

Sikkim Prison Manual 2010

CHAPTER XVIII

PREMATURE RELEASE

18.01

The primary objective underlying premature release is reformation of offenders and their rehabilitation and integration into the society, while at the same time ensuring the protection of society from criminal activities. These two aspects are closely interlinked. Incidental to the same is the conduct, behaviour and performance of prisoners while in prison. These have a bearing on their rehabilitative potential and the possibility of their being released by virtue of remission earned by them, or by an order granting them premature release. The most important consideration for premature release of prisoners is that they have become harmless and useful member of a civilized society. For this purpose of recommending the premature release of prisoner a Sentence Review Board should be constituted to advise the Government for release of prisoner and the procedure thereof in a prescribed manner under this Act or rule made thereunder.

18.02

The Sentence Review Board shall consists of the following permanent body to review the sentence awarded to the prisoners and for recommending premature release in appropriate cases.

1. Principal Secretary, Home Department - Chairman
2. Law Secretary / Legal Remembrancer - Member
3. Head of Prisons Department - Member
4. A senior officer nominated by DGP of the State - Member

5. A senior officer nominated by Head of Prisons - Member from his Department

6. District Magistrate – Member.

18.03

The cases put forward to the Sentence Review Board shall be reviewed even when one or more members of the Board are not able to attend the meeting or when there is a vacancy of the Board. The quorum shall consist of four members and the Board shall not take any decisions if the quorum is not complete.

18.04

The State Sentence Board shall meet at least once in a quarter at the State Head Quarters on a date to be notified to its members at least ten days in advance by the Deputy Inspector General / Sr. Superintendent of Prison. The notice of such meeting shall be accompanied by complete agenda papers. 85

18.05

However, the Chairman of the Board can convene a meeting of the Board more frequently even at short notices, if necessary.

18.06

The functions of the Review Board shall be: -

- (i) To review cases of inmates
- (ii) To evaluate inmates response to imprisonment, training and treatment.
- (iii) To recommend to Government: - (a) conditional release (b) unconditional release (c) release on grounds of de mercy ELIGIBILITY FOR PREMATURE RELEASE

18.07

The following category of convicted prisoner shall be eligible to be considered for premature release by the State Sentence Review Board.

(1) Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A of Criminal Procedure Code, 1973 shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 (fourteen) years of actual imprisonment, i.e. without remission. It is, however, clarified that completion of 14 (fourteen) years in prison by itself would not entitle a convict to automatic release from the Prison and the State Sentence Review Board shall have the discretion to release a convict, at an appropriate time in all cases considering the circumstances on which the crime was committed and other relevant factors namely: - (a) whether the convict has lost his potential for committing crime considering his overall conduct in prison during the 14 (fourteen) year incarceration; (b) the possibility of reclaiming the convict as a useful member of the society; and (c) socio-economic condition of the convict's family.

(2) In no case, the total period of incarceration including remission shall exceed twenty years.

(3) Section 433A of the Code of Criminal Procedure, 1973 was enacted to deny premature release before completion of 14 (fourteen) years of actual imprisonment to such persons who have been sentenced to imprisonment for life on being convicted for an offence for which the death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted into one of imprisonment for life under section 433 of the Code. With this category a reasonable classification can be made on the basis of the magnitude of brutality and gravity of the offence for which the

convict was sentenced to life imprisonment. Certain categories of convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 (twenty) years including remission. The period of incarceration inclusive of remission in such cases should not exceed 25 (twenty five) years. Following categories of cases which are not to be taken as exhaustive but illustrative may kept in view, namely: - (a) Convicts who have been imprisoned for life for murder in heinous cases such as murder with rape, murder with dacoity, murder involving an offence under Protection of Civil Rights Act, 1955, murder for dowry, murder of a child below 14 (fourteen) years of age, multiple murder, murder committed after conviction while inside the prison, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty; (b) Gangsters, contract killers, smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-medication and with exceptional violence or perversity; (c) Convicts whose sentence has been commuted to life imprisonment.

(4) All other convicted male prisoner not covered by section 433 A of Criminal Procedure Code, 1973 undergoing the sentence of life imprisonment would be entitled to be considered for premature release after they have served at least 14 (fourteen) years of imprisonment inclusive of remission but only after completion of 10 (ten) years actual imprisonment i.e. without remission. 86

(5) The female prisoners not covered by section 433 A Criminal Procedure Code, 1973 undergoing the sentence of life imprisonment would be entitled to be considered for premature release after they have served at least 10 (ten) years of imprisonment inclusive of remissions but only after completion of 7 (seven) years actual imprisonment i.e. without remission.

(6) Cases of premature release of persons undergoing life imprisonment before completion of 14 (fourteen) years of actual imprisonment on grounds of terminal illness or old age, etc. can be dealt with under the provisions of Article 161 of the Constitution and old paras 3, 4 and 3.5 are therefore redundant and omitted.

(7) Women offenders sentenced for infanticide; their cases should be reviewed immediately on admission in prison and they should be sent to the care of voluntary organizations of good repute for a reasonable period of time.

(8) Women offenders who have committed crime under compulsion and / or under social and cultural pressures: their cases should also be reviewed immediately on admission in prison for sending them to the care of voluntary organizations of good repute.

(9) Women offenders sentenced to life imprisonment: on completion of seven years of imprisonment, including remission, except those covered under Section 433 of Cr. P.C. 1973, whose cases will be considered only after completing 14 (fourteen) years of actual imprisonment.

(10) Non-habitual male and adolescent offenders (other than those sentenced to imprisonment for life), sentenced to undergo more than one year of imprisonment, on undergoing half of their substantive sentence, including remission, subject to condition that they shall not be actually released unless they have undergone at least one year of sentence including remission.

(11) Non-habitual women offenders (other than those sentenced to imprisonment for life), sentenced to a term of imprisonment of more than one year, on undergoing half of their substantive sentence, including remission, whichever is less. This would be subject to the condition that they shall not be actually released unless they have undergone at least one year's imprisonment including remission.

(12) Habitual offenders (other than those sentenced to imprisonment for life) sentenced to five years or more of imprisonment, on completion of two-third of their sentence including remission, subject to the condition that they shall not be released unless they have undergone at least five years of imprisonment, including remission.

13) Prisoners convicted of offences such as rape, dacoity, terrorist crimes, kidnapping, smuggling (including those convicted under NDPS Act), Prevention of Corruption Act, Immoral Traffic Prevention Act, offences against State, and undergoing life imprisonment after completion of 14 (fourteen) years of sentence inclusive of remission.

(14) Prisoners convicted of offences mentioned in para (viii), other than those sentenced to imprisonment for life, or to a term of imprisonment of 5 (five) years and above, after completing three-fourths of the sentence including remission, subject to the condition that they shall not be released unless they have undergone at least 5 (five) years of sentence including remission.

(15) Old (above 65 years of age) and infirm offenders (other than those serving life imprisonment) sentenced to imprisonment for one year and more on completion of one third of the substantive sentence including remission, subject to the condition that they shall not be actually released unless they have undergone at least one year of imprisonment including remission.

(16) Offenders certified by a designated Medical Board to be suffering from incurable diseases likely to prove fatal, whenever such a situation arises.

(17) Convicted prisoners undergoing the sentence of life imprisonment on attaining the age of 65 (sixty five) years provided he

the prisoner or not and in either case it shall be supported by adequate reasons.

18.10

The Superintendent of Prison shall make reference to the District Magistrate / Superintendent of Police of the District where the prisoner was ordinarily residing at the time of the commission of the offence for which he was convicted and sentenced or where he is likely to resettle after his release from prison. However, in case the place where the prisoner was ordinarily residing at the time of commission of the offence is different from the place where he committed offence, a reference shall also be made to the District Magistrate / Superintendent of Police to express his views in this regard to the desirability of the premature release of the prisoner.

18.11

On receipt of the reference the concerned District Magistrate / Superintendent of Police shall cause an inquiry to be made in the matter through senior police officers of appropriate rank and based on his own assessment shall make his recommendations. While making the recommendations the District Magistrate / Superintendent of Police shall not act mechanically and oppose the premature release of prisoner on untenable and hypothetical grounds apprehensions. In case the District Magistrate / Superintendent of Police is not in favour of the premature release of the prisoner, he shall justify the same with cogent reasons and material reasons. He shall return the reference to the Superintendent of the concerned prison not later than 30 (thirty) days from the receipt of the reference.

18.12

The Superintendent of Prison shall also make a reference to the Probation Officer In-Charge of the District and shall forward to him a copy of his notice. On receipt of the reference, the Probation Officer

/ she has served at least 7 (seven) years of imprisonment including the remissions.

(18) The convicted prisoner undergoing the sentence of imprisonment for life and who are suffering from terminal diseases like cancer, T.B., AIDS, irreversible kidney failure, cardio respiratory disease, leprosy and any other infections disease, etc. as certified by a Board of Doctors on completion of 5 (five) years of actual sentence or 7 (seven) years of sentence including remission. 87 PROCEDURE FOR PROCESSING OF THE CASES FOR CONSIDERING OF THE REVIEW BOARD

18.08

Every Superintendent of Prison who has prisoners undergoing sentence of imprisonment for life, shall initiate the case of the prisoner at least 6 (six) months in advance of the date when the prisoner would become eligible for considering of premature release as per the criteria laid down by the State Government in that behalf.

18.09

The Superintendent of Prison shall prepare a comprehensive note in each case giving out the family and society background of the prisoner, the offence for which he was convicted and sentenced and the circumstances under which the offence was committed. He will also reflect fully about the conduct and behaviour of the prisoner in the prison during the period of his incarceration, behaviour conducted pattern and prison offences, if any, committed by him and punishment awarded to him for such offence(s). A report shall also be made about his physical or mental health or any serious ailment with which the prisoner is suffering entitling his case special consideration for his premature release. The note shall also contain recommendation of the Prison Superintendent whether he favours for the premature release of

In-Charge shall either hold an enquiry, or get an inquiry done, for the desirability of premature release of the prisoner taking into the consideration his family and social background, his acceptability by his / her family members and the society, prospects of the prisoner for rehabilitation and leading a meaningful life as a good citizen. He will not act mechanically and recommend each and every case for premature release. In either case he should justify his recommendations by reasons material. The Probation Officer shall furnish his report / recommendations to the Superintendent of Prison not later than 30 (thirty) days from the receipt of the reference.

18.13

On receipt of the report / recommendations of the District Magistrate / Superintendent of Police and the Probation Officer, the Superintendent of Prison shall put up the case to the next higher authority of Prison at least 3 (three) month in advance of the proposed meeting of the Sentence Review Board. The said authority shall examine the case bearing in mind the report / recommendations of the Superintendent of Prison, District Magistrate / Superintendent of Police and the Probation Officer and shall make his own recommendations with regard to the premature release of the prisoner or otherwise keeping in view the general or special guidelines laid down by the Government of the Sentence Review Board. Regard shall also be had to various norms laid down and guidelines given by the Apex Court and various High Courts in the matter of premature release of prisoner shall also be given due consideration. 88
PROCEDURE AND GUIDELINES FOR THE REVIEW BOARD

18.14

Chairman shall convene a meeting of the Sentence Review Board on a fixed date and time at the State Head Quarters and advance notice of which shall be given to the Chairman and Members of the Board at least ten days in advance of the scheduled meeting and

it shall accompany the complete agenda papers i.e. the note of the Superintendent of Prison, recommendations of the District Magistrate / Superintendent of Police, Probation Officer and that of the superior prison authority along with the copies and documents, if any.

18.15

A meeting shall ordinarily be chaired by the Chairman and if for some reasons he is unable to be present in the meeting it shall be chaired by the Secretary, Law cum Legal Remembrancer. The Member Secretary shall present the case of each prisoner under consideration before the Sentence Review Board. The Board shall consider the case and give its view. As far as practicable, the Sentence Review Board shall endeavor to make unanimous recommendation. However, in case of dissent, the majority view shall prevail and will be deemed to be decision of the Board. If equal number of members is of opposing views the decision of the Chairman will be final.

18.16

While considering the case of premature release of a particular prisoner, the Board shall keep in view the general principles of amnesty remission of the sentences as laid down by the State Government or by Courts as also the earlier precedents in the matter. The paramount consideration before the Sentence Review Board being the welfare of the prisoner and the society at large. The Board shall not ordinarily decline a premature release of a prisoner merely on the ground that the police has not recommended his release on certain farfetched and hypothetical assumption. The Board shall take into account and the circumstances in which the offence was committed by the prisoner and whether he has the propensity and is likely to commit similar or other offence again.

18.17

Rejection of the case of the prisoner for premature release on one or more occasion by the Sentence Review Board will not be a bar for reconsideration of his case. However, the reconsideration of the case of a convict already rejected shall be done only after the expiry of a period of one year from the date of last consideration of his case.

18.18

The recommendations of the Sentence Review Board shall be placed before the competent authority without delay for consideration. The competent authority may either accept the recommendations of the Sentence Review Board or reject the same on the grounds to be stated or may ask the Sentence Review Board to reconsider a particular case. The decision of the competent authority shall be communicated to the concerned prisoner and in case the competent authority has ordered for his premature release, the prisoner shall be released forthwith with or without condition.

CHAPTER XX

LEAVE AND EMERGENCY (SPECIAL) LEAVE

20.01

Leave and Special leave to inmates are progressive measures of correctional services. The release of a prisoner on leave not only saves him from evils of incarceration but also enables him to maintain social relations with his family and community. It also helps him maintain and develop a sense of self confidence.

20.02

The objective of releasing a prisoner on leave are: - 92 (i) to enable the inmate to maintain continuity with his family life and deal with family matters. (ii) to save him from the evil effects of continuous prison life. (iii) to enable him to maintain and develop self confidence. (iv) to enable him to develop constructive hope and active interest in life. LEAVE.

20.03

Leave is not a right but a concession which may be granted to convicts. The leave is subject to cancellation. The State Government and the Deputy Inspector General / Sr. Superintendent of Prisons reserves the right to debar / withdraw any prisoner from the concessions of leave. ELIGIBILITY.

20.04

The following categories of prisoners shall NOT be eligible for being released on leave. (i) Prisoners whose presence is considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate / Superintendent of Police. (ii) Prisoners who are considered dangerous or who have been involved in serious prison violation like assault, out break, riot, meeting, escape, strike, etc. (iii)

Offenders classified as habituals. (iv) Prisoners convicted for offences such as dacoity, terrorist crimes, kidnapping, smuggling, NDPS Act and foreigners. (v) Prisoners committed to prisons in default of furnishing security to keep the peace or good behaviour. (vi) Prisoners suffering from unsoundness of mind (if not certified by the Medical Officer to have recovered). (vii) Prisoners whose work and conduct are not good.

20.05

The Deputy Inspector General / Sr. Superintendent of Prisons shall refer to Government, the cases of the under mentioned categories of prisoners when they apply for leave: - (i) Persons convicted if offences against law relating to a matter to which the executive power of the Union Government extends. (ii) Persons whose release on leave is likely to have repercussion elsewhere in the country.

20.06

Prisoner may be entitled to 16 (sixteen) days in one or two spells during a year or the completion of half of his sentence or a minimum period of three years of imprisonment, whichever is less. Such a leave may be earned by a prisoner on the basis of his good behaviour and conduct in the prison.

20.07

The eligibility for leave should be regulated as follows: -
SENTENCE WHEN DUE FOR FIRST RELEASE ON LEAVE
WHEN DUE FOR 2ND RELEASE WHEN DUE FOR
SUBSEQUENT RELEASE DURATION OF LEAVE Not exceeding
five years On completion of one year of actual imprisonment – to be
counted from the date of admission to prison as convict After
completion of six months of actual imprisonment – to be counted
from the date his last return from leave. After completion of six

months of actual imprisonment – to be counted from the date his last return from leave. 16 (sixteen) days. Exceeding five years but not more than fourteen years On completion of two years of actual imprisonment – to be counted from the date of admission to prison as convict After completion of one year of actual imprisonment – to be counted from the date of his last return from leave After completion of six months of actual imprisonment – to be counted from the date of his last return from leave 16 (sixteen) days during the first five years of confinement and 20 (twenty) days for the rest of term. 93 Prisoners sentenced to life or imprisonment exceeding fourteen years On completion of three years of actual imprisonment – to be counted from the date of admission to prison as convict. After completion of one year of actual imprisonment – to be counted from the date of his last return from leave. After completion of six months actual imprisonment – to be counted from the date of his last return from leave. 16 (sixteen) days during the first five years of confinement and 20 (twenty) days for the rest of term.

20.08

For calculation of sentences of the purposes of eligibility for leave “Sentence” shall mean a sentence as finally fixed on appeal or revision or otherwise and includes an aggregate or more sentences than one. Sentences in default of fine shall not be taken into consideration while fixing eligibility for being released on leave.

20.09

Leave should not be granted to a prisoner within a period of six months from the date of his surrender after the expiry of emergency leave.

20.10

A register shall be maintained in a prescribed form in which all cases of prisoners eligible for leave shall be posted three months in

advance of the date on which they become eligible for being released on leave. On due dates all such cases shall be placed before the classification Committee.

20.11

The Committee shall examine the case of each prisoner who is eligible to leave to find out whether the prisoner is fit for being released on leave. His case will be considered on the basis of his: - (a) Conduct (b) Work (c) Progress achieved in various spheres (d) Efforts for introspection and self improvement (e) Attitude towards family and community (f) The manner in which the previous period of leave or emergency leave was utilized

20.12

Prisoners whose conduct has been found to be unsatisfactory or prisoners who are punished for prison offences shall be considered as unfit for being considered for release on leave.

20.13

A prisoner in whose case the Classification Committee decides to recommend for release on leave should be allowed to submit his application to the Deputy Inspector General / Sr. Superintendent of Prisons in prescribed form. In the application, he shall state, amongst other things, the name and address of his relative or friend with whom he wishes to stay during his leave period.

20.14

A copy of this application shall be forwarded to the District Superintendent of Police who in turn will forward the papers to the District Magistrate, alongwith the requisite information and his recommendations. The Police authorities shall specially state whether the relatives or friends of the prisoner are willing to keep him during the leave period. If the District Superintendent of Police / District

Magistrate does not recommend release on leave, detailed reasons thereof shall be given by him. The recommendation shall be forwarded to Deputy Inspector General / Sr. Superintendent of Prisons. The police of the concerned District shall submit its report through the D.M. within four weeks of receipt of such reference.

20.15

If on the receipt of the recommendations of the District Magistrate / Superintendent of Police the Deputy Inspector General / Sr. Superintendent of Prisons is satisfied that there is no objection to grant the leave applied for, he shall make an order for release of the prisoner on leave for a maximum of 16 (sixteen) days and suspension of the execution of sentence on such condition as may be specified in the order.

20.16

The following conditions should invariably be laid down in addition to such other conditions if any, as may be deemed necessary.

94

- (i) That the prisoner may give cash security for the amount ordered by the Deputy Inspector General / Sr. Superintendent of Prisons. The wages earned by the prisoner may be taken as cash surety.
- (ii) That the said prisoner shall reside at the place designated by the Deputy Inspector General / Sr. Superintendent of Prisons and shall not go beyond the limits of that place.
- (iii) That the said prisoner shall be of good behaviour and shall not commit any offence.
- (iv) That the prisoner shall not associate with bad characters or lead a dissolute life.
- (v) That the prisoner shall be liable to be recalled immediately to prison in case he violates any of the conditions.

- (vi) That the prisoner shall surrender himself to the Superintendent of the Prison on expiry of the leave granted or on recall.
- (vii) Panchayat of the home village of the prisoner may stand surety for him.
- (viii) Family members / relatives / friends of the prisoner, if of good antecedents, may stand surety for him.

20.17

If the prisoner commits serious violation of prison discipline after the dispatch of the application and prior to his actual release on leave from the prison, the Superintendent is authorized to postpone his release on leave. In such case the Superintendent shall forward his report alongwith the recommendations to the Deputy Inspector General / Sr. Superintendent of Prisons for further orders.

20.18

On the application of the prisoner, the Deputy Inspector General / Sr. Superintendent of Prisons may postpone the prisoners release on leave, so that the leave period may coincide with agricultural operations like sowing, harvesting or repair of their homes, attending marriage in his family, etc.

20.19

Prior to being released on leave, the inmate should be oriented and prepared for his leave.

20.20

On receipt of the orders of the Deputy Inspector General / Sr. Superintendent of Prisons, the prisoner shall be released on leave, provided he executes the necessary bond and signs the required conditions. At the time of release the prisoner should be supplied with an identification card and a certificate of release on leave. The

prisoner should be ordered to report at the prison on the due date before lock-up.

20.21

Release of prisoner on leave should be intimated to the following authorities: -

- (i) The District Magistrate and the District Superintendent of Police of the District within whose jurisdiction the prisoner proposed to spend his leave.
- (ii) The District Magistrate / District Superintendent of Police or the Deputy Inspector General of Police within whose jurisdiction the prisoner was convicted.
- (iii) The District Magistrate / Superintendent of Police or the Deputy Inspector General of Police (Range) from whose jurisdiction the prisoner hails.

20.22

The prisoner will himself meet all expense, including those on journey to and from the place of his stay, during leave.

20.23

The period of release shall count towards sentence.

20.24

Prisoners are not allowed to apply for extension of leave period.

20.25

Prisoner returning from leave shall not be admitted after lock-up.

20.26

If a prisoner released on leave does not return to the prison on the due date, police authorities shall immediately be telegraphically requested to arrest and bring him back to the prison. In each case of late surrender or breach of any of the conditions of leave, the Superintendent shall hold an inquiry and put it up to the Deputy Inspector General / Sr. Superintendent of Prisons.

20.27

When a prisoner returns from leave, a report in the prescribed form shall be forwarded to the Deputy Inspector General / Sr. Superintendent of Prisons. So also intimation to the 95 District Magistrate / Superintendent of Police / Deputy Inspector General of Police (Range) etc. shall be sent.

20.28

On return from leave, the prisoner response to the release on leave shall be evaluated. All these observation shall be kept in the inmates file.

20.29

A leave register showing details of release and surrender, etc. shall be maintained.

20.30

The opinion of the District authorities should be obtained only for the first release of a prisoner on leave. For the second and subsequent releases no such opinion would be necessary provided that the prisoner had surrendered in time and there had been no adverse report from the police about the behaviour of the prisoner during the earlier leave period.

20.31

Prisoners whose conduct is found unsatisfactory should not be considered for this concession. SPECIAL (EMERGENCY) LEAVE

20.32

The head of the Prisons Department will be the competent authority for granting release on special leave for a maximum period of Fourteen days at a time. For the extension of such leave beyond 14 (fourteen) days, order of the State Government will be obtained by the Head of the Prison Department.

20.33

Release of prisoner for special leave on emergent grounds may be ordered to: -

- (i) facilitate the inmates presence in his family during a period of grave emergency like death or serious illness of his father / mother / brother / sister / spouse / children and
- (ii) to facilitate the inmate in specialized treatment for diseases like Cancer, AIDS or as recommended by the State Medical Board outside the State.
- (iii) marriage of brother / sister / children.

20.34

Prisoners who are eligible for release on leave should ordinarily be considered as eligible for emergency release.

20.35

Special leave may be granted after verifying the facts of the case by contacting the concerned Police authority by the quickest mode of communication available.

20.36

The procedures for applying sureties, release return, etc. for special leave shall be the same as those laid down for leave. However, in case of prisoners required to be released for medical reasons, a certificate from the Medical Officer and Chief Medical Officer should be attached to the applications.

20.37

Prisoners who apply for emergency release on false grounds or who abuse the concession or commits breaches of any of the conditions of emergency releases will be liable to be punished.

20.38

A prisoner applying for special leave on health grounds shall stay in a T.B. sanatorium or hospital or any other specified place in the interest of his health.

20.39

The period of release on special leave will be treated as out days or sentence suspended for all purpose and for the other leave will be counted as sentence served.

20.40

If a prisoner released on emergency grounds, wants extension of the period, he may apply to the Deputy Inspector General / Sr. Superintendent of Prisons in good time. For an extension of such leave beyond 14 (fourteen) days, the Deputy Inspector General / Sr. Superintendent of Prisons shall obtain the order of the State Government.

20.41

If orders authorizing the extension are not received before the expiry of his special leave period, the prisoner shall report back to prison.