

of mind by the Authority in the preceding paragraph but refrain to further proceed against the officer who had passed the said order. A word of caution is, however, passed to the respondents to be careful and watchful while passing orders without actually complying with the provisions and requirements of the Statute under which the said powers are being exercised by them.

(21) In the result, the writ petition is allowed. The impugned order, dated 24th April, 2007 (Annexure P-5) passed by the General Manager, Haryana Roadways, Jind is hereby quashed and the petitioner is reinstated in service forthwith. However, liberty is granted to the respondents for taking a decision for holding a regular departmental enquiry against the petitioner for the alleged misconduct on his part.

R.N.R.

BEFORE M.M. KUMAR & SABINA, JJ.

HARJINDER SINGH,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

C.W.P. No. 5169 of 2007

18th September, 2008

Constitution of India, 1950—Art. 226—High Court setting aside conviction & sentence of accused—Supreme Court allowing State's appeal and convicting accused under S. 304 Part I and S.34 IPC—Government granting remission releasing accused without serving full term of sentence awarded by Supreme Court—Challenge thereto—Whether judgment of Supreme Court in Joginder Singh's case is applicable—Held, yes—Respondents failing to consider judgment in Joginder Singh's case in its proper prospective—Order passed by authorities suffers from lack of application of mind—Petition allowed, respondents directed to recalculate remaining part of sentence of accused.

Held, that according to the judgment of the Supreme Court in **Joginder Singh versus State of Punjab, JT 2001(7) SC 587**, a person on bail cannot be granted benefits of Government circulars. It is not possible to grant the benefit of remission in respect of the period when respondent Nos. 3 to 6 were free on account of their acquittal from 17th October, 1987 to 5th October, 1989 and thereafter when they were on bail from 15th October, 1981 to 8th May, 1999. Remission circulars cover the period 11th November, 1989 to 8th April, 1999. Respondents No. 3 to 5 have served their sentence from 3rd May, 1983 to 17th October, 1987 which include the period of under trial as well as the period of their conviction. However, a Division Bench of this Court acquitted them,—*vide* order dated 12th October, 1987 and they were released. From 17th October, 1987 to 5th October, 1989 they remained free and thereafter on bail from 5th October, 1989 to 8th May, 1999. They surrendered on 8th May, 1999 to serve the sentence in pursuance to the orders of Hon'ble the Supreme Court dated 6th March, 1998 and continued to serve the sentence till 14th April, 1999 when they were released by granting the benefit of circular dated 11th November, 1989 and other circulars.

(Para 25)

Further held, that one of the grounds of judicial review laid down in the judgment of **Bikas Chatterjee versus Union of India (2004) 7 SCC 634**, and similar other judgments is that an order passed by the authorities if lacks application of mind then the Courts would be fully competent to set aside such an order. Taking into account the fact that respondents have failed to consider the judgment in Joginder Singh's case in its proper prospective, we are of the considered view that the order dated 20th March 2003 passed by respondent No. 2 suffers from lack of application of mind and therefore the same cannot be sustained.

(Para 27)

I.K. Mehta, Senior Advocate, with Ranjit Mehta, Advocate,
for the petitioner.

Suvir Sehgal, Addl. AG, Punjab, for respondent Nos. 1
and 2.

V.K. Jindal, Advocate, for respondent Nos. 3 to 6.

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution challenges order dated 20th March, 2003 (P-5), passed by the Principal Secretary to Government of Punjab, Department of Home Affairs and Justice, Chandigarh-respondent No. 2. As per the impugned order respondent Nos. 3 to 6 and Daya Singh son of Balwant Singh (since deceased) have been released by granting them remission without requiring them to serve the sentence of 10 years rigorous imprisonment as per the orders dated 6th March, 1998 (P-I), passed by Hon'ble the Supreme Court in **Criminal Appeal No. 589 of 1988, titled as Harjinder Singh versus Karnail Singh and others**, and **Criminal Appeal No. 784 of 1989, titled as State of Punjab versus Karnail Singh and others** (1). A further prayer has also been made for commanding respondent Nos. 1 and 2 to comply with orders dated 6th March, 1998 (P-1), passed by Hon'ble the Supreme Court, to take respondent Nos. 3 to 6 into custody and confine them to jail to undergo the remaining period of sentence of ten years rigorous imprisonment.

(2) *Facts* : There is a village called Bhadaur in the Sub Division Barnala (District Sangrur). Late in the evening of 24-4-1983 a number of persons were killed by a group of accused. A case FIR No. 41, dated 25th April, 1983 was registered at Police Station Bhadaur on the statement of Head Constable Chanan Singh, regarding the occurrence. The petitioner and his companions were arrested. It is claimed that the actual accused were not named in the FIR. Therefore, on 2nd August, 1983 the petitioner was compelled to file a private complaint in the Court of Judicial Magistrate Ist Class, Barnala, naming nine other accused persons. The case was committed to the Court of Sessions by the learned Magistrate,—*vide* order dated 30th March, 1984. Both the cases arising out of FIR No. 41 dated 25th April, 1983 and arising out of private complaint, dated 2nd August, 1983, filed by the petitioner were clubbed by the learned Additional Sessions Judge, Barnala. It was ordered that the evidence recorded in one case be treated as evidence in the other case. On 29th January, 1986, the Trial Court convicted Karnail Singh (respondent No. 3), Gurcharan Singh

(respondent No. 4), Mohinder Singh (respondent No. 5), Ghala Singh (respondent No. 6), Daya Singh (since deceased), Bachan Singh (since deceased) and Gurdial Singh under Section 302 read with Section 149 IPC and sentenced them to undergo imprisonment for life. However, the other accused persons were acquitted.

(3) Feeling aggrieved, the accused-convict preferred an appeal to this Court, bearing Criminal Appeal No. 58-DB of 1986, which was allowed,—*vide* judgment dated 12th October, 1987, setting aside their conviction and sentence. During the pendency of the said appeal accused/convict Bachan Singh son of Shingara Singh died.

(4) Thereafter, the petitioner filed Criminal Appeal No. 589 of 1988 (*supra*) and State of Punjab filed Criminal Appeal No. 784 of 1989 (*supra*) before Hon'ble the Supreme Court, which were allowed,—*vide* order dated 6th March, 1988 (P-J) and the accused were convicted under Section 304 Part I read with Section 34 IPC. They were sentenced to suffer rigorous imprisonment for a period of 10 years. The concluding paras of the order reads thus :—

“Having considered carefully the evidence of PWs-2 and 7 and the reasons given by the High Court for not believing them and acquitting the respondents we are of the opinion that the High Court not only failed to give due weight to the reasons given by the trial Court but also failed to consider some very relevant aspects while appreciating their evidence. But their evidence does not rule out the possibility of the respondents entertaining an apprehension that PW-2 Harjinder Singh and his men had come there to take forcible possession of land and to attack them. However, there can be no doubt that they exceeded the right of private defence when they chased Major Singh and Nachhattar Singh outside the compound and killed them. There was also no necessity for them to fire as many as 30 to 40 rounds at Jit Singh, Dayal Singh and Nazir Singh. Thus, in view of the facts and circumstances of the case, they can be said to have exceeded

the right of private defence and committed the offence punishable under Section 304 Part I read with 34 IPC.

Therefore, these appeals are allowed, the acquittal of the respondents is set aside and they are convicted under Section 304 Part I read with 34 IPC and sentenced to suffer rigorous imprisonment for a period of 10 years.”

(5) In pursuance to the order dated 6th March, 1998 (P-1), learned Additional Sessions Judge, Barnala, issued orders of conviction warrant, dated 23rd April, 1998, to Karnail Singh, Gurcharan Singh, Mohinder Singh, Ghala Singh and Daya Singh directing them to surrender in Jail upto 10th May, 1988. Accordingly, Karnail Singh, Gurcharan Singh, Mohinder Singh, Ghala Singh and Daya Singh surrendered on 8th May, 1998, learned Additional Sessions Judge, Barnala, passed an order requiring these five convicts to undergo the balance sentence. The aforementioned convicts surrendered within fifteen days. However, they were granted remission in pursuance to Government order issued from time to time between 11th November, 1989 to 1999. On 31st October, 1998, convict Gurcharan Singh and Mohinder Singh were released from Central Jail, Amritsar, convict Karnail Singh was released on 3rd November, 1998 from Central Jail, Gurdaspur, whereas convict Ghala Singh and Daya Singh were released on 14th April, 1999 from Central Jail, Ludhiana. In this manner, the aforementioned convicts were released without serving the full term of sentence awarded by Hon'ble the Supreme Court. It is claimed that convict Karnail Singh, Gurcharan Singh and Mohinder Singh served a sentence of about 4½ years whereas Ghala Singh and Daya Singh have served sentence of over 2½ years.

(6) The petitioner challenged the action of the respondent State in releasing the aforementioned convicts by granting them remission, by filing C.W.P. No. 11126 of 2000 in this Court. During the pendency of the writ petition, the petitioner filed an application bearing Civil Misc. No. 4971 of 2002, seeking disposal of the writ petition in terms of the judgment rendered by Hon'ble the Supreme Court in the case of **Joginder Singh versus State of Punjab (2)**. On 31st July, 2002 (P-2), the aforementioned application and writ petition were disposed

of by a learned Single Judge of this Court by passing the following order :—

“CM 4971/2002

This application has been filed by the petitioner praying that the writ petition be disposed of in the light of the law laid down by the Supreme Court in **Joginder Singh versus State of Punjab and others** JT 2001(7) SC 587.

In view of the above submission, the C.M. is allowed and the writ petition is taken up for hearing.

“CWP 11126/2000

Counsel for the parties are agreed that the cases of respondent Nos. 2 to 6 for remission have to be examined afresh in the light of the law laid down by the Supreme Court in the case of **Joginder Singh (supra)**.

Learned counsel for respondent Nos. 2 to 6 contend that the cases of respondent Nos. 2 to 6 had been considered prior to the judgment of the Supreme Court and, therefore, the ratio of the aforesaid judgement is not applicable to their cases. They shall be at liberty to raise all these objections when the matter is decided afresh.

In view of the above, I dispose of the writ petition with a direction to respondent No. 1 to consider and decide the cases of respondent Nos. 2 to 6 for remission afresh in the light of the law laid down by the Supreme Court in the case of **Joginder Singh (Supra)**. Respondent Nos. 2 to 6 shall be afforded a reasonable opportunity of being heard and shall be at liberty to raise all the objections being raised now in the present proceedings. Their cases shall be decided by passing a speaking order. The necessary exercise shall be completed within two months from today.

It is made clear that nothing stated in this order shall be considered as an expression of the opinion of this Court on the merits of the case.

Copy of the order be given dasti on payment of usual charges.”

(7) It is alleged that the accused-respondents are very influential persons and they have managed their release on account of political consideration. It has been further claimed that accused Ghala Singh, who wielded significant political influence in the area, had bargained with S. Parkash Singh Badal that in lieu of their release they would ensure complete support of voters to whom their word was a command.

(8) In terms of order dated 31st July, 2002 (P-2), the matter was to be decided within two months by respondent No. 1 but nothing was done. Faced with this situation, the petitioner was compelled to file a contempt petition bearing C.O.C.P. No. 643 of 2003, in this Court. On 2nd September, 2003, this Court issued notice to the Advocate General, Punjab, to ascertain the facts. When no reply was furnished, this Court took serious view of the matter and on 1st December, 2006 (P-3), following order was passed by the Contempt Court :—

“It was on 31st July, 2002 that a direction was issued to the State of Punjab to reconsider the case of the respondents No. 2 to 6 (in the main Writ Petition) for the remission in the light of the judgment rendered by Hon’ble Supreme Court of India in **Joginder Singh versus State of Punjab** J.T. 2001(7) SC 587.

The non-compliance of the aforesaid direction has led to initiation of these contempt proceedings which are also pending since 2003. Even reply has not been filed from the last more than three years, what to talk of compliance of the time bound directions. The order granting remission to respondents No. 2 to 6 is *prima facie* in derogation of the principles laid down by the Hon’ble Supreme Court.

Mr. Cheema learned State counsel seeks one more opportunity to comply with the orders passed by this Court.

In the interest of justice and as last opportunity, adjourned to 19th December, 2006. The Principal Secretary

(Home), State of Punjab, shall remain present on the adjourned date.

Copy of this order be supplied to learned State counsel dasti for information and compliance thereof.”

(9) On 18th December, 2006, a reply was filed in the contempt petition stating that facts could not be brought to the notice of the Court due to some communication gap as the speaking order with regard to reconsideration of remission to the accused respondents in light of the judgment of Hon’ble the Supreme Court in the case of **Joginder Singh** (*supra*) was already passed on 20th/25th March, 2003 after affording reasonable opportunity of being heard to accused persons (P-4). In this view of the matter, the contempt petition filed by the petitioner was disposed of,—*vide* order dated 19th December, 2006 (P-6) with liberty to the petitioner to challenge the order dated 20th/25th March, 2003.

(10) In these circumstances the petitioner has filed the instant petition impugning order dated 20th/25th March, 2003 (P-5), passed by respondent No. 2. It is apposite to mention that respondent No. 2 has ordered that remission granted to the accused persons/respondent Nos. 3 to 6 has to prevail because they were released prior to the decision of Hon’ble Supreme Court, dated 11th September, 2001, in the case of **Joginder Singh** (*supra*), Para 7 of the impugned order reads thus :—

“7. After examining the facts of the case it has come to the notice that it is not possible to act according to the orders of the Hon’ble Supreme Court dated 11th September, 2001 on the persons who were already released before this decision. In view of the above position it has been decided that the earlier release orders of Sarv Shri Karnail Singh, s/o Wasakha Singh, Gurcharan Singh s/o Jagir Singh, Mohinder Singh s/o Mehma Singh, Ghala Singh, s/o Bhajan Singh and Daya Singh, s/o Balwant Singh will prevail.” (emphasis added)

(11) In the written statement filed on behalf of respondent Nos. 3 to 6 preliminary objections have been raised that they were released

by the jail authorities after granting benefit of various remissions under the Punjab Jail Manual and also the special remissions granted by the State of Punjab under Section 432 Cr. P.C. and Article 161 of the Constitution. Various circulars granting remissions, after conviction of respondent Nos. 3 to 6 have been placed on record as Annexures R-3/1 to R-3/9. Regarding applicability of the judgement of Hon'ble the Supreme Court rendered in the case of **Joginder Singh** (*supra*), it has been asserted that the same is not applicable to them under the doctrine of 'prospective overruling'. The said judgment was passed on 11th September, 2001 whereas respondent Nos. 3 to 6 were released much prior in the year 1999. It has been further asserted that the judgment in **Joginder Singh's case** (*supra*), is applicable only to those cases where the convicts remained on bail and who had not served substantial part of their sentence. It is claimed by respondent Nos. 3 to 6 that they actually served substantial part of their sentence. The instant petition has been filed only because the petitioner is inimical towards respondent Nos. 3 to 6 and the same is a calculative attempt to harass, torture and victimize them. The allegation of political influence on account of S. Parkash Singh Badal has been specifically denied.

(12) In the counter filed on behalf of respondent Nos. 1 and 2 details with regard to remission granted to respondent Nos. 3 to 6 by the Government and their release from various jails have been given and it has been reiterated that the judgment of Hon'ble the Supreme Court in the case of **Joginder Singh** (*supra*), is not applicable to the case of respondent Nos. 3 to 6. In other words, the impugned order dated 20th/25th March, 2003 (P-5) has been sought to be justified. It has been asserted that if the benefit of Government remissions was not granted to respondent Nos. 3 to 6, it would have led to legal complications because remission was granted in similar cases in the State of Punjab as per the instructions of the Government.

(13) In the rejoinder to the reply filed by respondent Nos. 1 and 2, the petitioner has taken the stand that while passing the impugned order on 20th March, 2003 neither he was heard by respondent No. 2 nor a copy of the order was conveyed to him despite various inquiries.

It was only after filing of contempt petition that a copy of the order was for the first time placed before this Court in December, 2006. It is, thus, claimed that the impugned order was stage managed and an attempt to frustrate the proceedings, which the petitioner was pursuing.

(14) Mr. I.K. Mehta, learned counsel for the petitioner has argued that respondent Nos. 3 to 5 have undergone only 4½ years of sentence as against 10 years rigorous imprisonment ordered by the Hon'ble Supreme Court,—*vide* its order dated 6th March, 1998. According to the learned counsel respondent No. 6 Ghalla Singh has undergone only over 2½ years of sentence as against 10 years rigorous imprisonment awarded to him by the Hon'ble Supreme Court. He has emphasised that according to the judgement rendered in the case of **Joginder Singh** (*supra*), respondent Nos. 3 to 6 have not served substantial part of sentence as per the requirement of the judgement in **Joginder Singh case** (*supra*) and therefore they are not entitled to take advantage of the remissions granted to them in pursuance to circulars R/3/1 to R/3/9. Mr. Mehta has also made reference to the background facts showing that right from the beginning the prosecution and respondent-State has adopted favourable attitude to the accused-respondent Nos. 3 to 6 and others in as much as proper prosecution could be launched against respondent Nos. 3 to 6 only when a private complaint by the petitioner was filed and that the persons who have been granted the benefit of remission are potential threat to the life and property of the petitioner.

(15) Mr. Suvir Sehgal and Mr. V.K. Jindal, learned counsel for the respondents have argued that the power of the State to grant remissions by issuing circular under Article 161 is well recognised and it cannot be nullified by the mere complaint of the petitioner that respondent Nos. 3 to 6 should be asked to undergo complete imprisonment. They have submitted that the judgement rendered in the case of **Joginder Singh** (*supra*) in the year 2001 would not apply to the case of respondent Nos. 3 to 6 because they were released after serving sentence in accordance with the remissions granted to them on 14th April, 1999. The case of the petitioner was considered as per the

law prevailing at that time. The legal position at that time was settled as per the judgement of Hon'ble the Supreme Court in the case of **Nalamolu Appala Swamy and others versus State of Andhra Pradesh (3)**, (Annexure R/3/10). According to the afore-mentioned judgement it has been held that the benefit of remission could not confine to prisoners actually in jail on the date of issuance of Government order and even persons on bail on the date of issue of circular were also entitled to the benefit of remission. Therefore it has been maintained that the benefit of remission have been rightly granted to them.

(16) Having heard learned counsel at a considerable length and perusal of Government circulars Annexures R/3/1 to R/3/9 we are of the view that the only issue which needs determination is :

Whether judgement of the Hon'ble Supreme Court in the case of **Joginder Singh (supra)** is applicable to the case in hand ?

(17) It is well settled that the State Government under Article 161 and the Union Government under Article 72 of the Constitution are empowered to issue circulars granting remission of sentence. The matter has been considered by a Constitution Bench of the Supreme Court in the case of **Maru Ram versus Union of India (4)**. The view taken is that the afore-mentioned provision clothe the President and the Governor respectively to pass order of remission. However, such an order is open to judicial review and the grounds of judicial review are extremely limited. It is only a case of non considerations or consideration based on wholly irrelevant grounds or on irrational, discriminatory or *mala fide* decision of the President or Governor which could provide a ground of judicial review. All subsequent judgements of the Supreme Court draw support from the case of **Maru Ram (supra)** 'In **Sat Pal versus State of Haryana (5)**, the statement of law has been re-stated as under :

“...(i) the Governor exercising the power under Article 161 himself without being advised by the Government; or (ii)

(3) 1989 Supp. (2) S.C.C. 192

(4) (1981) 1 S.C.C. 107

(5) (2000) 5 S.C.C. 170

the Governor transgressing his jurisdiction; or (iii) the Governor passing the order without application of mind; or (iv) the Governor's decision is based on some extraneous considerations; or (v) *mala fide*."

(18) The aforementioned view has been reiterated in the case of **Bikas Chatterjee versus Union of India (6)**, **E. Puru Sudhakar versus Government of Andhra Pradesh (7)**. Therefore, the orders of remission passed by respondent Nos. 1 and 2 have to be examined within the para-meters laid down by their Lordships in the aforementioned judgements.

(19) It has come on record that respondent No. 3 Karnail Singh remained undertrial from 3rd May, 1983 to 28th January, 1986. He was convicted on 29th January, 1986 and served the sentence on his conviction from 29th January, 1986 to 17th October, 1987. He was acquitted on 12th October, 1987. However, on the ground that he was convicted by the Hon'ble Supreme Court,—*vide* order dated 6th March, 1998 he surrendered on 8th May, 1998 and served the sentence till 3rd November, 1998. In respect of each of respondent Nos. 3 to 6. The whole position could be summed up from the following four tables :

Respondent No. 3 Karnail Singh, s/o Wasakha Singh, released from Central Jail, Gurdaspur on 3rd November, 1998

From 3-5-1983 to 28-1-1986 (under trial) period	Years	Months	Days
	02	08	27
From 29-1-1986 to 17-10-1987 (conviction) period	1	8	22
From 8-5-1988 to 3-11-1988 (conviction) Period	—	5	26
Total Period	4	11	15
Remissions given by the Govt.	5	—	15
Total sentence with remission till 3-11-1998	10	0	0

(6) (2004) 7 S.C.C. 634

(7) (2006) 8 S.C.C. 161

Respondent No. 4 Gurcharan Singh, s/o Jagir Singh released from Central Jail, Amritsar on 31st October, 1998

From 3-5-1983 to 28-1-1986 (under trial) period	Years	Months	Days
	02	08	27
From 29-1-1986 to 17-10-1987 (conviction) period	1	8	22
From 8-5-1998 to 31-10-1998 (conviction) Period	—	5	23
Total Period	4	11	12
Remissions given by the Govt.	5	—	18
Total sentence with remission till 31-10-1998	10	—	—

Respondent No. 5 Mohinder Singh, s/o Mehma Singh released from Central Jail, Amritsar on 3rd October, 1998

From 3-5-1983 to 28-1-1986 (Under trial) period	Years	Months	Days
	02	08	27
From 29-1-1986 to 17-10-1987 (conviction) period	1	8	22
From 8-5-1998 to 31-10-1998 (conviction) period	—	5	23
Total Period	4	11	12
Remissions given by the Govt.	5	—	18
Total sentence with remission till 31-10-1998	10	—	-

Respondent No. 6 Ghalla Singh, s/o Bhajan Singh, released from Central Jail, Amritsar on 14th April, 1999

Date of surrender	8-5-1998		
Conviction period from 29-1-1986 to 17-10-1987	Years	Months	Days
	01	08	20
Less Parole period	—	1	12

Less period spent in jail	1	7	8
After surrender conviction from 8-5-1998 to 14-4-1999	—	11	6
Total conviction period	2	6	14
Availed Govt. Remissions 89 months 16 days.	7	5	16
Total sentence alongwith State Govt. Remissions	10	—	—

(20) A close scrutiny of the afore-mentioned tables would show that respondent Nos. 3 to 5 have availed 5 years 15 days / 5 years 18 days remissions whereas respondent No. 6 has availed 7 years 5 months 16 days remission. Another feature which is discernible from the afore-mentioned table is that respondent Nos. 3 to 5 have served the sentence from 3rd May, 1983 to 17th October, 1987 when they were acquitted,—*vide* order, dated 12th October, 1987 by acceptance of their appeal by a Division Bench of this Court. They did not serve any part of sentence after 12th October, 1987. However, they were convicted by the order passed by the Hon'ble Supreme Court on 6th March, 1998 and they surrendered on 8th May, 1998 and served the sentence till October/November, 1998. Likewise, respondent No. 6 did not spend any period as an undertrial which could be counted for serving sentence. He was convicted by an order of conviction passed on 29th January, 1986. He was taken into custody and continued to serve the sentence till 17th October, 1987 when the order of acquittal was passed by this Court on 12th October, 1987. He also surrendered in pursuance to the order, dated 6th March, 1998 on 8th May, 1998 and was released from the jail on 14th April, 1999.

(21) It is further appropriate to mention that Government orders granting remission have been issued starting from 11th November, 1989 to 8th April, 1999 (Annexures R/3/1 to R/3/8). The remission orders passed by respondent Nos. 1 and 2 have granted benefit of Government

circulars Annexures R/3/1 to R/3/8. Admittedly, respondent Nos. 3 to 6 were not serving any sentence during the period when Government circulars, dated 10th November, 1989 (Annexure R/3/1); 5th April, 1992 (Annexure R/3/2); 27th January, 1994 (Annexure R/3/3); 6th March, 1995 (Annexure R/3/4); 18th December, 1996 (Annexure R/3/5); 14th August, 1997 (Annexure R/3/6) and 14th August, 1998 (Annexure R/3/7) were in operation. Therefore, the question which arises for consideration is whether respondent Nos. 3 to 6 would become entitled to the benefit of provision available under those circular/government order when they were free on account of order of acquittal and were not serving any part of sentence. It is in this context that the judgement of Hon'ble the Supreme Court rendered in the case of **Joginder Singh** (*supra*) is required to be considered.

(22) A perusal of paras 8,9,10 and 11 of the judgement in **Joginder Singh** (*supra*) shows that the Court was considering the effect of various circulars Annexures R/3/1 to R/3/8. Rejecting the argument that the accused in that case although have served 2 months 25 days of sentence out of 1½ years they would be entitled to the benefit of afore-mentioned circulars granting remission despite the fact that the accused were on bail. It would first be appropriate to notice the argument rejected by the Hon'ble Supreme Court in para 9 of the judgement in the context of various notifications starting from notification, dated 11th November, 1989 to the notification, dated 14th August, 1997 (Annexure R/3/1 to R/3/6). The afore-mentioned argument has been noticed by the Supreme Court as under :

“9. Therefore, according to the argument of the learned counsel, even without taking into consideration the notification, dated 14th February 1997, the said respondents would be entitled to a total remission of 17½ months. Therefore, the said respondents even though have served just 2 months and 25 days and were on bail rest of the period in view of the various notifications referred to hereinabove, it is deemed

that they have served their entire period of conviction which is only for a period of 18 months (1½ years).”

(23) After noticing the afore-mentioned argument, their Lordships also considered another judgement rendered in the case of **State of Haryana versus Nauratta Singh and others (8)**. While rejecting the above extracted argument, the following observations were made in para 10 which reads thus :

“With respect, we are unable to agree with the learned counsel for the said respondents. In other words, acceptance of this argument, in our opinion, would reduce the criminal justice system to mockery as has been said by this Court in **Nauratta Singh’s case** (JT 2000(3) SC 85). In the cases cited by the appellant, this Court has categorically held that there is substantial difference between the words ‘parole’ and ‘furlough’ on one hand and the expression ‘bail’ on the other. These judgement have also held that persons who are enlarged on bail cannot claim the benefit of the period during which they were on bail for the purpose of counting the period of sentence already undergone to apply the remission given by the government. In view of this clear enunciation of law, in our opinion, even by the inclusion of the word ‘bail’ in the notification of the Punjab Government an accused who has always remained on bail or has not served the substantial part of his sentence cannot take advantage of the remission notification.”

(24) It is thus obvious that despite the fact that word ‘bail’ has been used in circular Annexures R/3/1 to R/3/9 the same is deemed to be omitted on the interpretation provided by the Hon’ble Supreme Court in **Joginder Singh’s case** (*supra*) which to out mind is clear enunciation of law

(25) The question which arises in the present case is whether the benefit of various remission circulars could be granted to the

respondents 3 to 6 of those circular which were issued by respondent Nos. 1 and 2 when they were free citizen after their acquittal and then bail granted to them on 5th October, 1989 in pursuance to directions issued by Hon'ble the Supreme Court. According to the judgement of the Supreme Court in **Joginder Singh's case** a person on bail cannot be granted benefits of Government circulars R-3/1 to R-3/9. It is not possible to grant the benefit of remission in respect of the period when respondent Nos. 3 to 6 were free on account of their acquittal from 17th October, 1987 to 5th October, 1989 and thereafter when they were on bail from 15th October, 1981 to 8th May, 1999. Remission circulars cover the period 11th November, 1989 to 8th April, 1999. Respondent Nos. 3 and 5 have served their sentence from 3rd May, 1983 to 17th October, 1987 which include the period of under trial as well as the period of their conviction. However, a Division Bench of this Court acquitted them,—*vide* order, dated 12th October, 1987 and they were released. From 17th October, 1987 to 5th October, 1989 they remained free and thereafter on bail from 5th October, 1989 to 8th May, 1999. They surrendered on 8th May, 1999 to serve the sentence in pursuance to the orders of Hon'ble the Supreme Court, dated 6th March, 1998 and continued to serve the sentence till 14th April, 1999 when they were released by granting the benefit of circular, dated 11th November, 1989 and other circulars (Annexures R/3/1 to R/3/8).

(26) A perusal of circular, dated 11th November, 1989 shows that it was issued to celebrate the birth centenary of Independent India's First Prime Minister Pt. Jawahar Lal Nehru. Respondent Nos. 3 to 6 were free to celebrate as they were enjoying the life of free man after having been acquitted by the Court,—*vide* order, dated 12th October, 1987 although on bail,—*vide* order, dated 5th October, 1989. Likewise they were also free to celebrate the installation of new Ministry in Punjab on 25th February, 1992 when circular 5th April, 1992 (Annexure R/3/2) was issued. The position would continue to be the same when special remissions were granted to the prisoners by issuing circulars on 27th January, 1994 and 6th March, 1995 (Annexure R/3/3 and R/3/4). Similarly respondent Nos. 3 to 6 were also free to celebrate the

Martyrdoem Day of Shri Guru Teg Bahadur on 15th December, 1996 when circular, dated 18th December, 1996 (Annexure R/3/5) was issued. They were also free to celebrate the 50th year of India's independence when circular of 14th August, 1997 (Annexure R/3/6) was issued and subsequent circular (Annexure R/3/7) was issued on 12th August, 1998. Therefore, we are of the considered view that the judgement in **Joginder Singh's case** (*supra*) would apply to the facts of the present case with added force.

(27) One of the grounds of judicial review laid down in the judgement of **Bikas Chaterjee** and similar other judgements is that an order passed by the authorities if lacks application of mind then the Courts would be fully competent to set aside such an order. Taking into account the fact that respondents have failed to consider the judgement in **Joginder Singh's case** (*supra*) in its proper prospective we are of the considered view that the order, dated 20th March, 2003 passed by respondent No. 2 suffers from lack of application of mind and therefore the same cannot be sustained.

(28) The argument of the learned counsel for the respondents that the judgment in **Joginder Singh's case** (*supra*) is prospective cannot be accepted because firstly there is no observation in that case to give effect to the operation of the judgement only prospectively. Secondly, it is declaration of law which is binding on everyone under Article 142 of the Constitution. Therefore, we have no hesitation to reject the argument raised.

(29) For the reasons afore-mentioned this petition succeeds. Order, dated 20th March, 2003 (Annexure P.5) is set aside. The respondent Nos. 1 and 2 are directed to re-calculate the remaining part of sentence of respondent Nos. 3 to 6 within one month from the date of receipt of a copy of this order. Within one week of passing of order by respondent Nos. 1 and 2 the convict respondent Nos. 3 to 6 shall surrender before the Superintendent, District Jail, Ludhiana.

R.N.R.