറന്ന ജയിലിലെ 07.08.2024 ലെ ജയിൽ ഉപദേശകസമിതിയും ശിപാർശ ചെയ്തിട്ടുള്ളതും സർക്കാർ വിവിധ ഫയലുകളിൽ പരിശോധിച്ചുവരുന്നതുമാണ്. പ്രസ്തുത ശിപാർശകളിൽ ഉൾപ്പെട്ട ചില തടവുകാരുടെ കാര്യത്തിൽ

സ്പഷ്ടീകരണങ്ങൾ ആവശ്യമായിട്ടുണ്ട്. ഇതിന് കാലതാമസമുണ്ടാകും. മേൽ തടവുകാർ ഉൾപ്പെടുന്ന ഡിവിഷൻ ബെഞ്ചിന്റെ വിധിന്യായം സമയബന്ധിതമായി (സമയപരിധി : 30.08.2025) നടപ്പിലാക്കേണ്ടതുളളതിനാലാണ് ഇവ പ്രത്യേകമായി പരിഗണിക്കേണ്ട സാഹചര്യം സംജാതമായിട്ടുള്ളത്. WA(CrI) 1245/24, WA 2137/24 എന്നീ കേസുകളിലെ 11.04.2025 തീയതിയിലെ വിധിന്യായം നടപ്പിലാക്കാത്തതിനെതിരെ ശ്രീമതി പ്രസന്ന ബഹു. ഹൈക്കോടതി മുമ്പാകെ Contempt case (C) No. 1203/2025 ഫയൽ ചെയ്തിട്ടുണ്ട്. 11.04.2025 തീയതിയിലെ വിധിന്യായം നടപ്പിലാക്കുന്നതിന് സമയം ദീർഘിപ്പിച്ച് നൽകുന്നതിന് സർക്കാർ അപേക്ഷ സമർപ്പിച്ചതിന് പ്രകാരം 30.08.2025 വരെ ബഹു. ഹൈക്കോടതി സമയം അനുവദിച്ചിട്ടുള്ളതും വിധിന്യായം നടപ്പാക്കാത്ത പക്ഷം, ആഭ്യന്തര വകുപ്പ് അഡീഷണൽ ചീഫ് സെക്രട്ടറി 01.09.2025 തീയതിയിൽ നേരിട്ട് ഫാജരാകാൻ നിർദ്ദേശിച്ചിട്ടുണ്ട്.

8. മേൽപ്പറഞ്ഞ അന്തേവാസികളുടെ കേസ് സംബന്ധിച്ച വിവരങ്ങൾ ചുവടെ പറയും വിധമാണ്.

ക്രമ നം.	കൺവിക്ട് നം. & പേര് (വയസ്സ്)	കുറ്റകൃത്യം	ശിക്ഷ	പോലീസ് റിപ്പോർട്ട്	പ്രൊബേഷൻ റിപ്പോർട്ട്	31.05.2024 തീയതിയിൽ പൂർത്തീകരിച്ച യഥാർത്ഥ ശിക്ഷാ കാലയളവ്	31.05.2024 തീയതിയിൽ ഇളവ് ഉൾപ്പെടെ പൂർത്തീകരിച്ച ശിക്ഷാ കാലയളവ്	ഹൈൻ സംബന്ധിച്ച വിവരം
1	2761 രാജൻ (63)	സ്ത്രീയെ കൊലപ്പെടുത്തി	ജീവപര്യന്തം കഠിന തടവ്(302 IPC)	പ്രതികൂലം	അനുകൂലം	22 വർഷം 03 മാസം 10 ദിവസം	28 വർഷം 07 മാസം 02 ദിവസം	ഹൈൻ ഇല്ല

ക്രമ നം.	കൺവിക്ട് നം. & പേര് (വയസ്സ്)	കുറ്റകൃത്യം	ശിക്ഷ	പോലീസ് റിപ്പോർട്ട്	പ്രൊബേഷൻ റിപ്പോർട്ട്	31.12.2023 തീയതിയിൽ പൂർത്തീകരിച്ച യഥാർത്ഥ ശിക്ഷാ കാലയളവ്	31.12.2023 തീയതിയിൽ ഇളവ് ഉൾപ്പെടെ പൂർത്തീകരിച്ച ശിക്ഷാ കാലയളവ്	ഹൈൻ അടച്ചതിന്റെ വിവരം
1	സി.നം.321 പ്രകാശൻ വയസ്സ് : 51	മാതാവിനെ കൊലപ്പെടുത്തി	ജീവപര്യന്തം കഠിന തടവ് (302, 307 IPC)	പ്രതികൂലം	അനുകൂലം	20 വർഷം 3 മാസം 27 ദിവസം	26 വർഷം 2 മാസം 7 ദിവസം	ഹൈൻ ഇല്ല

9. പ്രസ്തുത തടവുകാരുടെ കേസ് സംബന്ധിച്ച വിശദാംശങ്ങൾ കൂടി ഉൾപ്പെടുത്തിയുള്ള നിയമവകുപ്പിന്റെ അഭിപ്രായം ചുവടെചേർക്കുന്നു.

**1.C No.2761 RAJAN S/o KRISHNANKUTTY NAIR(Age:63)**

Details of conviction	Reasons for Recommendation
<p>The Prosecution case is that Rajan who was a close relative of the deceased Geetha and was alleged to have illicit relation with Geetha rejected her request to live together after the marriage of her daughter and hence he poured kerosene over her and set her ablaze on 17.04.1997 and she succumbed to the burn injuries.</p> <p>He was the accused in SC.No.117/1999 of the Additional Sessions Court North Paravoor and convicted and sentenced to Imprisonment for life u/s 302 of IPC. Set off allowed</p> <p>The judgment of the convicting Court was confirmed and the appeal was dismissed by the High Court vide Judgment in CrI. Appeal No.51 of 2002 dated 24.07.2003.</p>	<p>The District Probation Officer recommended for his release. But the Police report is adverse. Jail Advisory Board recommended his release.</p> <p>As per sec. 475 of BNSS where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, such person shall not be released from prison unless he had undergone atleast 14 years of imprisonment. The prisoner has undergone actual imprisonment of 22 years, 03 month and 10 days as on 31.05.2024.</p> <p>Neither in the judgment of the Hon'ble Additional Sessions Court North Paravoor in Sessions Case No.117/1999 nor in the judgment of the Hon'ble High Court in CrI. Appeal No.51 of 2002 dated 24.07.2003 contain any adverse remarks on the premature release of Sri.Rajan.</p> <p>Since the prisoner has completed the minimum period stipulated by section 475 of BNSS, there is no legal impediment in his premature release.</p>

**2.C.No. 321 PRAKASHAN S/o NARAYANAN (51 years)**

Details of conviction	Reasons for Recommendation
<p>The Prosecution case is that on the night of 29.07.1999, the accused stabbed his mother to death and injured his father who tried to avert the attack.</p> <p>He was the accused in SC.No.162/2001 of the Addl. Sessions Court, Fast Track-II, (Adhoc) Thrissur and was convicted and sentenced to imprisonment for Life u/s 302 IPC and RI for 05 years u/s 307 IPC. Sentence to run concurrently. Set off allowed against the imprisonment u/s 307 IPC.</p>	<p>The District Probation Officer, recommended his release. Police Report is adverse. Jail Advisory Board recommended his release.</p> <p>As per sec. 475 of BNSS where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, such person shall not be released from prison unless he had undergone atleast 14 years of imprisonment. The prisoner has undergone actual imprisonment of 20 years. 03</p>

<p><i>The judgment of the convicting Court was confirmed and the appeal was dismissed by the High Court vide Judgment in Crl. Appeal No.890/2003 dated 29.10.2004.</i></p>	<p><i>months and 27 days as on 31.12.2023.</i></p> <p><i>Neither the judgment of the Hon'ble Addl.Sessions Court -Adhoc -III) Thrissur in Sessions Case No.162/2001 nor in the judgment of the Hon'ble High Court in Crl. Appeal No.890/2003 dated 29.10.2004 contain any adverse remarks on the premature release of Sri.Prakashan.</i></p> <p><i>Since the prisoner has completed the minimum period stipulated by section 475 of BNSS, there is no legal impediment in his premature release.</i></p>
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സി.നം.2761 രാജൻ, സി.നം. 321 പ്രകാശൻ എന്നിവർക്ക് അകാല വിടുതൽ അനുവദിക്കുന്നതിന് മറ്റ് നിയമസംഹാരമില്ലായെന്ന് നിയമവകുപ്പ് അഭിപ്രായപ്പെട്ടിരിക്കുന്നു.

10. കുറ്റവാളികളുടെ മേൽ ചുമത്തുന്ന പിഴ ശിക്ഷ (fine sentence) സംബന്ധിച്ച് Bilkis Yakub Rasool Vs Union of India, MANU/SC/0025/2024 നമ്പർ കേസിലെ ഉത്തരവിൽ ബഹു. സുപ്രീംകോടതിയുടെ നിരീക്ഷണങ്ങളുടെ അടിസ്ഥാനത്തിൽ നിയമവകുപ്പ് താഴെപ്പറയുന്ന അഭിപ്രായം ലഭ്യമാക്കിയിട്ടുണ്ട്:

**\* Bilkis Yakub Rasool Vs. Union of India, MANU/SC/0025/2024** എന്ന കേസിൽ അകാല വിടുതലിനായി പരിഗണിക്കുന്ന തടവുകാർക്ക് ശിക്ഷയോടൊപ്പം ഫൈൻ കൂടി വിധിച്ചിട്ടുള്ളതാണെങ്കിൽ ഫൈൻ ഒട്ടുകിയത് സംബന്ധിച്ച വിവരങ്ങൾ കൂടി പരിശോധിക്കേണ്ടതാണെന്ന് വിധിക്കുകയുണ്ടായി. ആയത് ഭരണവകുപ്പ് ഉറപ്പ് വരുത്തേണ്ടതാണ്.

ഇവർ രണ്ടുപേർക്കും ഫൈൻ ശിക്ഷ വിധിച്ചിട്ടില്ല.

11. ഈ തടവുകാർ CrPC 433 A പ്രകാരമുള്ള മിനിമം ശിക്ഷാകാലാവധി പൂർത്തിയാക്കിയിരുന്നെങ്കിലും സ്ത്രീകളെയും കുട്ടികളെയും കൊല ചെയ്ത കുറ്റകൃത്യത്തിൽ ഏർപ്പെട്ടവർക്ക് അകാലവിടുതൽ അനുവദിക്കേണ്ടതില്ലായെന്ന നിലപാടിന്റെ അടിസ്ഥാനത്തിലാണ് മുൻകാലങ്ങളിൽ ഇവരുടെ അകാലവിടുതൽ സർക്കാർ നിരസിച്ചിരുന്നത്. എന്നാൽ ബഹു. സുപ്രീംകോടതിയുടെ WP(Crl) 520/2022 നമ്പർ കേസിലെ Joseph Vs State of Kerala 21.09.2023 തീയതിയിലെ വിധിന്യായത്തിലും, WA 1245/24, WA 2137/24 എന്നീ കേസുകളിലെ 11.04.2025 ലെ വിധിന്യായത്തിലും കുറ്റകൃത്യത്തിന്റെ സ്വഭാവം മുൻനിർത്തി മാത്രം അകാലവിടുതൽ നിഷേധിക്കുന്നതിനെതിരെ നിരീക്ഷണം നടത്തിയിട്ടുള്ളതാണ്.

12. WA 1245/24, WA 2137/24 എന്നീ കേസുകളിലെ 11.04.2025 ലെ വിധിന്യായത്തിന്റെ അടിസ്ഥാനത്തിൽ നെടുങ്കാൽത്തേരി തുറന്ന ജയിലിലെ അന്തേവാസിയാ യ സി.നം. 2761 രാജൻ, ചീമേനി തുറന്ന ജയിലിലെ അന്തേവാസിയാ യ സി.നം.321 പ്രകാശൻ എന്നിവർക്ക് അകാല വിടുതൽ അനുവദിക്കുന്നത് പരിശോധിക്കുന്ന കാര്യം മന്ത്രിസഭയുടെ പരിഗണനയ്ക്ക് സമർപ്പിക്കുവാൻ ബഹു. മുഖ്യമന്ത്രി ഉത്തരവായിട്ടുണ്ട്.

### തീരുമാനിക്കേണ്ട വിഷയം

ബഹു. ഹൈക്കോടതി മുമ്പാകെ ശ്രീമതി പ്രസന്ന, ശ്രീമതി ബിന്ദു പ്രകാശൻ എന്നിവർ യഥാക്രമം ഫയൽ ചെയ്ത WA 1245/24, WA 2137/24 എന്നീ കേസുകളുടെ 11.04.2025 തീയതിയിലെ വിധിന്യായത്തിന്റെ അടിസ്ഥാനത്തിൽ, ഭരണഘടനയുടെ 161-ാം അനുച്ഛേദം പ്രദാനം ചെയ്യുന്ന അധികാരങ്ങൾ വിനിയോഗിച്ചും, 2014 ലെ കേരള പ്രിസണുകളും സംശുദ്ധീകരണ സാമ്പാർഗികരണ സേവനങ്ങളും (നിർവ്വഹണം) ചട്ടങ്ങളിലെ ചട്ടം 470 ലെ നിബന്ധനകൾക്ക് വിധേയമായും നെട്ടുകാൽത്തേരി തുറന്ന ജയിലിലെ അന്തേവാസിയായ സി.നം. 2761 രാജൻ, ചീമേനി തുറന്ന ജയിലിലെ അന്തേവാസിയായ സി.നം. 321 പ്രകാശൻ എന്നീ തടവുകാരുടെ ശേഷിക്കുന്ന പ്രധാന ശിക്ഷാ കാലയളവ് (period of substantive sentence) ഇളവ് ചെയ്ത് അകാലവിടുതൽ അനുവദിക്കുന്നതിന് ബഹു. ഗവർണ്ണർക്ക് ഉപദേശം നൽകാമോ ?



22  
നോട്ടീസിംഗ് . J



2025:KER:31224

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 11<sup>TH</sup> DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

WA NO. 1245 OF 2024

AGAINST THE JUDGMENT DATED 14.08.2024 IN WP(Crl.)

NO.90 OF 2024 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

PRASANNA  
AGED 59 YEARS, W/O.RAJAN, VELLAMATHUKUDI HOUSE,  
KEEZHILLAM (P.O), PERUMBAVOOR, ERNAKULAM  
(DIST).., PIN - 683541

BY ADV K.DEEPA (PAYYANUR)

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031
- 2 THE ADDL. CHIEF SECRETARY TO HOME DEPARTMENT  
GOVERNMENT OF KERALA, SECRETARIAT,  
THIRUVANANTHAPURAM., PIN - 695001
- 3 THE DIRECTOR GENERAL OF POLICE (PRISONS)  
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM.,  
PIN - 695001
- 4 THE SUPERINTENDENT OF PRISON  
OPEN PRISON & CORRECTION HOME NETTUKALTHERI,

W.A. Nos.1245 and 2137 of 2024

2025:KER:31224

- 2 -



THIRUVANANTHAPURAM (DIST) ., PIN - 695572

5 THE CHAIRMAN  
JAIL ADVISORY COMMITTEE, OPEN PRISON &  
CORRECTION HOME NETTUKALTHERI,  
THIRUVANANTHAPURAM (DIST) ., PIN - 695572

BY ADVS.

SHRI.P.NARAYANAN, SPL. G.P.

SHRI.JACOB P.ALEX, AMICUS CURIAE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON  
19.03.2025, ALONG WITH WA.2137/2024, THE COURT ON  
11.04.2025 DELIVERED THE FOLLOWING:

W.A. Nos.1245 and 2137 of 2024

- 3 -

2025:KER:31224



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 11<sup>TH</sup> DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

WA NO. 2137 OF 2024

AGAINST THE JUDGMENT DATED 03.12.2024 IN WP(Crl.)

NO.79 OF 2024 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER IN THE WRIT PETITION:

BINDU PRAKASAN  
AGED 47 YEARS, W/O PRAKASAN,  
PARAMBIL HOUSE, BROTHERS ROAD, KANDANNASSERY  
P.O., THRISSUR, PIN - 680102

BY ADVS.  
GEORGE VARGHESE (PERUMPALLIKUTTIYIL)  
MANU SRINATH  
LIJO JOHN THAMPY  
NIVEDITA MUCHILOTE  
RIYAS M.B.

RESPONDENTS/RESPONDENTS IN THE WRIT PETITION:

1 STATE OF KERALA  
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001



- 2 DIRECTOR GENERAL  
PRISON AND CORRECTIONAL SERVICE DEPARTMENT,  
GOVERNMENT OF KERALA, POOJAPPURA,  
THIRUVANANTHAPURAM, PIN - 695012
- 3 JAIL ADVISORY BOARD  
OPEN PRISON AND CORRECTIONAL HOME, CHEEMENI,  
KASARAGOD, KERALA, PIN - 671313
- 4 DISTRICT PROBATION OFFICER  
THRISSUR, KALYAN NAGAR, AYYANTHOLE, THRISSUR,  
KERALA, PIN - 680003
- 5 DISTRICT POLICE CHIEF  
THRISSUR CITY, RAMAVARMAPURAM RD, PALLIMOOLA,  
MANNUMKAD, RAMAVARMAPURAM, THRISSUR, KERALA,  
PIN - 680631
- 6 SUPERINTENDENT  
OPEN PRISON AND CORRECTIONAL HOME, CHEEMENI,  
KASARAGOD, KERALA, PIN - 671313  
BY ADVS.  
SHRI.P.NARAYANAN, SPL. G.P.  
SHRI.JACOB P.ALEX, AMICUS CURIAE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON  
19.03.2025, ALONG WITH WA.1245/2024, THE COURT ON  
11.04.2025 DELIVERED THE FOLLOWING:

W.A. Nos.1245 and 2137 of 2024

2025:KER:31224

-: 5 :-



C.R.

P.B.SURESH KUMAR & JOBIN SEBASTIAN, JJ.

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Writ Appeal Nos.1245 and 2137 of 2024  
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Dated this the 11<sup>th</sup> day of April, 2025

J U D G M E N T

P.B.Suresh Kumar, J.

The questions that arise for consideration in these matters are common and as such, they are disposed of by this common judgement. For a proper adjudication of the questions, a clear articulation of the facts involved in the matters is essential.

W.A.No.1245 of 2024

2. The appellant is the petitioner in the writ petition from which the appeal arises. Her husband is undergoing imprisonment for life pursuant to his conviction under Section 302 of the Indian Penal Code (IPC) for having committed the murder of one Geetha, with whom he was



having an illicit relationship. The convict has undergone 22 years, 3 months and 19 days of imprisonment as on 10.06.2024 and has also earned a remission of 6 years, 3 months and 22 days. The period of sentence of the convict inclusive of remission would workout to be approximately 29 years. Although the case of the convict is being recommended by the Advisory Committee constituted under Section 77(1) of the Kerala Prisons and Correctional Services (Management) Act, 2010 (the Act) for premature release from the year 2017 onwards, the same is not being accepted by the Government. The appellant, in the circumstances, preferred W.P.(Crl.) No.320 of 2023 before this Court voicing the grievance and the writ petition was disposed of as per Ext.P3 judgment directing the Government to consider the case of the convict for premature release in the light of the latest recommendation of the Advisory Committee. Pursuant to the said direction, the Government issued Ext.P4 order holding that the case of the convict being a case involving the brutal murder of a widow who requires special care in the society, his premature release



would facilitate offences against women and that therefore, the case of the convict cannot be considered for premature release. The present writ petition is instituted challenging Ext.P4 order.

3. A counter affidavit was filed in the writ petition on behalf of the State Government contending, among others, that punitive measures imposed on persons convicted for offences against women are found not sufficient to deter and curb such offences; that stopping crimes against women is essential to ensure their safety and security; that criminal activities against women restrict their freedom and hinders their active participation in the society; that granting release to those involved in offences against women may facilitate offences against women and that they are, therefore, not extended the benefit of premature release.

4. The learned Single Judge dismissed the writ petition holding that the power conferred on the Government to grant remission is discretionary, and having regard to the facts of the case, the impugned order does not warrant



interference. The appellant is aggrieved by the decision of the learned Single Judge.

W.A. No.2137 of 2024

5. The appellant is the petitioner in the writ petition from which the appeal arises. Her husband is undergoing imprisonment for life pursuant to his conviction under Sections 302 and 307 IPC for having committed the murder of his mother and attempted to commit the murder of his father. The convict has undergone 20 years, 9 months and 27 days of imprisonment as on 30.06.2024 and he has earned a remission of 5 years, 10 months and 10 days. The period of sentence of the convict inclusive of remission would workout to be approximately 26 years. The case of the convict was recommended twice by the Advisory Committee constituted under Section 77(1) of the Act for premature release. The recommendations were, however, not accepted by the Government. The appellant, in the circumstances, preferred a writ petition before the Apex Court, and the same was disposed of by the Apex Court in terms of Ext.P5 order





directing the appellant to make a representation before the Government and directing the Government to consider the same. Pursuant to Ext.P5 order, the appellant preferred a representation and the same was rejected by the Government in terms of Ext.P7 order holding that inasmuch as the conviction was for the murder of his mother, the case cannot be considered for premature release. Ext.P7 order was challenged by the appellant before this Court in W.P(CrI) No.973 of 2022. During the pendency of the writ petition, the Advisory Committee recommended the case of the convict again for premature release on 02.05.2023. In the light of the said development, W.P(CrI) No.973 of 2022 was disposed of in terms of Ext.P12 judgment directing the Government to consider the said recommendation of the Advisory Committee untrammelled by Ext.P7 decision earlier taken in the matter. Pursuant to Ext.P12 judgment, the Government issued Ext.P14 order rejecting the recommendation of the Advisory Committee holding that the consistent stand of the Government in matters of this nature is that persons involved in the murder of women



and children shall not be granted premature release. The present writ petition is instituted challenging Ext.P14 order.

6. A counter affidavit was filed in the writ petition on behalf of the State Government. The stand taken by the Government in the counter affidavit is consistent with the stand taken by the Government in the counter affidavit filed in W.P.(Crl) No.90 of 2024 from which W.A.No.1245 of 2024 arose.

7. The learned Single Judge dismissed the writ petition following the decision of the learned Single Judge impugned in writ appeal No.1245 of 2024 and holding that the policy of the Government referred to in Ext.P14 is one evolved in terms of Section 77 of the Act and the Kerala Prisons and Correctional Services (Management) Rules, 2014 (the 2014 Rules) and that therefore, the decision is in order. The appellant is aggrieved by the decision of the learned Single Judge.

8. In the year 2020, Government proposed to grant premature release to all those prisoners who have completed 14 years of imprisonment and whose proposals for



premature release were rejected by the Advisory Committee. A committee was constituted thereupon for the said purpose to examine their cases for premature release. The said committee formulated a few general guidelines for determining the eligibility of the prisoners and recommended to the Government for premature release of 67 prisoners on the basis of the formulated guidelines. The prisoners were classified in four categories in terms of the said guidelines as (i) Category of prisoners who are not eligible for premature release (ii) Category of prisoners who are eligible for premature release after 25 years of imprisonment including remission (iii) Category of prisoners who are eligible for premature release after 20 years of imprisonment including remission and (iv) Category of prisoners who are eligible for premature release after 14 years of imprisonment excluding remission. The Government accepted the recommendations made by the committee after excluding (i) persons involved in most cruel murder, (ii) persons who committed murder of women and children, persons who committed murder with rape and (iii)



among the prisoners who are undergoing treatment for mental illness, prisoners whose relatives are reluctant to receive them, as per G.O.(Ms) No.116/2022/HOME dated 14.06.2022. The said Government Order is part of the records in W.A.No.1245 of 2024. The relevant part of G.O.(Ms) No.116/2022/HOME dated 14.06.2022 dealing with the exclusions made by the Government from the categories, reads thus:

"6. Accordingly, the Government have examined in detail the recommendations of the Committee headed by the Additional Chief Secretary(Home&Vigilance) Department vide minutes read as 5th paper above and decided to approve the proposal, excluding the following category of prisoners :-

1. Persons involved in most cruel murder.
2. Persons who committed murder of women and children, persons who committed murder with rape.
3. Among the prisoners who are undergoing treatment for mental illness, the prisoners whose relatives are reluctant to receive them."

9. It is seen that a doubt arose in the course of the hearing as to whether the guidelines prescribed in G.O.(Ms) No.116/2022/HOME dated 14.06.2022 and the exclusions made therein represent the policy of the Government on premature release of prisoners, and consequently, in terms of the interim



order passed on 28.11.2024, this Court directed the respondents to file an affidavit placing on record as to how and under which document the eligibility of the prisoners for premature release is assessed. Pursuant to the said order, an affidavit has been filed on behalf of the Government in W.A.No.1245 of 2024 stating that the said Government Order cannot be treated as the policy of the Government for, the same was formulated solely for the purpose of releasing those prisoners who have completed 14 years of imprisonment and whose proposals for premature release were rejected by the Advisory Committee. It is also stated in the affidavit that the Government is identifying prisoners eligible for premature release in accordance with the provisions contained in Chapter 36 of the 2014 Rules.

10. Heard Adv.Deepa K.Payyanur for the appellant in W.A.No.1245 of 2024 and Adv.Manu Srinath for the appellant in W.A.No.2137 of 2024. Special Government Pleader Sri.P.Narayanan addressed arguments on behalf of the State. We also had the benefit of hearing Sri.Jacob P.Alex, who was



appointed as *amicus curiae* in the matters.

11. The learned counsel for the appellants contended in unison that classification of prisoners for premature release based on the gender of the victim, and the denial of the benefit of such release solely due to the severity of the offence committed, are arbitrary and discriminatory. According to the learned counsel, a blanket exclusion of certain offences from the scope of grant of premature release is not permissible in law. They relied on the decision of the Apex Court in **Joseph v. State of Kerala**, 2023 SCC OnLine SC 1211, in support of this argument. It was submitted by the learned counsel that inasmuch as the Government extended the benefit of premature release to similarly placed prisoners, the prisoners involved in the cases on hand are also entitled to be released prematurely. In addition, the learned counsel for the appellant in W.A. No. 2137 of 2024 argued that in the light of Section 77 of the Act, the benefit of premature release is one to be extended to well-behaved long-term convicted prisoners, regardless of the nature of the offence they committed.



According to the learned counsel, in the absence of any case for the Government that the prisoners involved in the cases on hand are not well-behaved long-term convicted prisoners, they are certainly entitled to the benefit of premature release.

12. *Per contra*, the learned Special Government Pleader argued that the exclusion of prisoners involved in certain categories of offences, especially those involved in the offences against women and children, in the matter of extending the benefit of premature release, is perfectly in order and does not violate the fundamental rights guaranteed to the prisoners. The learned Special Government Pleader relied on the decisions of the Apex Court in **State of Haryana v. Jai Singh**, (2003) 9 SCC 114 and **Sanaboina Satyanarayana v. Govt. of A.P.**, (2003) 10 SCC 78, in support of this argument. It was pointed out by the learned Special Government Pleader that even in **Joseph**, the Apex Court clarified that grouping of type of convicts based on the offences they were found to have committed, as a starting point, is permissible.

13. The learned *amicus curiae* brought to our



attention, the statutory provisions which have a bearing on the questions involved. The learned *amicus curiae* has also made available a compilation of various decisions of the Apex Court dealing with the subject and explained their interplay on the facts of the present cases. According to the learned *amicus curiae*, in the light of the decision of the Apex Court in *Joseph*, the State cannot be heard to contend that exclusion of convicts from the zone of consideration for premature release on the ground that they were involved in offences against women, is not arbitrary. According to the learned *amicus curiae*, inasmuch as the convicts involved in the cases were not imposed with a punishment of a longer term of imprisonment by the convicting courts, they are entitled to be considered for premature release in terms of the relevant statute. It was also the submission of the learned *amicus curiae* that the issue relating to premature release is one to be considered based on the provisions of the Act and the 2014 Rules and the relevant considerations namely, reformation, post-conviction changes in behaviour, remorse, good behaviour in jail etc. were not taken





note of while passing the impugned orders. It was also pointed out by the learned *amicus curiae* that one of the most important objects of punishment is reintegration of the convict back to society and the said object has been defeated in terms of the impugned orders.

14. We have examined the arguments advanced by the learned counsel for the parties as also the learned *amicus curiae*.

15. The orders impugned in the writ petitions were issued at a time when the Code of Criminal Procedure, 1974 (the Code) was in force. Section 432 of the Code confers power on the State Government to remit the whole or any part of the punishment to which a person has been sentenced for an offence. Section 433A of the Code, however, restricts the power conferred on the State Government under Section 432 by providing that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, such a person shall not be released from prison unless he had served



at least 14 years of imprisonment.

16. The Travancore-Cochin Prisons Act, 1950 (Act XVIII of 1950) and Prisons Act, 1894 (Central Act IX of 1894) were the statutes in force at the time of formation of the State. Both the statutes were enacted only to regulate the management of prisons. The Kerala Prisons Rules, 1958 (the 1958 Rules) framed invoking the power conferred by the said statutes provided for constitution of an Advisory Board to investigate and report on the sentences of prisoners. The 1958 Rules also empowered the Advisory Board to submit recommendations for their release in terms of the same. It is also provided in 1958 Rules that the case of prisoners whose aggregate sentence is more than 20 years shall be submitted for special orders of the Government as to their premature release on completion of 14 years of sentence including remission in each case. The said Rule reads thus:

"545A. '14-Year-Rule'.—The cases of \* prisoners whose aggregate sentence is more than 20 years shall be submitted together with the records specified under Rule 545 for special orders of Government as to their premature release or completion of 14 years of sentence including remission in each case.



\*\* "Provided that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 of the Code of Criminal Procedure, 1973 such persons shall not be considered for release from prison unless he has served at least fourteen years of imprisonment."

The 1958 Rules also contained a provision to the effect that the sentence of prisoners sentenced to life imprisonment shall be deemed to be a sentence of imprisonment for twenty years.

Rule 299 dealing with the said aspect reads thus:

"299. Definitions in these rules. - [...]"

(c) The sentence of all prisoners sentenced to imprisonment for life or to more than twenty years imprisonment in the aggregate or to imprisonment for terms exceeding in the aggregate twenty years shall for the purpose of these rules, be deemed to be sentence of imprisonment for twenty years."

17. "Prisons" being a State Subject under Entry 4 of List II of the Seventh Schedule to the Constitution, the statutes referred to in the preceding paragraph were replaced with the Act by the State Government, with effect from 14.05.2010. Unlike the repealed enactments, the Act was intended not only to regulate the management of prisons, but



also to provide for the safe custody, correction, reformation, welfare and rehabilitation of prisoners. The Preamble of the Act reads thus:

"WHEREAS, it is expedient to provide for the safe custody, correction, reformation, welfare and rehabilitation of prisoners and management of prisons and correctional services in the State and for matters connected therewith or incidental thereto."

Section 77 of the Act provides for premature release. Section 77 reads thus:

"77.Premature release: (1) Well behaved, long term convicted prisoners may be prematurely released with the objective of their reformation and rehabilitation, by the Government, either *suo motu* or on the recommendations of an Advisory Committee as may be prescribed.

(2) The Advisory Committee constituted as per subsection (1) shall have the powers and duties, as may be prescribed."

Chapter 36 of the 2014 Rules deals with the "Advisory Committee" provided for under Section 77 of the Act for premature release of prisoners and related matters. Rules in Chapter 36 lay down the procedure to be followed for making recommendations for premature release of prisoners. Rules 465(2), 466(3) and 466(4) of the 2014 Rules read thus:



"465(2) വിട്ടുതലിനായി പരിഗണിക്കുമ്പോൾ കറുത്തുതലിന് ഇരയായവരിൽ നിന്നുള്ള വിട്ടുതലിനെ സംബന്ധിച്ച പ്രതികരണവും കാഴ്ചപ്പാടും കണക്കിലെടുക്കേണ്ടതാണ്. ഈ ആവശ്യത്തിലേക്കായി കറുത്തുതലിന് ഇരയായവരുടെ ബന്ധുക്കൾ, അയൽവാസികൾ, തദ്ദേശ സ്വയംഭരണ സ്ഥാപനങ്ങളിലെ ജനപ്രതിനിധികൾ മുതലായവരെ ബന്ധപ്പെട്ട് അന്വേഷണം നടത്തേണ്ടതാണ്. ഇത്തരം അന്വേഷണം തടവുകാരുടെ ബന്ധുക്കളിൽ നിന്നുകൂടി നടത്തേണ്ടതാണ്. കറുത്തുതലിന് ഇരയായവരുടെ പ്രതികരണം വിചിന്തയ്ക്കുന്നതിനായി പോലീസ് ഉദ്യോഗസ്ഥരും പ്രൊബേഷൻ ഓഫീസറും നൽകുന്ന രഹസ്യാനുബന്ധ വിചോദ്യകളും ഉപയോഗിക്കേണ്ടതാണ്. കറുത്തുതലിന് ഇരയായവരിൽനിന്നുള്ള പ്രതികരണം മില്ലാ പ്രൊബേഷൻ ഓഫീസറിൽ നിന്നും ശേഖരിച്ച് പ്രസ്തുത വിചോദ്യങ്ങളുള്ള തന്റെ അഭിപ്രായം സഹിതം ബന്ധപ്പെട്ട കക്ഷിയിൽ സ്ഥാപനത്തിലെ സൂപ്രണ്ട് സമിതി മുമ്പാകെ ഹാജരാക്കേണ്ടതാണ്."

466(3) ഓരോ തടവുകാരന്റെയും കാലാവധി തീരുന്നതിന് മുമ്പുള്ള വിട്ടുതലിനായുള്ള ശുപാർശ പരിഗണിക്കുമ്പോൾ തടവുകാരന്റെയും സമൂഹത്തിന്റെ ആകെ യുക്തമായ മോക്ഷത്തിനും സർക്കാരോ കോടതികളോ ശിക്ഷാ ഇളവിനെ സംബന്ധിച്ച് നൽകിയിട്ടുള്ള പൊതു തത്ത്വങ്ങൾക്കും കീഴ് വഴക്കങ്ങൾക്കും പരമ പ്രാധാന്യം കൽപ്പിക്കേണ്ടതാണ്. അനേകാണ്ടുകളുടെ അടിസ്ഥാനത്തിലുള്ളതും സാങ്കല്പികവുമായ കാരണങ്ങളാൽ പോലീസിൽ നിന്നുള്ള ശുപാർശ അനുകൂലമല്ല എന്ന കാരണത്താൽ മാത്രം ഒരു തടവുകാരന്റെ അകാലവിട്ടുതലിനായുള്ള ശുപാർശ സമിതി തള്ളിക്കളയുവാൻ പാടുള്ളതല്ല. തടവുകാരൻ കറുത്തുതലിന് നടത്തിയപ്പോഴുള്ള സാഹചര്യങ്ങളും വിട്ടുതലായി കഴിഞ്ഞാൽ വീണ്ടും അത്തരത്തിലുള്ളതോ മറ്റുതരത്തിലുള്ളതോ കറുത്തുതലിലേർപ്പെടാനുള്ള പ്രവണതയും കണക്കിലെടുക്കേണ്ടതും വിട്ടുതലിനായി ശുപാർശ സമർപ്പിക്കേണ്ടത്.

466(4) ഒന്നോ അതിലധികമോ പ്രാവശ്യം സമിതി അകാലവിട്ടുതലിനുള്ള ശുപാർശ നിരസിച്ചു എന്നത് വീണ്ടും പരിഗണിക്കുന്നതിന് തടസ്സമാകുന്നതല്ല. ഇത്തരത്തിൽ നിരസിച്ച ഒരു ശിക്ഷാപ്രതിയുടെ കേസ് ഒരു വർഷം കഴിഞ്ഞുമാത്രമേ പുനഃപരിശോധിക്കുവാൻ പാടുള്ളൂ. പുനഃപരിശോധനയ്ക്ക് ഇതിൽ സൂപ്രണ്ടിന്റെ പുതിയ വിചോദ്യ ആവശ്യമാണ്. ഇത്തരത്തിലുള്ള പുനഃപരിശോധന കാലാവധി തീരുന്നതിന് മുമ്പുള്ള വിട്ടുതലിനുള്ള ശുപാർശ നിരസിച്ചതിന് ശേഷമുള്ള തടവുകാരന്റെ ജയിലിലെ സ്വഭാവത്തിന്റെ അടിസ്ഥാനത്തിലാകണം, അല്ലാതെ മുമ്പ് നിരസിക്കുന്നതിന് അവലംബമായി വിചോദ്യങ്ങളുടെ അടിസ്ഥാനത്തിലാവരുത്.

As evident from the extracted Rules, even though the scheme of the Act is that well-behaved long-term convicted prisoners should be considered for premature release with the object of their reformation and rehabilitation, the Rules obligate the Advisory Committee to consider the views of the victims as



also the views of the relatives of the prisoners, while making recommendations. Similarly, the Rules also obligates the Advisory Committee to consider the welfare of the society as also the prisoner while making recommendations for premature release of the prisoners. Likewise, the Rules obligates the Advisory Committee to give utmost regard to the various principles laid down by the courts in the matter of considering the issues relating to premature release of prisoners. There is also a provision in the 2014 Rules analogous to Rule 216 of 1958 Rules namely, Rule 377 which provides that if the period of imprisonment of life convicts and those other convicts whose aggregate sentence exceeds 20 years, their period of imprisonment shall be deemed to be 20 years. Rule 377 of 2014 Rules reads thus:

- "377. ശിക്ഷാകാലാവധി നിജപ്പെടുത്തൽ. (1) ജീവപര്യന്തം ശിക്ഷ വിധിക്കപ്പെട്ടതോ ഒന്നിലധികം ശിക്ഷകളുടെ ആകെ കാലയളവ് ഇരുപതുവർഷത്തിലധികമായിരിക്കുകയോ ശിക്ഷയുടെ വിവിധ വകുപ്പുകളനുസരിച്ചുള്ള കാലയളവ് ഇരുപത് വർഷത്തിലധികമായിരിക്കുകയോ ചെയ്താൽ, ഈ അദ്ധ്യായത്തിൻ്റെ ആവശ്യങ്ങൾക്കായി പ്രസ്തുത ശിക്ഷ 20 വർഷമായി കണക്കാക്കുന്നതാണ്.
- (2) ശിക്ഷാകാലയളവ് കണക്കാക്കുന്നതിന് മേൽനോട്ടം വഹിക്കുന്നത് ആക്ടൻ്റെ 72-ാം വകുപ്പ് (1)-ാം ഉപവകുപ്പ് പ്രകാരം രൂപീകരിച്ച ഇളവു ചെയ്യൽ സമിതിയായിരിക്കും."

As clarified in sub-rule (2) of Rule 377, for releasing a prisoner

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based on the said Rule, the recommendation of the Remission Committee constituted under Section 72 of the Act is required.

18. It is trite that in the matter of deciding the eligibility for premature release of prisoners, the Policy/Rules that are in force as on the date of conviction are to be applied. This principle finds reiteration in several judgments of the Apex Court including **State of Haryana v. Jagdish**, (2010) 4 SCC 216 and **State of Haryana v. Raj Kumar**, (2021) 9 SCC 292. The State Government has no case that it had a policy for extending the benefit of remission to prisoners at the time when the prisoners involved in these cases were convicted. In other words, since the 1958 Rules was in force at the time of conviction of the prisoners, it was obligatory on the part of the State Government to consider their case for premature release in terms of the provisions contained in the 1958 Rules. Inasmuch as both the prisoners were not directed to undergo imprisonment for a period exceeding 20 years by the concerned convicting courts and since they have already completed 20 years of actual imprisonment, according to us,



their cases ought to have been considered by the State Government favourably, for, the scheme of 1958 Rules is that the sentence of prisoners undergoing life imprisonment shall be limited to 20 years. This position was clarified by the Apex Court in Joseph. Paragraph 38 of the said judgment dealing with that aspect reads thus:

"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". (Underline supplied)

19. Be that as it may, as noted, the stand of the State Government in these matters is that it does not have a remission policy and that the benefit of premature release is extended to prisoners in terms of the provisions of the Act and 2014 Rules. Let us now consider the entitlement of the prisoners involved in these cases for premature release in





terms of the Act and 2014 Rules. As noted, Section 77 of the Act provides for premature release of long-term convicted prisoners who are well behaved with the objective of their reformation and rehabilitation, either *suo motu* or on the recommendation of the Advisory Committee. In the light of the said statutory provision, in the absence of any other policy for the State Government for extending the benefit of premature release, it could be inferred that the policy of the State Government is that well-behaved long-term convicted prisoners shall be extended the benefit of premature release with the objective of their reformation and rehabilitation. The case of the appellant in W.A.No.1245 of 2024 is that the convict has undergone 22 years, 3 months and 19 days of imprisonment as on 10.06.2024 and that he has also earned a remission of 6 years, 3 months and 22 days. Similarly, the case of the appellant in W.A.No.2137 of 2024 is that the convict has undergone 20 years, 9 months and 27 days imprisonment as on 30.06.2024 and that he has also earned a remission of 5 years, 10 months and 10 days. In the light of



Rule 377 of the 2014 Rules, inasmuch as the prisoners involved in the cases on hand have completed more than 20 years of actual imprisonment, they are entitled to be treated as long term convicted prisoners. Rule 376 of 2014 Rules prescribes that prisoners shall be granted remission for keeping peace and good behaviour in jail. The fact that the prisoners have earned remission for a period exceeding five years, demonstrates their good behaviour in the jails. The prisoner involved in W.A.No.1245 of 2024 has been recommended by the Advisory Committee under Section 77(1) of the Act for premature release on several occasions since 2017 and the prisoner involved in W.A.No.2137 of 2024 has been recommended by the Advisory Committee under Section 77(1) of the Act for premature release twice. No doubt, the recommendations of the Advisory Committee does not create any obligation on the part of the Government to release prisoners prematurely. The Government has the discretion to accept or reject the recommendations of the Advisory Committee. In the cases on hand, as revealed from the orders



impugned in the writ petitions, the Government has not rejected the recommendations of the Advisory Committee on the ground that the prisoners are not entitled to premature release in terms of Section 77 of the Act. Instead, the recommendations were rejected having regard to the gender of the victim and the severity of the offence committed by the prisoners. No doubt, premature release is a matter over which the State Government has discretion and the convict is having only a right to be considered for premature release. But, the discretion has to be exercised in a fair, just and reasonable manner [See **Laxman Naskar v. Union of India**, (2000) 2 SCC 595]. The pointed question, therefore, is whether the Government is justified in rejecting the recommendations made by the Advisory Committee for the reasons mentioned in the orders impugned in the writ petitions, especially when it does not have a remission policy and also its stand that the entitlement for remission is determined based on the Act and the 2014 Rules.

20. The reason stated in Ext.P4 order which is



impugned in the writ petition, from which W.A.No:1245 of 2024 arises is that the offence committed by the prisoner is extremely cruel inasmuch as he committed the murder of a widow who requires special care of the society and the reason stated in Ext.P14 order which is impugned in the writ petition, from which W.A.No.2137 of 2024 arises is that persons involved in the murder of women are not entitled to premature release. In fact, the reasons aforesaid were the reasons stated by the Government in G.O.(Ms) No.116/2022/HOME dated 14.06.2022 to deny the benefit of premature release to a batch of similarly placed prisoners. The case of **Joseph** decided by the Apex Court is also an identical one, as the prisoner involved in that case was also denied the benefit of premature release on the ground that persons involved in the murder of women are not entitled to premature release. Having regard to G.O.(Ms) No.116/2022/HOME dated 14.06.2022, it was held by the Apex Court in **Joseph** that a blanket exclusion of certain offences from the scope of grant of remission is not only arbitrary, but turns the ideals of reformation that run through our criminal



justice system, on its head. Paragraph 32 of the said judgment reads thus:

"32. To issue a policy directive, or guidelines, over and above the Act and Rules framed (where the latter forms part and parcel of the former), and undermine what they encapsulate, cannot be countenanced. Blanket exclusion of certain offences, from the scope of grant of remission, especially by way of an executive policy, is not only arbitrary, but turns the ideals of reformation that run through our criminal justice system, on its head. Numerous judgments of this court, have elaborated on the penological goal of reformation and rehabilitation, being the cornerstone of our criminal justice system, rather than retribution. The impact of applying such an executive instruction/guideline to guide the executive's discretion would be that routinely, any progress made by a long-term convict would be rendered naught, leaving them feeling hopeless, and condemned to an indefinite period of incarceration. While the sentencing courts may, in light of this court's majority judgment in *Sriharan* (supra), now impose term sentences (in excess of 14 or 20 years) for crimes that are specially heinous, but not reaching the level of 'rarest of rare' (warranting the death penalty), the state government cannot - *especially* by way of executive instruction, take on such a role, for crimes as it deems fit."

As seen from the extracted passage, the view that is taken in *Joseph* is that the blanket exclusion of certain offences from the scope of grant of remission will have the effect of imposing, on the accused, a longer term of sentence which the Government cannot do, but only the Court can do. It was also held by the Apex Court in the said case that typecasting convicts based on the crime committed in the distant past



would result in a real danger of overlooking the reformatory potential of each individual convict and such typecasting would result in violation of Article 14 of the Constitution. Paragraph 37 of the judgment in **Joseph** reads thus:

"37. Classifying - to use a better word, typecasting convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real danger of overlooking the reformatory potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed, as a starting point, may be justified. However, the prison laws in India - read with Articles 72 and 161 - encapsulate a strong underlying reformatory purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, based entirely on the nature of crime committed in the distant past, would be to crush the life force out of such individual, altogether. Thus, for instance, a 19 or 20 year old individual convicted for a crime, which finds place in the list which bars premature release, altogether, would mean that such person would never see freedom, and would die within the prison walls. There is a peculiarity of continuing to imprison one who committed a crime years earlier who might well have changed totally since that time. This is the condition of many people serving very long sentences. They may have killed someone (or done something much less serious, such as commit a narcotic drug related offences or be serving a life sentence for other non-violent crimes) as young individuals and remain incarcerated 20 or more years later. Regardless of the morality of continued punishment, one may question its rationality. The question is, what is achieved by continuing to punish a person who recognises the wrongness of what they have done, who no longer identifies with it, and who bears little resemblance to the person they were years earlier? It is tempting to say that they are no longer the same person. Yet, the insistence of guidelines, obdurately, to not look beyond the red lines drawn by it and continue in denial to consider the real impact of prison good behavior, and other relevant factors (to ensure that such individual has been rid of the likelihood of causing



harm to society) results in violation of Article 14 of the Constitution. Excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies society's resolve to be harsh and unforgiving. The idea of rewarding, a prisoner for good conduct is entirely negated."

Underline supplied

As seen from the extracted passage, it was observed therein that if a prisoner who has completed 20 or 25 years of imprisonment, is excluded from consideration for premature release based entirely on the nature of crime committed by him in the distant past, the same would certainly crush the life force out of such individual, altogether. It was also observed by the Apex Court in the said case that excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies resolve of the society to be harsh and unforgiving and that the same would negate the idea of rewarding a prisoner for good conduct. In essence, the view taken by the Apex Court in **Joseph** is that the persons involved in offences against women and children are not entitled to premature release at all, is against the scheme of the Act and



that long-term convicted prisoners cannot be denied the benefit of remission, having regard to the nature of crime committed by them in the distant past.

21. Let us now consider the arguments advanced by the learned Special Government Pleader. True, in *Joseph*, it was observed by the Apex Court that grouping types of convicts based on the offences they were found to have committed, as a starting point, may be justified. But, in the light of the propositions laid down in the said case as contained in paragraphs 32 and 37 of the judgment, the said observation cannot be understood as one permitting grouping of convicts based on the offences they were found to have committed in such a manner as to exclude certain offences from the scope of grant of remission as done by the State Government. True, in *Jai Singh*, the Apex Court held that it is permissible to exclude convicts based on the nature of the offence committed by them in the matter of extending the benefit of remission, having regard to the effect of such offences on the society. Similarly, it was held by the Apex Court in *Sanaboina*





Satyanarayana that classification to keep away convicts of crime against women from the benefits of remission cannot be said to be unreasonable. It would be incorrect if we hold that the decisions referred to above are not in conflict with the decision in **Joseph**. There exists some conflict, even though the decision in **Joseph** is one rendered in the context of a prisoner who is deemed to have completed the entire term of his imprisonment in terms of the provisions of the Act and the Rules made thereunder dealing with the management of prisons and related matters, which is enacted invoking the power under Entry 4 of List II of the Seventh Schedule to the Constitution.

22. What should a High Court do when faced with two judgments of the Supreme Court which cannot be apparently reconciled with respect to its ratios is a vexed question. One line of decision is that if there is a conflict in two Supreme Court decisions, the decision which is later in point of time would be binding on the High Courts. The second line of decisions is that in case there is a conflict between the



judgments of the Supreme Court consisting of equal authorities, incidents of time is not a relevant factor and the High Court must follow the judgment which appears it to lay down elaborately and accurately. A Full Bench of the Punjab and Haryana High Court in **Indo Swiss Time Limited v. Umrao**, 1981 SCC OnLine P&H 45 followed the second line of decisions. The same is the view taken by the Bombay High Court also in **Special Land Acquisition Officer (I) v. Municipal Corporation of Greater Bombay**, 1987 SCC OnLine Bom 177. According to us, the decision in **Joseph** is not only the decision rendered at a later point of time, but also one which identifies the core of the issues arising for consideration in matters of this nature and answers the same elaborately and accurately. Needless to say, we accept the decision of the Apex Court in **Joseph** as the binding precedent. We are inclined to hold that long-term convicted prisoners, especially those who deemed to have completed the entire term of imprisonment in terms of the provisions contained in the Act and 2014 Rules, other than those who were sentenced by the convicting courts for



imprisonment for a period exceeding 20 years, cannot be denied the benefit of remission having regard to the nature of the offence committed by them in the distant past.

23. We take this view for yet another reason also. Granting early release to prisoners is a matter related to their fundamental human rights. The National Human Rights Commission has received a number of representations pointing out that the State Governments are applying differing standards in the matter of premature release of prisoners undergoing life imprisonment. After considering the response received from a number of States/Union Territories, the Commission fixed guidelines and the same were communicated to all the State Governments/Union Territories on 26.09.2003. The Apex Court has made a reference to these guidelines also in *Joseph*. In the said communication, even though it is provided that there can be a classification among the life convicts having regard to the magnitude, brutality and gravity of the offence for which the convict was sentenced to imprisonment, the period of incarceration inclusive of



remission even in worst of the worst situation should not exceed 25 years.

24. On an evaluation of the totality of the facts and circumstances of the cases on hand, especially the finding rendered by us that the prisoners involved in these cases were entitled to be released prematurely on completion of imprisonment for a period of 20 years in terms of the 1958 Rules, we are of the view that these are apt cases where this Court should direct the Government to release the prisoners with immediate effect, as done by the Apex Court in Joseph. However, inasmuch as the grant of remission is a prerogative of the Government, although the power conferred on the Government for the said purpose is a power coupled with duty to be exercised after taking into account all the relevant factors, we set aside the impugned judgments as also the orders of the Government impugned in the writ petitions and dispose of the writ appeals directing the Government to consider afresh, the last among the recommendations made by the Advisory Committee for the premature release of the



prisoners involved in these cases, within a period of one month, in the light of the findings and observations made by the Apex Court in **Joseph**, as referred to by us in this judgment, untrammelled by the nature of the offences for which they were convicted.

25. In **Rashidul Jafar v. State of U.P.**, (2024) 6 SCC 561, the Apex Court observed that many of the life convicts in our country who have suffered long years of incarceration have few or no resources at all and lack of literacy, education and social support structure, impede their right to access to legal remedies. Having regard to the decision of the Apex Court in **Rashidul Jafar** and other relevant matters, the Apex Court, in *Suo Motu* Writ Petition (Crl.) No.4 of 2021 titled **In Re: Policy Strategy for Grant of Bail**, issued certain general directions to ensure that the appropriate Government considers the case of all prisoners for extending the benefit of premature release, in cases where they are entitled to such release, as and when they become eligible for the same, irrespective of the fact as to whether they make specific applications for grant of premature



release, and directed the District Legal Services Authorities to monitor implementation of the direction aforesaid.

26. It has come to the notice of this Court while considering these matters that a large number of prisoners who deemed to have completed their entire term of imprisonment in terms of Rule 377 of 2014 Rules, are languishing in jails in the State, despite recommendations in their favour made by the Advisory Committee under Section 77 of the Act as in the case of the prisoners involved in these matters and the directions issued by the Apex Court in **In Re: Policy Strategy for Grant of Bail**. In the circumstances, having regard to the spirit of the decisions of the Apex Court in **Rashidul Jafar** and **In Re: Policy Strategy for Grant of Bail**, we deem it appropriate to direct the Government *suo motu*, in public interest, to consider the cases of those prisoners who deemed to have completed the term of imprisonment in terms of Rule 377 of 2014 Rules and in whose favour there were recommendations by the Advisory Committee for premature release, as directed in the case of prisoners involved in these

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matters, within two months from the date of receipt of a copy of this judgment. It shall be the endeavour of the State Legal Services Authority to implement the directions issued in this judgment. A copy of this judgment shall be forwarded to the Kerala State Legal Services Authority. It is made clear that those prisoners who were sentenced for imprisonment for any specified period by the concerned convicting courts, without remission, will not be entitled to the benefit of this judgment, before completing the period of imprisonment specified by the convicting courts.

Before parting, we also place on record our boundless appreciation for the able assistance given by the learned *amicus curiae* Sri.Jacob P.Alex, for rendering this judgment.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

JOBIN SEBASTIAN, JUDGE.

YKB

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**OFFICE OF THE DIRECTOR GENERAL OF PROSECUTION &  
STATE PUBLIC PROSECUTOR, KERALA, HIGH COURT OF  
KERALA, ERNAKULAM**

Phone: 0484- 2564303,  
e-mail:sppkerala@gmail.com

No. WA 1245 & 2137/2024/DGP&SPP

Dated: 02.06.2025.

To

The Additional Chief Secretary to Government,  
Home (B) Department, Government Secretariat,  
Thiruvananthapuram.

Sir,

Sub:- Scope for filing appeal against the common judgment  
dt. 11.04.2025 in W.A. No. 1245 & 2137 of 2024 relating  
to premature release of Prisoners – Legal opinion  
forwarding - reg.

- Ref:- 1) Letter No. B1/136/2023-Home dated 26.05.2025 from  
the Additional Chief Secretary, Home (B) Department,  
Secretariat, Thiruvananthapuram.
- 2) Judgment of the Hon'ble Division Bench of the High  
Court dated 11.04.2025 in W.A. No. 1245 & 2137 of 2024.
- 3) G.O.(Ms.) No.116/2022/Home dated 14.06.2022 of Home  
(B) Department, Secretariat, Thiruvananthapuram.
- .....

1. Attention is invited to the references cited. Legal opinion is sought on the judgment referred 2<sup>nd</sup> above by which the Division Bench of Kerala High Court allowed the Writ Appeals filed by the petitioners in W.P.(Crl.) 79 of 2024 and W.P.(Crl.) No.90 of 2024 seeking premature release of the convicts who have been convicted for offence against women.



2. In W.P.(Crl.) 90 of 2024, the petitioner who is the wife of the convict challenged the Government Order by which the application for premature release was rejected by the Government. It is the case of the petitioner that the convict is undergoing imprisonment for life pursuant to his conviction u/s. 302 IPC for having committed murder of a woman. The convict has undergone 22 years, 3 months and 19 days of imprisonment as on 10.06.2024 and also has earned a remission of 6 years, 3 months and 22 days. Thus he has undergone approximately 29 years including remission.

3. In W.P.(Crl.) 79 of 2024, the petitioner who is the wife of the convict challenged the Government Order by which the application for premature release was rejected by the Government. It is the case of the petitioner that the convict is undergoing imprisonment for life pursuant to his conviction u/s. 302 IPC for having committed murder of a woman. The convict has undergone 20 years, 9 months and 27 days of imprisonment as on 30.06.2024 and also has earned a remission of 5 years, 10 months and 10 days. Thus he has undergone approximately 26 years including remission.

4. The Government has rejected the convicts' request for premature release on the ground that they have involved in offence against the women as the consistent stand of the Government that the prisoners convicted for offences against Women and Children are not to be granted premature release.

5. The challenge made before the learned Single Judge was rejected holding that the Government has absolute discretion in extending the benefit of premature release and the Court cannot direct release of the prisoner particularly referring to the judgment of the Hon'ble Apex Court

in *Sanaboina Sathyanarayana vs. Government of Andhra Pradesh and others* {(2003) 10 SCC 481}.

6. In W.P.(Crl.) 90 of 2024 the learned Single Judge relied on the recent judgment of the Apex Court in *Bilkis Yakub Rasool Vs. Union of India & others* {(2024) 5 SCC 481}.

7. Challenging the judgments of the learned Single Judge, the appellants contended that in view of the Apex Court judgment in *Joseph vs. State of Kerala* {(2023) SCC Online SC 1211} the request of the petitioner is liable to be allowed. It is contended that the nature of crime committed during the distant past cannot be a reason for denial of premature release. In *Joseph vs. State of Kerala*, the Hon'ble Supreme Court had occasion to consider similar requests from a prisoner who was excluded from consideration for premature release on the ground that he comes under the excluded category specified in G.O.(Ms.) No. 116/2022/Home dated 14.06.2022. As per the said Government Order the persons who committed murder of Women and Children and persons who committed murder with rape are excluded from the benefit of premature release. The Apex Court had considered the issue in detail and held that "typecasting convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real danger of overlooking the reformatory potential of each individual convict". It is further held that "the practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 to 25 years, based entirely on the nature of crime committed in the distant past would be to crush the life force out of such individual, altogether". Finally the Court directed release of the prisoner. Thus it appears that the Government order referred (3<sup>rd</sup> cited) above which

excludes prisoners who are involved in offences against Women & Children from consideration for premature release no longer good in view of the judgment.

8. When the matter was heard before the Division Bench the Government was directed to produce the remission policy of the Government. In response to the said order, the Government have produced the remission policy (which was produced before the Apex Court in Crl.A. No. 1003/2017 in *Pyare Lal vs. State of Haryana*) as forwarded to this office vide letter No. B1/136/2023-Home dated 26.10.2024.

9. On a perusal of the remission policy followed by the Government of Kerala as forwarded from the Home Department shows that there is no specific provision excluding the prisoners who are involved in offence against Women & Children from consideration for premature release. Further it is stated in the said remission policy as follows:

*"The recommendations received as above will be subjected to a thorough examination by the Government referring to the case file which includes judgments of the courts concerned police report narrating the law and orders issues that may arise upon his release, probation report describing his familial and special acceptability after release and report of superintendent of prison concerned regarding his character and conduct inside prison. Case of each prisoner is examined individually by the Council of Ministers. After detailed deliberations, if found eligible, the Council of Ministers take a decision to advise the Hon'ble Governor to grant premature release to the prisoners after*

*remitting their remaining period of sentence in exercise of powers conferred under Article 161 of the Constitution of India, subject to the conditions laid down in Rule 470 of Kerala Prisons and Correctional Services (Management) Rules, 2014".*

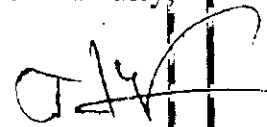
10. It is therefore, at present, there is no material except the contentions and statement made before the Court either in the form of a Government order or in the form of a legislation, excluding the prisoners involved in offence against Women & Children from consideration for premature release as a policy of the Government. It is also the fact that the lack of legislation reflecting the policy of the Government as discussed in *Joseph's* case came to the notice of the Government and the Government is contemplating required amendment incorporating such policy in the Prisoners Act and the Rules.

11. It is true that the two earlier judgments cited by the State Government before the Division Bench declared the law that the nature of crime can be relevant consideration in the matter of premature release of the prisoner. The Hon'ble Division Bench distinguished those judgments holding that the decision in *Joseph* is not only the decision rendered at a later point of time, but also one which identifies the core of the issues arising for consideration in matters of this nature and answers the same elaborately and accumulatively and hence the Division Bench accepted *Joseph's* case as the binding precedent.

12. On consideration of the entire facts and circumstances and the judgments referred to in the judgment of the Division Bench, I am of the considered opinion that there is no scope for filing appeal against the judgment in W.A. Nos. 1245 and 2137 of 2024. So long as the law declared by the Apex Court in *Joseph's* case holds the field there is no

scope for challenging the judgment of the High Court. The Government may implement the directions of the Division Bench of the Hon'ble High Court at the earliest to avoid contempt proceedings, as the time granted by the Court to implement the judgment has already been expired.

Yours faithfully,



P. Narayanan

Special Government Pleader to DGP &  
Addl. Public Prosecutor