

GOVERNMENT OF GUJARAT

HOME DEPARTMENT

Resolution No. JLK/822012/1859/J

Block No.2, Sardar Bhavan, Sachivalay, Gandhinagar.

Dated: 23rd January, 2014

Resolution:-

The State Government has constituted a committee headed by the Additional Chief Secretary (Home) for considering the policy and guidelines to be followed for the purpose of the State Remission and Premature Release of Prisoners. The Secretary, Legal Department and the Secretary, Legislative and Parliamentary Affairs Department were also one of the members of the said committee. The proceedings of the meeting and the opinion of the Legal Department in this regard, had been under consideration of Government of Gujarat.

2. After careful consideration, Government issues the following guidelines/ policy for considering the cases of the State Remission and Premature Release of Prisoners.

(A) State Remission of Prisoners:

- (i) The powers of the State Remission, Pardon and Commutation rest with H.E. the Governor under the Article 161 of the Constitution of India. Only convicted prisoners are eligible for the state remission. Therefore, the remission under Article 161 of the Constitution of India shall not be applicable to the under trial prisoners.
- (ii) Whenever, the remission orders are issued, the birth date of prisoners shall be verified by the concerned Jail Authorities with the authentic original documents e.g. the original Birth Certificate/ the School leaving Certificate/ Passport or other document as may be recognized by the Government. The Jail Authorities will get the said documents from the prisoners of the various Prisons of the State.

The Director General of Police, Gujarat State will issue necessary guidelines for registering the actual birth date of the accused while filing the charge sheet in the court on the basis of authentic original document of Birth Date.

- (iii) The Prisoners who are convicted for the crimes as mentioned in Annexure-I shall not be considered for the State Remission. Moreover, the State Government will not consider those cases where the Appropriate Authority for granting remission of Prisoners is the Central Government.

(B) Premature Release of Prisoners:

Government for good and valid reasons can suspend the execution of a sentence or remit the whole or any part of the punishment of a convict in exercise

of its powers under Section 432 of the Code of Criminal Procedure, 1973. Recently the Hon. Supreme Court in its judgment dated 20/11/2012 in Criminal Appeal(s) No.490-491 of 2011 has observed that the said section statutorily empowers the Appropriate Government with some inherent procedural and substantive checks on the arbitrary exercise of this power. Further the Supreme Court has observed in the said judgment as under;

- (i) **Para-63** An exercise of power by the appropriate Government under sub-section (1) of Section 432 of the Code of Criminal Procedure, 1973 cannot be suo motu for the simple reason that this sub-section is only an enabling provision. The appropriate Government is enabled to "override" a judicially pronounced sentence, subject to the fulfillment of certain conditions. Those conditions are found either in the Jail Manual or in statutory rules. Sub-section (1) of Section 432 of the Code of Criminal Procedure, 1973 cannot be read to enable the appropriate Government to "further override" the judicial pronouncement over and above what is permitted by the Jail Manual or the statutory rules. The process of granting "additional" remission under this Section is set into motion in a case only through an application for remission by the convict or on his behalf. On such an application being made, the appropriate Government is required to approach the presiding judge of the Court before or by which the conviction was made or confirmed to opine (with reasons) whether the application should be granted or refused. Thereafter, the appropriate Government may take a decision on the remission application and pass orders granting remission subject to some conditions, or refusing remission. Apart from anything else, this statutory procedure seems quite reasonable in as much as there is an application of mind to the issue of grant of remission. It also eliminates "discretionary" or enmasse release of convicts on "festive" occasions since each release requires a case-by-case basis scrutiny.
- (ii) **Para-65** For exercising the power of remission to a life convict, the Code of Criminal Procedure, 1973 places not only a procedural check as mentioned above, but also a substantive check. This check is through Section 433-A of the Code of Criminal Procedure, 1973 which provides that when the remission of a sentence is granted in a capital offence, the convict must serve at least fourteen years of imprisonment.
- (iii) **Para-74** There is a misconception that a prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years or twenty years imprisonment. The prisoner has no such right. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the Code of Criminal Procedure, 1973 which in turn is subject to the procedural checks in that section and

the substantive check in Section 433-A of the Code of Criminal Procedure, 1973.

- (iv) **Para-75** In a sense, therefore, the application of Section 432 of the Code of Criminal Procedure, 1973 to a convict is limited. A convict serving a definite term of imprisonment is entitled to earn a period of remission or even be awarded a period of remission under a statutory rule framed by the appropriate Government or under the Jail Manual. This period is then offset against the term of punishment given to him. In such an event, if he has undergone the requisite period of incarceration, his release is automatic and Section 432 of the Code of Criminal Procedure, 1973 will not even come into play. This Section will come into play only if the convict is to be given an "additional" period of remission for his release, that is, a period in addition to what he has earned or has been awarded under the Jail Manual or the statutory rules.
- (v) **Para-77** Therefore, Section 432 of the Code of Criminal Procedure, 1973 has application only in two situations: (1) Where a convict is to be given "additional" remission or remission for a period over and above the period that he is entitled to or he is awarded under a statutory rule framed by the appropriate Government or under the Jail Manual. (2) Where a convict is sentenced to life imprisonment, which is for an indefinite period, subject to procedural and substantive checks.

At present, the procedures and checks regarding remission by the appropriate Government are given in the Jail Manual. However, it requires certain changes to comply the observations of the Hon. Supreme Court. It requires changing the formation of the Jail Advisory Committee and also the procedure to be followed by the Advisory Committee.

In view of the proceedings of the committee mentioned hereinabove in Para-1 and the aforesaid judgment of the Hon. Supreme Court, it has been decided to form a revised Jail Advisory Committee and also the revised procedure to be followed by the said Advisory Committee as under superseding the previous all the provisions made in this regard.

Formation of the Jail Advisory Committee

- District Magistrate (only in district area) or Chief Metropolitan Magistrate	Chairman
- The District Sessions Judge	Member
- The Superintendent of Police or Commissioner of Police of the District/City	Member
- District Social Welfare Officer	Member
- Two Local Members	Member
- The concerned Jail Superintendent	Member Secretary

Note:

- (i) It is observed by the Supreme Court in Criminal Appeal No.490-491/2011 that the appropriate Government is required to approach the Presiding Judge of the Court before or by which the conviction was made or confirmed to opine (with reasons) whether the application for remission should be granted or refused. Therefore, the opinion of the Sessions Judge or equivalent Court with reasons is compulsory.
- (ii) If the conviction is made or confirmed by the Hon. High Court / Hon. Supreme Court (appellant court), the opinion of the appellant court is compulsory.
- (iii) Government will appoint two local members for three years in the Jail Advisory Committee.

Procedure to be followed by the Jail Advisory Committee:

The Jail Advisory Committee will follow the guidelines as stated here under.

- (i) The quorum of the Jail Advisory Committee shall be minimum of 2/3rd members.
- (ii) The presence of the District Magistrate as Chairman and also the District Sessions Judge or Chief Metropolitan Magistrate as Chairman is compulsory.
- (iii) The District Magistrate or Chief Metropolitan Magistrate will be the Chairman and concerned Jail Superintendent will be the Member Secretary of the Jail Advisory Committee.
- (iv) The meeting of the Jail Advisory Committee shall be convened in every six month.
- (v) The Jail Advisory Committee will consider the cases of prisoners convicted for life imprisonment after the completion of fourteen years of imprisonment only.
- (vi) The process of granting "additional" remission under Section 432 of the Code of Criminal Procedure, 1973 is set into motion in case only through an application for remission by the convict or on his behalf. The convict can apply before completing 14 years. On such an application being made, the concerned Jail Superintendent is required to approach the Presiding Judge of the Court or any equivalent Court and Appellant Courts by which the conviction was made or confirmed to opine (with reasons) whether the application should be granted or refused. Such opinion may be obtained before the prisoner completes fourteen years of imprisonment but after receiving an application from the convict. It is also required to obtain the opinion of the concerned District Magistrate and also the concerned Police Authorities (with detailed reasons) in advance after receiving an application from the convict.

- (vii) The Jail Advisory Committee shall consider the seriousness of crime, the conduct in the Jail, the status of co-accused, the period of absconding of the prisoner and the sentences in the Jail and also other cognizable offences during the period of Parole/Furlough and also period of absconding.
- (viii) The Jail Advisory Committee will also consider the following guidelines issued by the Hon'ble Supreme Court in the case of Laxman Naskar V/s. State of Bengal reported in AIR 2000 SC 2762.
 - (a) Whether offence is an individual act of crime without affecting the society at large?
 - (b) Whether there is any fruitful purpose of confining of this convict any more?
 - (c) Whether there is any chance of future reoccurrence of committing crime?
 - (d) Whether the convict has lost his potential in committing crime?
 - (e) Socio-economic condition of the convict family?
- (ix) The Jail Advisory Committee will also consider if there is any threat to the state or the National Security at large. In such cases the Jail Advisory Committee will give negative opinion with detailed reasons taking into account the Constitutional right.
- (x) The Jail Advisory Committee will consider the opinion of the judge as mentioned above. The committee will also consider the opinion of the District Magistrate and the Police Authorities. Both are the members of the Advisory Committee, therefore, both should stick to their earlier opinion. If the District Magistrate and also the Police Authorities want to change their earlier opinion, in the meeting of Advisory Committee, in such cases the detailed reasons/justification must be noted in the proceedings.
- (xi) If the Government rejects the proposal for the Premature Release, in such cases the proposal will be reconsidered **only after one year** taking into account all the factors stated herein above.
- (xii) In addition to above, the class of prisoners as shown at **Annexure-I** shall not be considered for the premature release by the Jail Advisory Committee.
- (xiii) The Jail Advisory Committee will take into account every point mentioned above and give its recommendation with detailed reasons. The Inspector General of Prisons will send the proposal of premature release of the prisoners after receiving the recommendations of the Jail Advisory Committee only in the prescribed Checklist as per **Annexure-II** to the Government

(C) Premature Release in case of Prisoners transferred to other State:

In the case of a prisoner who is transferred from the State of Gujarat to other State, (under the provisions of Transfer of Prisoners Act, 1900) the decision

of premature release will be taken by the Government of Gujarat according to the provision of Section 432 of Criminal Procedure Code (2 of 1974) as the power to remit sentence under Section 432 of the Code of Criminal Procedure is conferred upon the appropriate Government.

By order and in the name of the Governor of Gujarat



(Dilip G. Soni)

Deputy Secretary to Government
Home Department

TO,

1. Secretary to H.E. Governor of Gujarat, Raj Bhavan, Gandhinagar **(By Letter)**
2. Principle Secretary to Hon. Chief Minister, Sachivalay, Gandhinagar.
3. Personal Secretary to Hon. Minister of State (Home), Sachivalay, Gandhinagar.
4. The Director General & I.G. of Police, Gujarat State, Police Bhavan, Gandhinagar
5. The Registrar, Gujarat High Court, Sola, Ahmedabad **(By letter)**
6. The Chief Metropolitan Magistrate, Ahmedabad.
7. Inspector General of Prisons, Gujarat State, Jail Bhavan, Ahmedabad
8. All Commissioners of Police
9. All District Magistrates & Collectors
10. All District Sessions Judge.
11. All Superintendents of Police
12. All Jail Superintendents.
13. All Departments of Sachivalay, Gandhinagar
14. All Heads of the Department, Home Department, Sachivalay, Gandhinagar
15. All Officers of Home Department, Sachivalay, Gandhinagar
16. Section Officer Select File
17. Deputy Section Officer Select File
18. Select File

Annexure-I

The following class of prisoners SHALL NOT be granted for State Remission as well as for Premature Release.

- (I) **Such prisoners who have been convicted for a crime -**
 - (a) which was investigated by Delhi Special Police Establishment constituted under Delhi Special Police Establishment Act, 1946 (No.25 of 1946)
 - (b) which involved the misappropriation of or destruction of or damage to any property belonging to the Central Government.
 - (c) which was committed by a person in the Service of Central Government while acting or purporting to act in the discharge of his official duties.
- (II) **Such prisoners -**
 - (a) who have been categorized as **habitual offenders** under the prevailing rules by the competent authority.
 - (b) who have been ordered by a Magistrate to furnish security and are undergoing imprisonment for not furnishing such security.
 - (c) who are undergoing sentence in default of payment of fine.
- (III) **The Prisoners who are convicted for any offence under the following Acts:-**
 - (1) The Drugs & Cosmetics Act, 1940 (No.23 of 1940).
 - (2) The Foreign Exchange Regulation Act, 1973 (No.46 of 1973)
 - (3) The Employees Provident Funds and Miscellaneous Provisions Act, 1952 (No.19 of 1952).
 - (4) The Prevention of Food Adulteration Act, 1954 (No.57 of 1954).
 - (5) The Essential Commodities Act, 1955 (No.10 of 1955).
 - (6) The Protection of Civil Rights Act, 1955 (No.22 of 1955).
 - (7) The Customs Act, 1962 (No.52 of 1962).
 - (8) The Excise Act, 1955.
 - (9) The Narcotic Drugs and Psychotropic Substances Act, 1985 (No.61 of 1985).
 - (10) The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (No.52 of 1974).
 - (11) The Representation of the Peoples Act, 1951 (No.43 of 1951).
 - (12) The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1980 (No.46 of 1980).
 - (13) The National Security Act, 1980 (No.65 of 1980).
- (IV) **(a) A Prisoner or prisoners sentenced for group murder of two or more persons.**
 - (b) Absconders, including those who are absconding from Parole/ Furlough, bail/ interim bail, police custody or jail and those who have late surrendered in jail from Parole/Furlough, interim bail after three days of the stipulated period.
 - (c) Life imprisonment prisoners convicted under TADA or POTA.

- (d) Prisoners convicted for murder with rape or gang rape.
 - (e) Prisoners sentenced under Section 489 of the IPC.
 - (f) Such Prisoners who have been convicted for life imprisonment under Section 302 IPC in connection with Dowry/cruelty cases i.e. Offences under Section 306, 304-B, 498-A etc. of IPC
 - (g) Prisoners convicted for any offence against any law relating to a matter to which the executive power of the State does not extend.
 - (h) Prisoners sentenced to two or more sentences of life imprisonment for two or more separate cases of murder.
 - (i) Prisoners undergoing life sentence, who are having any other criminal case(s) pending against them either with the police for investigation or in the court for trial.
- (V)(a) The prisoners who are notorious, dangerous and involved in gang wars or interstate crime or offences having international ramification,
- (b) The prisoners who are involved in the offences falling under section 392 to 402 of the Indian Penal Code,
- (c) The prisoners who are involved in the serious offences under the Arms Act, 1959, the Explosive Substances Act, 1908, or under the Unlawful Activities(Prevention) Amendment Act, 2008.
- (d) The prisoners who are involved in activities of spying or escaping from Jail,
- (e) The prisoners belonging to banned organizations.
- (VI) Wherever, the Appropriate Authority is Central Government, in those cases, the State Government will not consider for granting the State Remission and Premature Release of the convict Prisoners.

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Annexure-II

જેલોના ઇન્સ્પેક્ટર જનરલશ્રી દ્વારા સરકારશ્રીમાં વહેલી જેલમુક્તિના કિસ્સામાં નિર્ણય માટે મોકલવાની થતી દરખાસ્તની વિગતો દર્શાવતું ચેકલિસ્ટ:

ભાગ-૧

ક્રમ	મુદ્દો	વિગત (દરખાસ્તના પાના નં. સહિત)
૧	કિમીનલ પ્રોસીજર કોડની કલમ ૪૩૨ મુજબ વહેલી જેલમુક્તિ માટે અરજદાર કેદી કે તેના વતી કરવામાં આવેલ અરજીની વિગત (તારીખ સાથે)	
૨	જે જિલ્લામાં કેદીએ ગુનો કરેલ હોય તે જિલ્લાના સેશન્સ જજશ્રીનો કારણો સહિતનો અભિપ્રાય.	
૩	અમદાવાદ શહેર વિસ્તારમાં કેદીએ ગુનો કરેલ હોય તો સંબંધિત પ્રિસાઇડીંગ જજશ્રીનો કારણો સહિતનો અભિપ્રાય.	
૪	એપેલેટ કોર્ટના કારણો સહિતના અભિપ્રાયની વિગત (દાખલ થયેલ અપીલના કિસ્સામાં)	
૫	જે જિલ્લા/શહેર વિસ્તારમાં કેદીએ ગુનો કરેલ હોય તે જિલ્લા/શહેરના પોલીસ અધિક્ષક/કમિશ્નરશ્રીનો કારણો સહિતનો અભિપ્રાય	
૬	સંબંધિત જેલના અધિક્ષકશ્રીનો અભિપ્રાય કારણો સહિત	
૭	જેલ સલાહકાર સમિતિનો કારણો સહિતનો અભિપ્રાય.	
૮	જેલોના ઇન્સ્પેક્ટર જનરલશ્રીનો અભિપ્રાય કારણો સહિત	

ભાગ-૨

ક્રમ	વિગત	વિગત (દરખાસ્તના પાના નં. સહિત)
૧	કેદીનું નામ, કેદી નંબર સાથે	
૨	કેદીની જન્મ તારીખ(જન્મ તારીખના પુરાવા સાથે)	
૩	કેદીની હાલની ઉંમર	
૪	હાલમાં સજા ભોગવી રહેલ જેલનું નામ	
૫	કેદીને હાલમાં રાખવામાં આવેલ જેલ તેના વર્ગીકરણ મુજબ છે કે કેમ? જો, ના તો તેના કારણો તથા હુકમની વિગત(નકલ સાથે)	
૬	સજાની તારીખ	
૭	સજા કરેલ કોર્ટનું નામ	
૮	સેટ ઓફ સહિત ૧૪ વર્ષની સજા પૂર્ણ થવાની તારીખ	
૯	અપીલ થયેલ હોય તો તેનું પરિણામ (કોર્ટના નામ સહિત)	
૧૦	ભોગવેલ વચગાળાના જામીન(સમયગાળા સાથે)	
૧૧	ભોગવેલ કુલ ફર્લો (સમયગાળા સાથે)	
૧૨	ભોગવેલ કુલ પેરોલ (સમયગાળા સાથે)	
૧૩	વચગાળાના જામીન/ફર્લો/પેરોલ પરથી ફરાર થયાની વિગત તથા ફરાર દરમિયાન કોઈ ગુનો આચરવામાં આવેલ હોય તો તેની વિગત.	
૧૪	જેલ શિક્ષાની વિગત	
૧૫	સહ ગુનેગારની છેલ્લી પરિસ્થિતિ દર્શાવતી વિગત (વહેલી જેલમુક્તિ મળવાપાત્ર સંભવિત તારીખ તથા જેલના નામ સાથે)	
૧૬	ગુનાની ટૂંકી વિગત:	
૧૭	જેલ જીવન દરમિયાન કેદીએ કરેલ કામગીરીની વિગત	
૧૮	કેદીના અન્ય ગુનાહિત ઇતિહાસની વિગત (કેસની અદ્યતન પરિસ્થિતિ સાથે)	