Before Kulwant Singh Tiwana, J.

GURCHARAN KAUR,—*Petitioner*

versus

THE STATE OF PUNJAB,—*Respondent*

Civil Writ Petition No. 4380 of 1981.

May 18, 1982.

Code of Criminal Procedure (II of 1974)—Sections 418 & 426—Punjab Good Conduct Prisoners (Temporary Release) Act (XI of 1962)—Sections 3, 4 & 8—Accused convicted and sentenced to a term of imprisonment in jail—Said accused released on furlough under section 8 of Punjab Good Conduct Prisoners (Temporary Release) Act 1962—Accused not surrendering to custody after expiry of furlough—Period of sentence expiring while accused still absconding—Period of sentence—Whether continues to run while accused continues to abscond—Accused—Whether liable to be remanded to serve out remaining period of sentence.

Held, that section 418 of the Code of Criminal Procedure, 1974 prescribes the procedure for the execution of sentence imposed on a prisoner whereas sections 3, 4 & 8 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, provide for the release of prisoner on furlough and the implications thereof. Criminal offences are defined in the Indian Penal Code and other Criminal statutes and sentences for these are prescribed in them. In the matter of trials, conviction and sentence of the accused, the Courts are governed by the Indian Penal Code, other statutes and the Code of Criminal Procedure. The procedure for imposing the sentence and its execution is contained in the Code. After conviction, the convicting court gets a warrant, the form of which is prescribed in the Second Schedule of the Code, issued in the name of the officer in charge of the jail prescribed by the State Government for execution of the sentence and commits the accused or a convict for getting the sentence served. Once so committed by the warrant which is final, subject to the final result of any appeal or revision, if any, filed by him a prisoner has to undergo the term to which he is sentenced, in the place prescribed for undergoing the sentence, subject to remissions etc. which may be granted to him by the Government and other constitutional authorities in accordance with law. The only permissible clipping of the terms of the sentence to which a prisoner is sentenced are those which are permitted by law. The remissions are granted by the Constitutional authorities, that is, the President of India and the Government under its power to grant remissions or reprieve. The jail authorities also can grant remissions in sentence. Except these, there is no other authority or source which can remit the sentence

or cut it short. After the sentence imposed upon the prisoner starts running the period for which the convict is released on bail by the appellate or revisional courts by suspending the sentence does not form part of that sentence. To mellow down the harshness of the incarceration for the whole terms of sentence and to ameliorate the conditions of the prisoners, beneficial legislation, out of which the Temporary Release Act is one, has been brought on the Statute Book to allow temporary release of the prisoner for good conduct on certain conditions as contained in section 4 of the Act. The Act took the precaution by making a provision in section 3(8)(d), that the period of temporary release on furlough of the prisoner under section 4 shall not be counted towards the sentence. As such the sentence is to run only on the prisoner surrendering in jail when the furlough would come to an end and the thread of his sentence will be picked up from that end where it was left. The term of sentence has to be undergone by confinement in the place designated by the Government for that purpose and as such the sentence will not run while the prisoner remains an absconder and such prisoner is liable to be remanded to custody to serve out the remaining portion of sentence.

(Para 8)

Amended Writ Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue appropriate writ, order or direction directing the respondents from interfering with the right of personal liberty and proceeding against Shri Manmohan Singh Johal, son of Shiv Singh of Jawahar Nagar, Jullundur, under sections 8 and 9 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962.

(ii) Any other relief which this Hon'ble Court may deem just and proper in the circumstances of the case may also be granted to the petitioner.

(iii) Filing of certified copy of Annexure P-1 may be exempted, and

(iv) The writ petition may kindly be allowed with costs.

It is further prayed that during the pendency of the petition ad interim order may kindly be passed restraining the respondent State Government from interfering with the personal liberty and proceeding against Shri Manmohan Singh Johal under sections 8 & 9 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962.

S. C. Malik, Advocate with K. N. Kataria, Advocate and B. S. Khoji, Advocate, *for the Petitioner.*

D. S. Boparai, D.A.G., Punjab, *for respondent.*

JUDGMENT

K. S. Tiwana, J.

(1) Manmohan Singh Johal, son of Shiv Singh, resident of Jawahar Nagar, Jullundur, was tried in the court of Additional Sessions Judge, Jullundur, and convicted for committing offences under section 471 read with section 120-B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs. 5,000. In default of payment of fine he was further sentenced to undergo rigorous imprisonment for two years. At the same trial he was also convicted under section 466 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years. Both the sentences were directed to run concurrently. On appeal, the High Court suspended his sentence and he was released on bail. The High Court partly accepted the appeal and acquitted him of the charge under section 471 read with section 120-B of the Indian Penal Code. His conviction under section 466, Indian Penal Code, was upheld, but the sentence on this charge was reduced to four years' rigorous imprisonment and a fine of Rs. 5,000. In default of payment of fine he was directed to undergo rigorous imprisonment for one year.

2. Manmohan Singh Johal was committed to jail on 25th of March, 1969, after the dismissal of his appeal, to serve out the remaining sentence imposed on him. After serving the sentence for some time, Manmohan Singh Johal applied for his release on furlough under section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, hereinafter referred to as the Act, for a period of 15 days. This period, on his request, was further extended to another 15 days. Manmohan Singh Johal did not surrender to the jail authorities to serve the remaining sentence and is still at large.

(3) The consequence of the failure of Manmohan Singh Johal in not surrendering after the expiry of the furlough period is that under section 8(2) of the Act he could be arrested by any police officer and remanded to jail to undergo the remaining portion of the imprisonment or if a case under section 9 of the Act is registered against him, he can be convicted and sentenced, for escaping from custody. Apprehending such a situation, the petitioner, who is the sister of Manmohan Singh Johal, has filed this petition under

Articles 226 and 227 of the Constitution of India, praying for the issue of an appropriate writ that he cannot be arrested or can be tried for his not surrendering to the jail authorities after the expiry of furlough to undergo the remaining portion of his sentence. The ground taken is that out of fear of physical harm in the jail conditions, he did not surrender to the jail authorities in compliance with section 8(1) of the Oct on the expiry of the release period. The legal grounds taken are that as no case against Manmohan Singh Johal was registered under section 9 of the Act, it cannot now be registered after such a long lapse of time because of the embargo created by section 468 of the Code of Criminal Procedure, 1973, hereinafter referred to as the Code. The other ground taken in the petition is that his term of imprisonment like any other term of office was limited and defined for a period of five years, including the one year term for non-payment of fine, and cannot go beyond that. The sentence started running on March 25, 1969 and ended in March, 1974. It is averred in the petition that once the period of sentence starts running, it does not stop. As the sentence has run out and the warrant has expired, Manmohan Singh Johal cannot be arrested, tried for escape or remanded to serve the remaining portion of the sentence. The threat of arrest of Manmohan Singh Johal under section 8(1) of the Act after March, 1974, is a threat to his personal liberty and is a violation of Article 221(1) (2) of the Constitution of India.

(4) On behalf of the State, the *locus standi* of the petitioner to file the petition, for the liberty of Manmohan Singh Johal, who is still a fugitive from justice is questioned. The contents of the petition so far as these related to the facts were admitted. The right of any police officer to arrest Manmohan Singh Johal without a warrant and to remand him to custody to undergo the remaining portion of the sentence was defended as he had only undergone 83 days out of the total sentence imposed upon him. Defence to such an action of the respondent was sought from paras 417 and 453 of the Manual for the Superintendence and Management of Jails in the Punjab, hereinafter referred as the Jail Manual. It was averred that the writ jurisdiction is a discretionary relief and this Court could not entertain a petition through his sister, as Manmohan Singh Johal being still at large had not personally approached the Court with clean hands and there is no guarantee or even an undertaking on his behalf that he will honour the verdict of the Court.

(5) The original writ petition was amended and it was added that Manmohan Singh Johal was still alive.

(6) The *locus standi* of the petitioner to file the petition was questioned on the ground that Manmohan Singh Johal after his release on furlough from jail is believed to have escaped to some foreign country and the petitioner had no right to espouse his cause; especially when she suffered no personal injury to her property, body, mind or reputation. In the petition, the petitioner has averred that she was missing Manmohan Singh Johal, her brother, on the occasion of Raksha Bandhan and his presence was also required on the occasion of the marriage of her daughter. These grounds were not pressed at the time of arguments. Article 226 of the Constitution of India is wide enough to permit a citizen to move the Court to redress a wrong being committed by the State, body-corporate etc. The only things the Courts are to guard against in such cases are that the petitioner should not be a busy-body thriving on litigation, black-mailer or simply a way-farer taking to litigation as a pass-time or luxury. If the petitioner is able to urge a point, the decision of which will end the abuse of justice, or can win freedom to a person illegally detained or threatened to be detained in such a manner, the Court is not to be influenced by the technicality of the objection to deny relief or refuse to go into the matter. The action of the Court has to be conducive to the administration of justice. The petitioner feels that her brother Manmohan Singh Johal is being deprived of his personal freedom to freely move about in the country because of the provisions of section 8(2) of the Act. Her feeling seems to be genuine and the case on the face of it being first of its kind at least in this Court, requires examination. She, in the circumstance, cannot be described as a complete stranger to the matter involved to deprive her of a hearing in the question, which she has raised. The preliminary objection, which is purely based on technicalities cannot be taken as a restraint on these wide powers of the Court, especially in the circumstances of the case in hand.

(7) The prime argument addressed on behalf of the petitioner is that the sentence when it once starts running does not stop. Applying to the case, it is urged that Manmohan Singh Johal was commited to jail on 25th of March, 1969, after the dimissal of his appeal from the High Court, and the sentence of five years, including the one year for default of payment of fine, expired in 1974.

After that no unexpired portion of the sentence remains and he cannot be asked to undergo any sentence. To further this argument, distinction was sought to be drawn between section 8(2) of the Act and section 426 of the Code.

(8) In order to further appreciate the argument, the provisions of the Act, Code, other statutes and other provisions having the force of law, relevant to the case, require to be noticed here. The reproduction of sections 3 and 4 of the Act at this stage would be relevant to understand the policy of the Act to allow the release on furlough. Sections 3 and 4 are :—

"*Section* 3. (1) The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoner if the State Government is satisfied that—

(a) a member of the prisoner's family has died or is seriously ill; or

(b) the marriage of the prisoner's son or daughter is to be celebrated; or

(c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence; or

(d) it is desirable so to do for any other sufficient cause.

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed—

(a) where the prisoner is to be released on the ground specified in clause (a) of sub-section (1), two weeks;

(b) where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and

(c) where the prisoner is to be released on the ground specified in clause (c) of sub-section (1), six weeks.

(3) The period of release under this section shall not count towards the total period of the sentence of a prisoner.

(4) The State Government may by notification authorise any officer to exercise its power under this section in respect of all or any of the grounds specified therein.

Section 4. (1) The State Government or any other officer authorised by it in this behalf may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than five years, and who—

(a) has, immediately before the date of his temporary release, undergone imprisonment for a period of three years, excluding remissions; and

(b) has not during such period committed any jail offence and has earned at least three annual good conduct remissions:

Provided that nothing herein shall apply to a prisoner who—

(i) is a habitual offender as defined in clause (3) of section 2 of the Punjab Habitual Offenders (Control and Reform) Act, 1952, or

(ii) has been convicted of robbery or dacoity or such other offence as the State Government may, by notification, specify.

(2) The period of furlough for which a prisoner is eligible under sub-section (1) shall be three weeks during the first year of his release and two weeks during each successive year thereafter.

(3) Subject to the provisions of clause (d) of sub-section (3) of section 8, the period of release referred to in sub-section (1) shall count towards the total period of the sentence of a prisoner.

Section 418 of the Code, which prescribes the procedure for the execution of the sentence, is as under:—

> "*Section* 418. (1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by section 413, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined and unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant:
>
> Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail, and the accused may be confined in such place as the Court may direct.
>
> (2) Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in sub-section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest."

Under section 419 of the Code every warrant has to be directed in the name of the officer in charge of the jail or any place in which the prisoner is, or is to be, confined for undergoing the sentence. Section 3 of the Prisoners Act, 1900, which is reproduced, also provides to the same effect:—

> "3. The officer in charge of a prison shall receive and detain all persons duly committed to his custody, under this Act or otherwise, by any Court, according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged or removed in due course of law."

Section 426 of the Code, on which some stress was laid to urge that in the matter of undergoing of sentence only that period of sentence is to be undergone by the escaped prisoner which remained unexpired on the date of his escape, is as under:—

> "*Section* 426. (1) When a sentence of death, imprisonment for life or fine is passed under this Code on an escaped convict

such sentence shall, subject to the provisions hereinbefore contained, take effect immediately.

(2) When a sentence of imprisonment for a term is passed under this Code on an escaped convict:—

(a) If such sentence is severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately;

(b) if such sentence is not severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

"(3) For the purposes of sub-section (2), a sentence of rigorous imprisonment shall be deemed to be severer in kind than a sentence of simple imprisonment".

Section 8 of the Act, sub-section (1) of which according to the learned counsel for the petitioner does not have the same phraseology as section 426 of the Code in regard to unexpired portion of the sentence is as under:—

"8. (1) On the expiry of the period for which a prisoner is released under this Act, he shall surrender himself to the Superintendent of Jail from which he was released.

(2) If a prisoner does not surrender himself as required by sub-section (1) within a period of ten days from the date on which he should have so surrendered, he may be arrested by any police officer without a warrant and shall be remanded to undergo the unexpired portion of his sentence.

(3) If a prisoner surrenders himself to the Superintendent of the Jail from which he was released within a period of ten days of the date on which he should have so surrendered, but fails to satisfy the Superintendent of the Jail that he was prevented by any sufficient cause from surrendering himself immediately on the expiry of the period for

which he was released, all or any of the following penalties shall, after affording the prisoner a reasonable opportunity of being heard, be awarded to him by the Superintendent of Jail, namely,—

(a) a maximum cut of five days' remission for each day of overstay;

(b) stoppage of canteen concession for a maximum period of one month;

(c) withholding concession of either interviews or letter or both for a maximum period of three months;

(d) the period of temporary release on furlough of the prisoner under section 4 shall not be counted towards his sentence;

(e) warning;

(f) reduction from the status and grade of 'Convict watchman" or 'Convict Overseer'.

(4) — — — — — —".

The word 'sentence' has not been defined either in the Indian Penal Code of the Code of Criminal Procedure. The meanings of this term are, however, well understood from the repeated use of this word in various sections of the Code. Types of punishment are given in section 53 of the Indian Penal Code. Punishment is the mode, in which person accused of an offence, is condemned judicially for his act and is sentenced to undergo a term in confinement in jail. This is one of the modes prescribed by law. Section 9 of the Act is as under:—

"9. Any prisoner who is liable to be arrested under subsection (2) of section 8, shall be punishable with imprisonment of either description which may extend to two years or with fine or with both.

Explanation:—The punishment in this section is in addition to the punishment awarded to the prisoner for the offence for which he was convicted.".

A similar provision as section 9 of the Act exists in the Indian Penal Code in the form of section 224, which is as under:—

> "*Section* 224.—Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
>
> *Explanation.*—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted."

Criminal offences are defined in the Indian Penal Code and other criminal statutes and sentences for these are prescribed in that. In the matter of trials, conviction and sentence of the accused, the Courts are governed by the Indian Penal Code, other statutes and the Code of Criminal Procedure. The procedure for imposing the sentence and its execution is contained in the Code. After conviction, the convicting court gets a warrant, the form of which is prescribed in Second Schedule of the Code, issued in the name of the officer in charge of the jail prescribed by the State Government for execution of the sentence and commits the accused or a convict for getting the sentence served. Once so committed by the warrant which is final, subject to the final result of any appeal or revision, if any filed by him, a prisoner has to undergo the term to which he is sentenced, in the place prescribed for undergoing the sentence, subject to remissions etc. which may be granted to him by the Government and other constitutional authorities in accordance with law. By this final commitment, I mean the final commitment by any court, whether original appellate or revisional. The only permissible clipping of the terms of the sentence to which a prisoner is sentenced are those which are permitted by law. The remissions are granted by the constitutional authorities, that is, the President of India and the Government under its power to grant remissions or reprieve. The jail authorities also can grant remissions in sentence. Except these, there is no other authority or source which can remit the sentence or cut it short. After the sentence imposed upon the prisoner starts

running the period for which the convict is released on bail by the appellate or revisional courts by suspending the sentence does not form part of that sentence. To mellow down the harshness of the incarceration for the whole terms of sentence and to ameliorate the conditions of the prisoners, beneficial legislation, out of which the Act is one, has been brought on the Statute Book to allow temporary release of the prisoner for good conduct on certain conditions as contained in section 4 of the Act. The Act took the precaution by making a provision in section 8(3) (d) that the period of temporary release on furlough of the prisoner under section 4 shall not be counted towards the sentence. Para 417(2) of the Jail Manual also contains a similar provision, which is as under:—

"417 (1) — — — — —

(2) A recaptured prisoner may be admitted into and detained in jail on the authority of his original warrant, the time he was at large does not count as sentence served."

This para is not in excess of the powers of section 8(2) of the Act in view of the provisions of section 8(3) (c). Para 417(2) of the Jail Manual was in existence much before the Act came on the Statute Book. This blunts the argument of the learned counsel for the petitioner that the sentence had expired in 1974 when the Act prohibits the counting of the furlough towards the sentence. When a prisoner does not report back to the jail authorities at the end of furlough and absents, the period has to be taken as a continuation of the furlough, may be an illegal furlough. The sentence is to run only on his surrendering in jail when the furlough will come to an end and the thread of his sentence will be picked from that end where it was left. It cannot, by any stretch of imagination, be taken as a part of the sentence. The term of sentence has to be undergone by confinement in the place designated by Government, for that purpose, subject to the law or rules regarding remissions etc., and in no other way. In view of this, the argument of the learned counsel for the petitioner that the sentence of Manmohan Singh Johal expired in 1974 becomes untenable. This argument was raised only in abstract and no law or precedent was referred to support it.

9. No action has been taken to register a case under section 9 of the Act by the respondent. This makes the argument regarding the bar of limitation as created by section 468 of the Code unnecessary. It was however argued on the supposition of section 9 of the

Act that in case a prisoner is convicted for escape from jail or in the circumstances like the case in hand the priority for the start of sentence is given in section 426 of the Code. According to the learned counsel for the petitioner, sub-section 2(b) of section 426 has the words : "for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence". According to the learned counsel for the petitioner, this sub-section indicates that the term of the sentence which remained unexpired on the date of escape has to be undergone by the escape prisoner, while there is no such term as "on the date of escape" in section 8(2) of the Act. Section 426 of the Code comes into play only when the escaped prisoner is convicted for escape and he is required to undergo additional sentence under section 224 of the Indian Penal Code or section 9 of the Act. The explanations added to Section 224 Indian Penal Code and Section 9 of the Act, which are more or less similar, make the intention of the legislature clear that it took into consideration the additional sentence awarded. Section 426 of the Code guided only the priority of the sentence awarded to the escaped convict. Section 426(2) (b) of the Code, in view of this, is not attracted in this case. Section 8(2) of the Act does not create any substantive offence like section 9 of the Act or section 224 of the Indian Penal Code, but only gives power to a police officer to arrest the runaway convict, whose conduct in not reporting back to the jail authorities in violation of the conditions of temporary release on furlough amounts to an escape. The effect of the arrest under section 8(2) of the Act, in case it is made by a police officer, is that the prisoner is not punished or convicted but is only committed to the jail to undergo the unexpired portion of the sentence. This unexpired portion of the sentence unquestionably is the period which remained unserved on the day he defaulted to surrender to the jail authorities or in other words the day he was released on his furlough. By no stretch of imagination it can be derived that the omission of the words aobut the escape from section 8(2) of the Act is to mean on the day he is arrested, as is suggested by the learned counsel for the petitioner. Even on the date of the arrest of an escaped prisoner under section 8(2) of the Act, the term of an unexpired portion of the sentence will be the same which was on the day of his release on furlough or escape. Interpretations of a statute are to be made for the smooth working of a statute. If any such suggested interpretation is put then it will not act to further the object of the Act, but is likely to create hurdles in the way of its working. The unexpired sentence when considered plainly means and refers to that portion of the sentence

which the prisoner has not undergone in jail or any other place meant for serving the sentence. I find no logic or authority to give it any other meaning. To me, it appears to be the only interpretation of section 8(2) of the Act and no other. If this construction of section 8(2) of the Act, as is put forward by the learned counsel for the petitioner, is accepted then it will become very easy for the prisoners to evade the sentence. A prisoner may after getting his temporary release on furlough make his presence scarce and re-appear after calculating the expiry of his sentence. By calculating such periods on reappearance, he can claim that his sentence had already run out and he cannot be put back to the jail. Such a dubious conduct of a prisoner when coupled with the failure of the authorities to arrest him cannot be permitted to be capitalised by him. This would amount to flouting of the law by using the legitimate permission for illegitimate purposes. The convicted prisoner has to undergo the full term of sentence subject to the remissions etc. as provided by law in or at the place which is prescribed by the Government for that purpose and nothing short of it can be recognised.

(10) Manmohan Singh Johal, on some pretext, which provided a ground under section 3 of the Act, got a release under section 4 of the Act and then deliberately did not report back to the jail authorities to undergo the unexpired period of his sentence. The reason given in the petition is that he did not surrender to the jail authorities out of fear of physical harm. This ground cannot be countenanced. If this argument, as is given in the petition, is accepted, then any person with delicate frame of body or a person of high social status can with justification stay away from the jail to avoid incarceration to undergo the sentence, to which he is sentenced.

(11) Making reference to the provisions of the Jail Manual, it was urged that the warrant under which the convicting court had committed Manmohan Singh Johal to jail to undergo the sentence has lapsed, as it has to be returned to the convicting court by the jail authorities under para 533(5) of the Punjab Jail Manual. The Code provides that a convicting court issues a warrant in the form prescribed in second schedule in the name of an officer in charge of the jail to receive the convicted prisoner for serving the sentence. Para 442 of the Jail Manual is also to the same effect. Paras 442, 533 and 533-A of the Punjab Jail Manual are as under:—

> "*Para* 442 : No person shall be admitted into any jail as a prisoner, otherwise than under a lawful warrant or order

of commitment addressed to the Superintendent or officer in charge of the jail by a competent judicial tribunal or other proper authority.

"533. (1) On the release of a prisoner, upon the expiry of his sentence or on bail, his warrant shall be returned to the Court which (and not, by name to the officer who) issued it, with an endorsement showing the date and cause of release and the date on which the warrant is returned.

(2) The warrant of every prisoner who dies in jail shall be returned to the Magistrate of the District in which he was convicted.

(3) If any prisoner is required to undergo two or more sentences under separate warrants, each such warrant shall be returned as soon as the sentence to which it relates has been executed.

(4) *Warrants of commitment of prisoners sentenced by General Summary*—General or District Courts Martial should be sent to the Judge Advocate-General in India and those of prisoners sentenced by Summary Courts Martial the Officer Commanding the Unit in which the Court was held after the sentences have been executed.

(5) Warrants of commitment of escaped prisoners, who have not been recaptured, shall be returned to the convicting courts after a period of 10 years from the date of escape.

533-A.—Where an accused has been admitted to bail, pending the hearing of his appeal, the original warrant of commitment shall, after being returned by the Jail Authorities to the Court, which issued it, be forwarded to the Appellate Court,—

(1) In every case in which a sentence is reversed on appeal, the Appellate Court shall return the original warrant with a copy of its order to the Court by which the accused was admitted to bail with directions to discharge him.

(2) In every case in which a sentence is modified on appeal, the Appellate Court shall prepare a fresh warrant (in the form prescribed in the following rule) and shall forward the same, with the original warrant and with a copy of its order, to the Court by which the accused was admitted to bail, with directions to take measures to secure his surrender and commitment to jail on the modified warrant.

(3) In every case in which a sentence is confirmed on appeal, the Appellate Court shall return the original warrant with a copy of its order, to the Court by which the accused was admitted to bail, with direction to take measure to secure his surrender and commitment to jail on the original warrant.

In each of the last above-mentioned cases it shall be the duty of the Court to which the accused surrenders to his bail to endorse on the warrant the dates of his release on bail and his subsequent surrender."

Para 533(5) has a statutory force, as it has a black line in the margin, which, as stated in the Preamble to this Manual, has a statutory force. The function of the officer in charge of jail *vis-a-vis* the prisoner serving the sentence is like that of an Accountant. He keeps the record of each day of imprisonment undergone by the prisoner and also the remissions. He is to keep the records in a prescribed manner and to make entries upto date in those. When a prisoner escapes from jail custody he is to keep a separate record of the escape as per directions in the Jail Manual. When the escapee is not arrested for ten years, then under para 533(5) of this Manual, he has to send the warrant back to the convicting court. Two questions have been raised by the learned counsel for the petitioner in this context. One is that the warrant is taken to be lapsed after this period and the other is that the officer in charge of the jail after the warrant has been returned under para 533(5) to the convicting court, will have no authority in the absence of a warrant with him to admit it the escape to jail to serve the unexpired portion of the sentence.

(12) The Code provides for the issue of a warrant by the convicting court in the name of the officer in charge of jail to admit the

accused convicted for an offence to jail. There is no provision in the Code for the cancellation, withdrawal or lapse of that warrant after the case has been finally decided by the courts functioning under it. In no circumstances it can lapse. Even para 533(5) of the Jail Manual does not contain the word 'lapse'. It only contains the words "shall be returned to the convicting court. It can come to end only when its direction is fulfilled that is the sentence is actually served or is deemed to have been served because of the remissions etc. It can lapse or abate only in one case, that is, the death of the prisoner. It was pointed out that the Code does not have any provision to meet such a situation, when because of the non-arrest of the prisoner, the warrant is returned to the convicting court under para 533(5) of the Punjab Jail Manual. The warrant once it is issued by the convicting court, as has been noticed, remains active and alive till its object is fulfilled that is, the sentence is undergone. The intention of the warrant is always to detain a prisoner in custody till he serves the sentence. The return of the warrant under para 533(5) is in the same manner as is contained in para 533-A of the Jail Manual. During the pendency of an appeal the warrant is returned to the court and is re-sent after the decision of appeal or revision during which proceedings, convicted persons are released on bail on suspension of sentence. It does not mean that in every situation when a warrant is sent back to the court, which convicted the person accused of an offence, it is to lapse. The mere return of the warrant by the jail authorities under para 533(5) of the Jail Manual will not make any difference. The Jail Manual does not have an over-riding effect on the Code. In case of the arrest of the escapee, in the circumstances envisaged by section 8(2) of the Act, the Court will endorse it again in the name of the jail authorities in view of the changed situation, as is done in situations contained in para 533-A of the Jail Manual. It was again pointed out that the Criminal Procedure Code does not provide for such a re-issue of the warrant in the name of the officer-in-charge of the jail. The legislature while enacting a statute cannot be expected to contemplate and comprehend every situation, which might arise in the working of the statute. The subordinate legislation in the Jail Manual answers this argument of the petitioner. The statute has to be worked in a harmonious manner by placing legitimate construction on its provisions to work it in the interest for which the statutes have been brought on the Statute Book. In my view, section 8(2) of the Act with the aid of the

Code can be worked harmoniously in the situation, which is under examination in this case, only in the way as discussed above. The re-endorsement of the warrant in such a changed situation will be in consonance with the administration of justice and the spirit of the statute regarding the activity of the warrant issued by the convicting court. The re-endorsement of the warrant will authorise the officer-in-charge of the jail to receive the prisoner in accordance with the directions contained in the warrant, which neither lapses nor expires till its purpose is fulfilled and achieved. At the most one thing can be said that the officer-in-charge of the jail after he has returned the warrant to the convicting court will not be in a position to accept the escaped prisoner for serving the remaining part of the sentence, in the absence of warrant with him. This will not pose any problem as the arresting police officer will present the arrested escaped prisoner to the concerned court and obtain endorsement on the warrant in the changed situation.

13. The case has brought to light a novel situation, which, in my view, has not so far come for decision before this court. I am saying so because no other case of this type or any precedent of this or any other court has been brought to my notice. The penal statutes are construed to administer justice by punishing the criminal acts committed of those persons, who are charged for those. When the cases are finally decided by the highest courts exercising their criminal jurisdiction under the Code, then they attain finality. The commands of that court in the form of warrants,—*vide* which the accused prisoner is committed to jail, have to be strictly complied in the matter of execution of sentences in accordance with law, subject, however, to the law and rules regarding remissions, etc. The Rules of penology are to be taken into consideration only up to the stage of recording or upholding of a conviction. After that is exhausted, the principles of penology cannot be utilised by the court for further softening the sentences awarded. The Courts always act keeping in view the beneficial legislation within the frame-work of principles of penology, like the Probation of Offenders Act, Children Act, etc. In order to break the monotony or the harshness of the prison to save the prisoners from ill-effects or the evils of incarceration, the Government has brought enactments, like the Punjab Act No. 11 of 1962, for the benefit of convicted persons. Reliefs are granted to the prisoners under this Act for good conduct. The continuity of the terms of

imprisonment are broken and they are allowed furloughs in case they fulfil the conditions prescribed under section 3 of the Act. These beneficial legislations are to be put in use so long the prisoners do not misbehave. If these provisions are mis-used or mis-utilised and the conditions on which a person secures his release are breached, then sanctions have been provided to bring the erring or the defaulting prisoners back to the prison to serve out the remaining part of the sentence. In no reasonable way, section 8(2) of the Act can be taken to have given a licence to the prisoner to get out of jail on a true or a false pretext and then flout the law with impunity and to claim after some period that the sentence which once started running had come to an end because of his own dishonest act in not surrendering to the jail authorities at the end of furlough. Such a situation is not recognised because of the built-in safety in section 8(3)(d) of the Act quoted above.

14. It was urged before me that a broad view of the situation be taken and the condition of Manmohan Singh Johal, who underwent mental torture and agony by remaining underground, should be taken into consideration. Compassion in such cases may be a consideration for the Government but not for the courts. No doubt, broad views are possible, but the first and the foremost thing is that the view has to be reasonable, legitimate and has to have a basis in law. If a view does not have any roots in law or equity and is not based on reason flowing from these, then it is not permitted to be taken. From whatever angle the action of Manmohan Johal is viewed, it does not make out the contention of the petitioner justifiable in any manner. One can escape the punishment with ingenuity, but that should be ingenuity oriented by law, which is not found in this case.

15. For the foregoing reasons, the petition being without any merit is dismissed with no order as to costs.

H. S. B.

Before M. M. Punchhi, J.

ORIENTAL INSURANCE CO.—*Appellant*

versus

SITLA PARSHAD AND OTHERS,—*Respondents.*

First Appeal from Order No. 978 of 1984

August 7, 1985

Motor Vehicles Act (IV of 1939)—Sections 92-A and 96—Interim compensation paid by Insurance Company under court orders under