

received a sum of Rs. 2,00,000 through cheque, therefore, it should be construed that he had entertained the dishonest intention at the time when the agreements to sell (Annexures P6 and P7) were executed.

(10) In **Suresh versus Mahadevappa Shiappa Danannava and Another (8)**, it was held that where sale deed, in pursuance of an agreement to sell, has not been executed, it will amount to a dispute which is civil in nature and it cannot be said that at the time of execution of agreement to sell, the accused had an intention to cheat. Similar view has been reiterated by the Single Bench of this Court in **Ragbir Singh versus State of Punjab and Another (9)** after taking into consideration the case law on the subject.

(11) Thus, taking totality of circumstances into consideration, this Court is of the view that there is no infirmity in the impugned order dated 4.4.2000 (Annexure P4), passed by the Court of Judicial Magistrate Ist Class, Ludhiana and the order of affirmation dated 5.5.2001 (Annexure P5), passed by the Revisional Court.

(12) Hence, no interference is warranted in the present petition and the same is hereby dismissed.

J.S. Mehndiratta

Before Kanwaljit Singh Ahluwalia, J.

BAKHTAUR SINGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

Crl. Misc. No. M-25340 of 2011

6th December, 2011

Code of Criminal Procedure, 1973 - S.432, 482 - Petition filed U/s 482 Cr.P.C. for grant of Special remissions as granted by State Governments when petitioners were on bail - State Government vide various notification from 11.11.1989 to 2001 granted remissions - As a consequence of this a number of convicts whose sentences had been suspended or were granted bail, were released from jail on their

(8) 2005 (2) RCR (Crl.) 29

(9) 2011(3) RCR (Crl.) 157

return without undergoing substantial sentence- Matter was brought to the notice of Hon'ble Supreme Court - It was held by the Hon'ble Supreme Court that while on parole/furlough the convict is undergoing sentence whereas when sentence is suspended convict is neither entitled to nor can be granted remission- Petition dismissed - Accused on bail are not entitled to benefit of remissions.

Held, that this bunch of petitions raise common questions of law for the consideration of this Court (1) Whether all those convicts, who remained on bail till 11.9.2001, should be given benefit of remissions granted by the State from time to time or not? (2) Why a cut off date i.e. 11.9.2001 is so sacrosanct for grant of remissions? (3) Whether contention of learned counsel for the petitioners that 11.9.2001 is the date when Hon'ble the Apex Court rendered a judgment in Joginder Singh v. State of Punjab 2001(4) Recent Criminal Reports 341 should be determined as cut off date is tenable or not? These questions raise another very pertinent issue (4) Whether the interpretation of law given, in a judgment by the Court of law, is to apply prospectively or retrospectively?

(Para 1)

Further held, that the clear mandate of law laid in Joginder Singh's case(supra) is that the accused, while on bail, will not be entitled to benefit of remissions. The benefit, if any, shall accrue only to those accused who are actually undergoing their sentence. The accused who are on bail and enjoy their liberty outside the jail, without undergoing any period of sentence, are not entitled to draw the benefit of remissions, in case same is allowed, the phrase used in Joginder Singh's case (supra) that "it would reduce the Criminal Justice System to mockery" would become true.

(Para 22)

Further held, that to elucidate in my own words, reference can be made to the provisions of Section 389 Cr.P.C., which envisage suspension of sentence by the Appellate Court. Thus, the Code of Criminal Procedure, 1973, does not envisage bail by the Appellate or Revisional Court but suspension of sentence. Hence, bail is nothing but a natural corollary or outcome of an order of suspension of sentence. Once the sentence has been suspended, there is no other inference except to conclude that the sentence

has stopped from running. Thus, to grant remissions to those accused, whose sentence has stopped to run and is not undergoing the sentence will be travesty of justice . As held in Joginder Singh's case (supra), grant of remissions to accused, who are on bail, will take away the impact and effect of Criminal Justice System. Neither it will have the requisite deterrence nor would promote goal of reformation.

(Para 23)

Further held, that as a result of the above discussion, the questions, formulated above by this Court, are answered against the petitioners and it is held that no convict who remained on bail, as a result of suspension of sentence, is entitled to any benefit of remissions granted by the State before or after 11.9.2001. The benefit of remissions can only be granted to the accused/convicts taking into consideration actual period undergone by them in the Jail. It is further held that since the orders (Annexures P2 to P5), passed by various Co-ordinate Benches of this Court, are based on the concession made by the State, they propound no position of law. Furthermore the stand taken by the State that those accused who have undergone substantial period of their sentence, before 11.9.2001, shall be entitled to benefit of remissions, granted under various notifications, is also not tenable as same is contrary to enunciation of law made in Joginder Singh's case (supra).

(Para 24)

Amandeep Singh Cheema, Advocate, *for the petitioners.*

Bhupinder Pal Kaur Brar, Advocate, *for the petitioners.*

Kuldeep V. Singh Ahluwalia, Advocate, *for the petitioner.*

Sanjeev Sharma, Advocate, *for the petitioner.*

Ajay Pal Singh Rehan, Advocate, *for the petitioner.*

Jagjit Gill, Advocate, *for the petitioner.*

S.S. Chandumajra, Deputy Advocate General, Punjab, *for the respondents.*

Anupam Sharma, Assistant Advocate General, Haryana, *for the respondents.*

KANWALJIT SINGH AHLUWALIA, J. (ORAL)

(1) This bunch of petitions raise common questions of law for the consideration of this Court (1) Whether all those convicts, who remained on bail till 11.9.2001, should be given benefit of remissions granted by the State from time to time or not? (2) Why a cut off date i.e. 11.9.2001 is so sacrosanct for grant of remissions? (3) Whether contention of learned counsel for the petitioners that 11.9.2001 is the date when Hon'ble the Apex Court rendered a judgment in **Joginder Singh versus State of Punjab** (1) should be determined as cut off date is tenable or not? These questions raise another very pertinent issue (4) Whether the interpretation of law given, in a judgment by the Court of law, is to apply prospectively or retrospectively?

(2) Before I could express my humble opinion and answer the above said questions, it will be necessary to give a brief gist of facts from one of the petitions, which are being taken from **Criminal Misc. No. M-25340 of 2011** titled as "**Bakhtaur Singh v. The State of Punjab and Others**".

(3) Bakhtaur Singh was nominated as an accused in case FIR No. 9 dated 11.1.1991, registered at Police Station Dialpura, District Bathinda, under Sections 326, 324, 323, 148 and 149 IPC. Vide judgment dated 11.9.1999, the trial Court held the petitioner guilty for the offence under Section 326 read with Section 149 IPC and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 500, in default whereof to further undergo rigorous imprisonment for a period of three months, besides there being lesser sentence for other offences.

(4) Aggrieved against the same, the petitioner had filed an appeal. The Court of Additional Sessions Judge, Bathinda, vide its judgment dated 3.5.2002, upheld his conviction for all the offences for which the trial Court had convicted him, but reduced his sentence, under Section 326 read with Section 149 IPC, from two years rigorous imprisonment to that of one and a half year. Still feeling dissatisfied with the findings, the petitioner has filed a Criminal Revision No. 896 of 2002 in this Court, wherein he was acquitted of offence under Section 326 IPC and other offences but his conviction was upheld for offence under Section 323 IPC and he was ordered to undergo rigorous imprisonment for a period of six months.

(1) 2001(4) RCR (Crl.) 341

(5) The petitioner still proceeded further and filed a Special Leave Petition (Criminal) No. 7261 of 2010 before Hon'ble the Apex Court, but the same was dismissed on 22.7.2011.

(6) Now the present petition is for grant of special remissions granted from time to time by the State during the period he remained on bail.

(7) The case of Bakhtaur Singh has been taken as an example because herein the sentence awarded is less than that awarded in other cases. As stated earlier, the petitioner was initially convicted for the offence under Section 326 read with Section 149 IPC.

(8) In other connected cases, the petitioners have been convicted for the offences of rape, culpable homicide not amounting to murder etc. and the sentence, so awarded, vary from seven years to ten years.

(9) The State of Punjab had issued various notifications dated 11.11.1989, 5.4.1992, 27.1.1994, 6.3.1995, 18.12.1996, 14.2.1997 and 14.8.1997 and so on till the year 2001 granting remissions for the period varying from four months to one year. Details of these notifications till year 1997 have been given in para No.7 of *Joginder Singh's case (supra)*.

(10) Resultantly, the convicts, whose sentences were either suspended or who were granted bail, were released from the Jail, on their return, after decision of appeal or revision, in pursuance of notifications issued from time to time till year 2001, granting benefit of remissions.

(11) In few cases, the convicts either on surrender or after arrest were returned by Jail Authorities, on the gate of Jail, as having completed sentence, without undergoing substantial sentence, in few cases undergoing just few days.

(12) This issue was brought to the notice of the Court and the matter went upto Supreme Court. It pricked the conscientious of Hon'ble the Apex Court and it went to the extent of saying that release of convicts in the above manner amounted to mockery of justice. This issue was dealt in detail in *Joginder Singh's case (supra)* wherein their Lordships relying upon **State of Haryana and Others versus Mohinder Singh (2)** brought

out the distinction between parole, furlough and bail. It was observed that while on parole/furlough, the petitioner is undergoing sentence, whereas bail is consequence of suspension of sentence, therefore, convict is neither entitled to nor can be granted benefit of remissions under notifications issued by the State, while on bail.

(13) Leaned counsel for the petitioners, in support of their submissions, have placed reliance upon the order (Annexure P4) dated 25.1.2008, passed by a Co-ordinate Bench of this Court in **Criminal Writ Petition No. 1130 of 2007 titled as “Nachhattar Singh v. State of Punjab and Others**, operative portion whereof reads as under:-

“Learned counsel for the petitioner, however, submitted that even according to reply filed by the respondents, the petitioner is entitled to benefit of remissions ordered before 11.9.2001, the date of decision of Hon’ble Apex Court in case of Joginder Singh’s case (supra). There is no dispute about it and even learned Assistant Advocate General appearing for the State has no objection to the same.

In the light of what has been observed above, this petition is partly allowed. The petitioner shall be entitled to benefit of the remissions granted by the State of Punjab before 11.9.2001 but he would not be entitled to benefit of remissions granted on or after 11.9.2001.”

(14) A perusal of the same would reveal that this order cannot be made basis of an interpretation of any proposition of law as it is result of the concessions made by the State in its reply. Thus, this Court cannot rely upon the same to grant relief sought to the petitioners as it postulates no proposition of law.

(15) Similarly, another Co-ordinate Bench of this Court, in the order (Annexure P3) dated 24.4.2008 passed in **Criminal Writ Petition No. 1398 of 2007 titled as Mohan Singh v. State of Punjab and Another**, had ordered, on the basis of concessions made by the State, that

the convict is entitled to benefit of remissions granted considering the period while he was on bail before 11.9.2001. The concluding portion of this order reads as under:-

“Learned counsel for the petitioners states that the petitioner is claiming the benefit of remissions granted during the periods while he was on bail till before 11.09.2001 i.e. till before the date of aforesaid judgment of the Hon’ble Apex Court.

In view of the fact that the respondents in their reply have themselves admitted that the petitioner is entitled to benefit of remissions granted by the Government till before 11.09.2001, the petitioner has to succeed to this extent.

In view of the aforesaid, the petition is allowed and it is ordered that the petitioner shall be entitled to benefit of remissions granted by the State of Punjab from time to time till before 11.09.2001 only, whereas the petitioner shall not be entitled to benefit of remissions granted on or after 11.09.2001.

(16) Similarly, in **Criminal Writ Petition No. 991 of 2006 titled as Jagdeep Singh v. State of Punjab and Others, decided on 5.7.2007** (Annexure P5), another Co-ordinate Bench of this Court, on the basis of concessions made by the Deputy Advocate General, for the State of Punjab, granted benefit of remissions till 11.9.2001 i.e. the date of decision of Hon’ble the Apex Court in **Joginder Singh’s case** (*supra*), concluding portion whereof reads as under:-

“Learned counsel for the petitioner, however, submitted that even according to reply filed by the respondents, the petitioner is entitled to benefit of remissions ordered till before 11.09.2001, the date of decision of Hon’ble Apex Court in the case of Joginder Singh (supra). There is no dispute about it and even learned Deputy Advocate General has no objection to the same.

For the reasons recorded above, this petition is allowed partly. The petitioner shall be entitled to benefit of the remissions granted by the State of Punjab till before 11.09.2001 but he would not be entitled to benefit of remissions granted on or after 11.09.2001.”

(17) However, to some extent, legal position for grant of benefit of notifications granting remissions to the accused on parole emerged in **Criminal Writ Petition No. 1702 of 2009 titled as Pali Singh alias Satpal Singh v. State of Punjab and Others decided on 25.1.2011**. In the said case, relying upon the orders passed in *Mohan Singh's* and *Jagdeep Singh's cases (supra)*, which were based on the concession made by the State in their reply, another observation made was that those accused, who have undergone substantial portion of their sentence are entitled to benefit of remissions, so granted under the notifications issued from time to time. The concluding portion of the order passed in *Pali Singh's case (supra)* reads as under:-

“Learned State counsel argued that in view of the decision of Hon’ble Apex Court in Crl. Appeal Nos.910/919 of 2001 titled as Joginder Singh vs. State of Punjab and others, petitioner is not entitled to the benefit of special remission. Undisputedly, FIR No.94 dated 12.11.1990 under Sections 307/34 IPC was registered against the petitioner and the petitioner was convicted and sentenced vide judgment of conviction dated 9.9.1996 and order of sentence dated 12.9.1996 by Additional Sessions Judge, Mansa. He was directed to undergo RI for seven years and to pay a fine of Rs.5,000/-, in default of payment of fine, to further undergo RI for six months. As per custody certificate (Annexure P-1), he has already undergone 11 months and 23 days of substantive sentence as on 14.12.2009.

Crl.W.P.No.991 of 2006 was preferred by Jagdeep Singh. While disposing of that writ petition, there was a reference of decision dated 11.9.2001 by Hon’ble Apex Court in Crl. Appeal Nos.910/919 of 2001 titled as Joginder Singh vs. State of Punjab and others. Ultimately, petition was allowed and benefit of remissions granted by the State of Punjab till before 11.9.2001 was granted. Crl.W.P. No. 1130 of 2007 was instituted by Nachhattar Singh and in that case also, judgment of Joginder Singh’s case (supra) was considered. Petitioner, as per custody certificate, had already undergone

9 months and 1 day and as per reply filed by the State, he had already undergone 1 year and 8 days till the filing of the reply, i.e., 15.11.2007. Court opined that said period cannot be said to be substantial part of imprisonment of 2 years. So, petitioner is not entitled to the benefit of other remissions after 11.9.2001 but held that he is entitled to the benefit of remissions granted by the State Government till before 11.9.2001.

Similar view was taken by the High Court while deciding Cr.W.P.No. 1398 of 2007 (Mohan Singh vs. State of Punjab and another) and Crl.W.P.No. 995 of 2009 (Jit Singh vs. State of Punjab and others). Annexures P-4 and P-5 are the copies of judgments passed in Crl.W.P.No.1398 of 2007 and Crl.W.P.No.995 of 2009, respectively. Benefit of remissions granted by the State of Punjab before 11.9.2001 was extended.

In the present case also, as per custody certificate (Annexure P-1), petitioner has already undergone 11 months and 23 days of substantive sentence as on 14.12.2009. Petitioner was also on bail during trial and pendency of appeal. Petitioner got special remissions granted by the State Government from time to time right from 1990 till the decision of appeal by the High Court on 27.7.2009, but the only grievance of the respondents is that petitioner has not undergone substantial part of substantive sentence.

In view of the aforesaid discussion, petition is allowed and it is ordered that petitioner shall be entitled to the benefit of remissions granted by the State Government from time to time till before 11.9.2001 only but he shall not be entitled to the benefit of remissions granted on or after 11.9.2001.”

(18) This Court fails to comprehend as to how and why the State could grant concession of remissions to those accused, who remained on bail till 11.9.2001 when specifically it was held in **Joginder Singh's case** (*supra*) that the accused are not entitled to the same.

(19) In Bakhtaur Singh's case, which has been taken as a lead case in the present bunch of petitions, the State has made the following preliminary submissions:-

- (1) That it is brought to the notice of this Hon'ble Court that the petitioner is undergoing rigorous imprisonment of 06 months and fine Rs.100/-, and in default of payment of fine, to further undergo RI for 01 month, in case FIR No. 09 dated 11-01-1991 U/s 326/324/323/148/149 IPC, PSDialpura. The petitioner has undergone actual sentence as on 09-09-2011 as per details given below:-

	Years	Months	Days
Undertrial Nil to Nil Conviction	00	00	00
03-05-02 to 16-05-02	00	00	13
07-08-10 to 07-09-10	00	01	00
30-08-11 to 09-09-11	00	00	09
Total	00	01	22

*That the petitioner has undergone only 01 month 22 days of actual sentence, whereas he was sentenced to undergo 06 months RI and pay fine of Rs. 100 and in default to further undergo RI for 01 month. Therefore, the petitioner has not undergone substantial portion of sentence as envisaged by Apex Court (2001(4) RCR (Criminal) (341). Copy of judgment attached as **Annexure R-I** and custody certificate is attached as **Annexure R-II**"*

(20) The word "substantial part of sentence" occurred in para No. 9 of **Joginder Singh's case** (*supra*), which reads as under:-

"9. With respect, we are unable to agree with the learned counsel for the sad 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 (supra). 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 judgments 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. (emphasis supplied)"

(21) From the above, it is apparent that the accused, who has not undergone substantial part of sentence, cannot take advantage of the remissions so granted by the notifications, at the same time it has been wrongly and conversely interpreted in favour of the convict without making reference to the concluding portion of the judgment rendered in **Joginder Singh's case (supra)**, which reads as under:-

"14. For the reasons stated above, the judgment of the High Court is set aside. We allow the appeals and also set aside the letter of the 2nd Respondent herein dated 18th of September, 1998 addressed to the CJM and direct the said respondents to serve the remainder period of their sentence. We make it clear if during the period of serving their sentence any fresh remission notification is issued by the concerned Government, the same will be made applicable on terms and conditions enumerated in the said notification if it is applicable to the said respondents. The appeals are accordingly allowed."

(22) The clear mandate of law laid in **Joginder Singh's case (supra)** is that the accused, while on bail, will not be entitled to benefit of remissions. The benefit, if any, shall accrue only to those accused who are

actually undergoing their sentence. The accused who are on bail and enjoy their liberty outside the jail, without undergoing any period of sentence, are not entitled to draw the benefit of remissions, in case same is allowed, the phrase used in ***Joginder Singh's case*** (*supra*) that “it would reduce the Criminal Justice System to mockery” would become true.

(23) To elucidate in my own words, reference can be made to the provisions of Section 389 Cr.P.C., which envisage suspension of sentence by the Appellate Court. Thus, the Code of Criminal Procedure, 1973, does not envisage bail by the Appellate or Revisional Court but suspension of sentence. Hence, bail is nothing but a natural corollary or outcome of an order of suspension of sentence. Once the sentence has been suspended, there is no other inference except to conclude that the sentence has stopped from running. Thus, to grant remissions to those accused, whose sentence has stopped to run and is not undergoing the sentence will be travesty of justice. As held in ***Joginder Singh's case*** (*supra*), grant of remissions to accused, who are on bail, will take away the impact and effect of Criminal Justice System. Neither it will have the requisite deterrence nor would promote goal of reformation. As a result of the above discussion, the questions, formulated above by this Court, are answered against the petitioners and it is held that no convict who remained on bail, as a result of suspension of sentence, is entitled to any benefit of remissions granted by the State before or after 11.9.2001. The benefit of remissions can only be granted to the accused/convicts taking into consideration actual period undergone by them in the Jail. It is further held that since the orders (Annexures P2 to P5), passed by various Co-ordinate Benches of this Court, are based on the concession made by the State, they propound no position of law. Furthermore the stand taken by the State that those accused who have undergone substantial period of their sentence, before 11.9.2001, shall be entitled to benefit of remissions, granted under various notifications, is also not tenable as same is contrary to enunciation of law made in ***Joginder Singh's case*** (*supra*).

(25) Hence, all the petitions are hereby dismissed. The Director General (Prisons), Punjab and Haryana, are directed to clarify the matter, in terms of what has been held above.

J.S. Mehndiratta