14. The activity to be covered by the term "business" as used in section 2(d) of the Act, need not be profit oriented. The term "business" as used in the Act does not admit of narrow interpretation. It has a wider connotation. The activity of the District Employment Officer is an occupation, though not with a motive to make profit. It shall, therefore, be reasonable to infer that the building in dispute is not residential in terms of Section 2(d) of the Act inasmuch as it had been let out and is being used solely for the purpose of running the office of the District Employment Officer.

15. In the result, the revision fails and is dismissed with no order as to costs.

PREM CHAND JAIN, A.C.J.—I agree.

H.S.B.

Before M. M. Punchi, J.

RAM PHAL,—*Petitioner.*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Criminal Writ Petition No. 394 *of* 1985

May 23, 1985

Constitution of India 1950—*Article* 161—*Orders promulgated thereunder by the Government of Haryana regarding remission of sentence—Punjab Jail Manual—Paragraphs* 631 *to* 650—*Prisons Act* (9 of 1894)—*Section* 2—*Prisoners convicted before the date of the visit of the Minister but subsequently released on bail entitled to remission under orders of the State Government if they surrender in jail for undergoing the unexpired portion of theri sentence—Accused convicted by Trial court but released on bail the same day—Bail continuing during pendency of appeal and revision petition in High Court—Revision petition dismissed—Convict taken in custody long after the dismissal of the revision petition in pursuance of a warrant of arrest—Minister for Jails visiting the jail when the convict was on bail—Such convict—Whether entitled to remission—Surrender—Meaning of.*

Held, that before the Chief Judicial Magistrate, on the receipt of intimation from the High Court ventures to issue re-arrest warrants

and sets his process in motion, it is reasonable to expect of the convict to voluntarily surrender before Jail Authorities or the Chief Judicial Magistrate yielding himself up to the Court verdict. It is only then that it can be said that he surrendered timely and voluntarily so as to claim for himself the benefit of such remissions of punishment, which he would have earned had he been in Jail and not on bail, when the Governor or Minister paid visit to the jail, where he was supposed to be confined. That seems to be the only way to effectuate the spirit, intendment and purpose of the beneficence of Government orders when placed alongside the court's verdict. As is clear from the expression 'remission only if they surrender in the jail for undergoing the unexpired portion of their sentence', the remission is conditioned to the surrender. Inevitably, it has to be voluntary and timely surrender. By no stretch of reasoning can it be held that a re-arrest by process of Court tantamounts to surrender as envisaged. Equally, it cannot be said that one can surrender at a time of one's choosing-however remote and distant. 'Surrender' means to 'yield oneself up' which inevitably is an act volitional and obviously timely. Delayed surrender by a convict would obviously tend to obstruct and interfere with the administration of justice. Going or not going into jail at one's convenience is alien to the context of the Government orders promulgated under Article 161 of the Constitution of India. Jail sentence is not a business exercise or a debt which one can discharge whenever convenient. If the clamour of the society is that justice must be speedy, it does not only mean that Court's verdict should come out speedily. It sequally means that the sentence is carried out with logical speed. Thus, it inevitably has to be construed that surrender in jail by the convict for undergoing the unexpired portion of a sentence must be close to the heels of the court order, voluntarily and without demur.

... (Paras 4, 5 & 7)

PETITION UNDER ARTICLES 226 *of the Constitution of India praying that the record of the case be summoned and after perusal* :—

(*i*) *a writ in the nature of Habeas Corpus or* Mandamus *be issued commanding the respondents to set the detenue at liberty forthwith.*

(*ii*) *any other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case be issued.*

(*iii*) *the petitioner be ordered to be released on bail till the final decision of this writ petition.*

B. S. Malik, Advocate, *for the Petitioner.*

K. S. Saini, Advocate, for A.G. Haryana.

Ram Phal *v.* The State of Haryana and another
(M. M. Punchhi, J.)

JUDGMENT

M. M. Punchhi, J.

(1) Is the claim to remission towards prison sentence, derived in absentia while on bail, dependent on the voluntary surrender of a bailed out prisoner, is the crucial question which has cropped up for consideration in this criminal Writ Petition.

(2) The alleged detenu Rajinder Kumar was accused of an offence under section 16(1)(a)(i) of the Food Adulteration Act. He was tried in the Court of the Chief Judicial Magistrate, Jind and convicted and sentenced on 22nd October, 1981. On the same day, he was released on bail enabling him to file an appeal before the Court of Sesssions. The appeal, when filed, was dismissed on 21st December, 1982. He was on that day taken into custody. He then filed Criminal Revision No. 55 of 1983 before this Court. On 18th January, 1983, he was ordered by this Court to be released on bail to the satisfaction of the Chief Judicial Magistrate, Jind. On the requisite bond being executed, he was actually released from jail on 21st January, 1983 after having suffered 32 days of sentence. The revision petition was dismissed by this Court on 14th February, 1984, but sentence of imprisonment was reduced to six months' rigorous imprisonment. The ministerial re-arrest order was issued from this Court on 22nd March, 1984 to the Sessions Judge, Jind and a copy of the judgment and formal order, dated 14th February, 1984 was also issued to the Chief Judicial Magistrate, Jind for strict compliance requiring that Rajinder Kumar shall be forthwith arrested and committed to jail to undergo the remaining portion of his sentence and that bail order, dated 18th January, 1983 issued by this Court stood vacated. The detenu was arrested on 12th March, 1985 by the police under warrants of arrest issued for the purpose. It is plain from this data that the detenu after the dismissal of his revision petition by this Court on 14th February, 1984 remained at large for about 13 months and did not voluntarily surrender to undergo the remaining portion of the sentence. On his re-arrest, this petition has been filed by one Ram Phal, without disclosing his interest in the detenu, claiming that the detenu had in the meantime earned two special remissions totalling 180 days (6 months) and thus the act of detention of the detenu, dated 12th March, 1985 and/or his continued detention thereafer was illegal and in violation of his

fundamental rights under Article 14 and 21 of the Constitution. Thus a writ of the nature of *habeas corpus* or *mandamus* has been prayed for.

(3) The Inspector-General of prisons, Haryana in his affidavit and additional affidavit refuted the claim of the detenu by placing or record material to contend that special remissions whenever granted ensure to the benefit of persons already on bail only if they promptly surrender in jail for undergoing the unexpired portion of their sentence and not when the convict with State effort is re-arrested for the purpose.

(4) To appreciate the controversy, it would be prudent to take stock of the applicable law and the rules on the subject. Under Article 161 of the Constitution, the Governor of a State is empowered to grant remissions of punishment or to remit the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. In the instant case, the State Government exercised power under Article 161 of the Constitution and promulgated two orders, Annexures R.1 and R.2, on 18th January, 1982 and 3rd October, 1983, respectively. Relevant extracts of which are as follows :—

"Annexure R-1

ORDER OF THE GOVERNOR OF HARYANA

In exercise of the power conferred by Article 161 of the Constitution of India and subject to the following conditions, the Governor of Haryana hereby grants special remission of punishment to the following categories of prisoners to the extent noted against each who were convicted by various Courts situated in Haryana and confined in the District Jails, Bhiwani/Rohtak/Hissar, Borstal Jail, Hissar, Central Jail, Ambala, District Jail, Karnal and District Jail, Gurgaon on the occasion of the visit of the Jail Minister, Haryana to aforesaid jails on 28th December, 1981, 31st December, 1981, 1st January, 1982, 5th January, 1982 and 8th January, 1982, respectively:—

(1) Prisoners who have been undergoing sentence up to 2 years	...	15 days.

(2)	Prisoners who have been undergoing sentence of more than 2 years and up to 7 years	... 1 month.
(3)	Prisoners who have been undergoing sentence of more than 7 years	. 2 months.
(4)	All those prisoners who have been convicted before the aforementioned dates of visit of the Hon'ble Minister to the respective jails but subsequently released on bail shall be entitled to the remission only if they surrender in the jail for undergoing the unexpired portion of their sentence.	
(5)	* * *	
(6)	* * *".	

Annexure R-2

ORDERS OF THE GOVERNOR OF HARYANA

In exercise of the powers conferred by Article 161 of the Constitution of India and subject to the following conditions, the Governor of Haryana hereby grants special remission of 4 months punishment to the prisoners who were convicted by various Courts situated in Haryana and confined in the Borstal Jail, Hissar and Central Jail, Hissar on the occasion of the visit of the Jail Minister, Haryana to aforesaid jails on 14th August, 1983:—

All those prisoners who have been convicted before the aforementioned dates of visit of the Hon'ble Minister to the respective jails but subsequently released on bail shall be entitled to the remissions only if they surrender in the jail for undergoing the unexpired portion of their sentence.

* * *"

If one goes by English diction, the word 'remission' is understood in prison language to mean 'pardon' or forgiveness'. The concept

itself suggests an element of mercy-campassion. Innately, it is repugnant to any right to pardon or forgiveness. Yet, in a different context, especially in the Prisons Act, 1894 and the rules framed thereunder, there is something which can conveniently be called as systematic remission. And that is spelled out when it is co-related with the provisions of Prisoners' Act, 1900. In section 2 of the Prisons Act, 'convicted Criminal Prisoner' has been defined to mean any criminal prisoner under sentence of a Court or Court Martial and includes a person detained in prison under the provisions of Chapter-VIII of the Code of Criminal Procedure, 1882 (now 1973) or under the Prisoners' Act, 1871 (Now 1900). The definition encompasses the case of a convicted Criminal prisoner as one who is undergoing sentence or is detained in prison. Besides, the expression 'remission system' has been defined to mean the rules for the time being in force regulating the award of marks to and consequent shortening of sentences to prisoners in jail. Remission system works by a set of the rules. So far as the territory over which this Court exercises jurisdiction is concerned, these are available in Chapter-XX of the Punjab Jail Manual embodied in Paragraphs 631 to 650. A careful study of the rules of 'remission system' brings to the fore how remissions can be earned by a convict. There are cases in which ordinary remission may not be allowed to be earned as also by a convict having committed jail offences after admission to jail. There are rules for suspending the remission system as also their activation on re-admission. There are rules for the scale of award of remissions which is dependent on the prisoner's thoroughly good conduct and scrupulous attention to all prison's regulations as also for industry and on performance of the daily task imposed. Rules also prescribe scale of award of remission when a prisoner is unable to labour through causes beyond his control. Other rules are there for the regulation of the system as such and for the time and the period when remission is earned. On the convict's rendering special service, special remission can be earned. These are provided in Paragraph 644. Therein, even special remissions can be awarded by the Superintendent, Jail, the Chief Probation Officer and the Inspector-General of Prisons subject to an outer limit. These earned remissions or special remissions have an outer limit, inasmuch as the total remission awarded to a prisoner without the special sanction of the Local Government cannot exceed one-fourth part of his sentence but in very exceptional and suitable cases, the Inspector-General of Prisons may grant remissions amounting to not more than one-third of the total sentence. It is

thus plain from the reading of these rules that the remission system' regulates the award of marks to and the consequent shrotening of sentences of prisoners in a jail, mainly dependent on their own conduct and the approval they merit from the officers responsible for the upkeep of prisons. These officers being functionaries under the Prisons Act, though empowered to work the remission system, cannot by any stretch of imagination be taken to have been conferred with the power of pardon or forgiveness to a prisoner. That power inherently, constitutionally and rightly vests in the appropriate State Government and is kept exercised on the formal visits of the Governor or a Minister to jail, under provisions of the Constitution, though amusingly the Government of India,—*vide* letter No. 27/17/64-J-1 dated 1st July, 1966 has cautioned the State Governments in the following words:—

> "The grant of such special remission tends to interfere with the administration of justice as it unnecessarily curtails the sentence of all prisoners irrespective of their conduct and behaviour in the jail. It is felt that the practice of granting special remission of sentence to prisoners in connection with the formal visits of the Governor or a Minister to jail is not a desirable practice. The Government of India consider that the grant of such special remission to prisoners should be discouraged."

Yet the practice continues unabatedly. If reflects from Annexures R—1 and R—2 afore-extracted. Now if a special remission under Article 161 of the Constitution is pregnant with the element of forgiveness and pardon, ignoring the conduct and behaviour of prisoners in jail, then obviously if the instrument of pardon or forgiveness, imposes conditions, it has to be construed strictly and not liberally as the learned counsel for the petitioner would have it. Punishments may no longer be retributive and tend to be reformative, but these factors cannot be allowed to influence the plain instruments of remission given out by the State in exercise of its executive power. As is clear from the expression 'remission only if they surrender in the jail for undergoing the unexpired portion of their sentence', the remission is conditioned to the surrender. Inevitably, it has to be voluntary and timely surrender. By no stretch of reasoning can it be held that a re-arrest by process of Court tantamounts to surender as envisaged. Equally, it cannot be said that one can surrender at a time of one's choosing-however

remote and distant. 'Surrener' means to 'yield oneself up' which inevitably is an act volitional and obviously timely. Delayed surrender by a convict would obviously tend to obstruct and interfere with the administration of justice. Going or not going into jail at one's convenience is alien to the context of the orders, 'R—1 and R—2. Jail sentence is not a business exercise or a debt which one can discharge whenever convenient. If the clamour of the society is that justice must be speedy it does not only mean that Court's verdict should come out speedily. It sequally means that the sentence is carried out with logical speed.

(5) Interestingly, statistics gathered from this Court reveal that in convictions upheld or convictions made by this Court in the last 20 years, many convicts have not so far been re-arrested. There is a case each for the years 1965 and 1968 (number of convicts apart). Similarly, convicts have not been arrested in 3 cases of 1969, 7 cases of 1970, 12 cases of 1971, 19 cases of 1972, 23 cases of 1973, 19 cases of 1974, 19 cases of 1975, 7 cases of 1976, 28 cases of 1977, 66 cases of 1978, 110 cases of 1979, 90 cases of 1980, 58 cases of 1981, 65 cases of 1982, 188 cases of 1983, 83 cases of 1984 and 67 cases of 1985. Imaginably in all these yester years. Governors and Ministers must have paid visits to jails throwing out special remissions on the occasion of such visits. It is left to imagination that if the special remissions so piled up are not conditioned to 'voluntary surrender', convicts who successfully evaded re-arrest may have served their sentence while out of the confines of jail. Cool calculation might well be the reason for arrest-evasion. Where goes speedy justice then? Where is the recipient of pardon and forgiveness? From these factors and angularities, it inevitably have to be construed that the surrender in the jail by the convict for undergoing the unexpired portion of his sentence must be close to the heels of the Court order, voluntarily and without demur.

(6) An interesting example brought to the fore by the Inspector General of Prisons was the case of one Tuhi Ram who was sentenced to 4 years rigorous imprisonment by the Additional Sessions Judge, Bhiwani on 7th March, 1974. He remained in jail for 22 days and thereafter was released on bail pending decision of his appeal before this Court. His appeal was decided on 13th January, 1978 reducing the sentence to 2 years rigorous imprisonment. The convict surrendered in jail on 8th December, 1983 after about 6 years of the disposal of his appeal. The Inspector General of Prisons,

Haryana termed this to be a mockery of the administration of justice and in my view rightly. Could it ever be said by any logic- that the convict, while avoiding surrender or evading arrest, became entitled to special jail remissions in absentia? The answer would obviously be in the negative.

(7) The working of our Court procedure would also need some attention. Before the trial Magistrates or Sessions Judges, the presence of the accused is normally secured and assured at every hearing and he is available to receive sentence on the day when it is passed. He is normally sent to prison unless he is released on bail enabling him to file an appeal to the High Court and that too is limited by time. When appeals or revisions are filed in this Court mostly through enageged counsel, and a small number from jail, the petitions, if admitted, lead to a sequal release order of the convict on bail, normally to the satisfaction of the Chief Judicial Magistrate of the district concerned. The final hearing of the appeal or revision is regulated under sections 385, 386 and 388 of the Code of Criminal Procedure. It is regulated by perusal of the records of the case summoned and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears. The decision of the High Court is then passed on to the Court whose judgment and order was appealed/petitioned against so that the Court can make orders as are conformable to the judgment and order of the High Court and, if necessary, the record has to be amended in accordance therewith. But notice regarding hearing of the appeal, as envisaged under section 385 of the Code of Criminal Procedure, is regulated under the High Court Rules and Orders, Volume-V, Chapter 3-A, rule 5. Without burdening this judgment in detail, the weekly lists (the expression is by now well known) are broken up into daily lists (this expression too is known) and the daily lists are required to be sent to the Bar room at 4.15 p.m., on the day preceding the date of hearing, except the lists for Monday, which are supplied to the Bar room at 12 noon on the preceding Saturday. Any cases not reaching at the close of a day are required ordinarily to be placed at the top of the lists for the next day and similarly any cases not reached at the close of the last day of the sitting of the Court in a week are ordinarily placed at the top of the following week's list. Thus, the counsel of a criminal appellant or petitioner and an *amicus curiae* appointed in a case received from jail is in direct communication with the Court and is present to receive its verdict. Correspondingly, he is assumed to be in

direct communication with his client to convey to him the verdict of the Court, the apprising of which should involve not much time but barely a reasonable time. The verdict of the Court, when communicated to the Court below, under section 388 of the Code of Criminal Procedure also involves a reasonable time as also simultaneous intimation to the Court below that the bail orders of the convict stand vacated. It is thereupon that the Chief Judicial Magistrate ventures to cause the re-arrest of the convict who has lost his appeal or revision in this Court. Finding that there is time lag in that regard, this Court on 14th December, 1984,—*vide* letter No. 32352 Gaz. II/IX.C. 18 addressed to all the District and Sessions Judges in the State of Haryana directed them to be more meticulous in the cases of re-arrest of the accused who happen to be on bail and whose appeals are dismissed by the Supreme Court/High Court. Whatever speed which the Court machinery might like to gain, essential processes are bound to take a reasonable time, due and likely to be involved. But before the Chief Judicial Magistrate, on the receipt of the intimation of this Court, ventures to issue re-arrest warrants and sets his process in motion, it is reasonable to expect of the convict to voluntarily surrender before Jail Authorities or the Chief Judicial Magistrate yielding himself up to the Court verdict. It is only then that it can be said that he surrendered timely and voluntarily so as to claim for himself the benefit of such remissions of punishment, which he would have earned had he been in jail and not on bail, when the Governor or Minister paid visit to the jail, where he was supposed to be confined. That seems to me the only way to effectuate the spirit, intendment and purpose of the beneficence of Government orders, Annexure R-1 and R-2, when placed along side the Court's verdict. This seems to me the only way to meet the twain for these two cannot be allowed to run in parallel streams and have to confluence. I hold so.

(8) Now coming to the merits of the case, order (Annexure R-1) is of no avail to the detenu. As said before, without undergoing a single day of sentence, he was released on bail by the Chief Judicial Magistrate on 22nd October, 1981 and his appeal was dismissed by the Court of Sessions on 22nd December, 1982. Order (Annexure R-1) thus cannot be attracted to the case of the detenu. The learned Counsel for the petitioner frankly conceded this position and abandoned his claim in that regard. Even otherwise, the claim could at best go upto 15 days and not 60 days, as claimed, for the sentence was less than two years. But that is now beside the point. The terms of order (Annexure R-2) would on first impressions apply to the

detenu, for on the date of the visit of the Jail Minister, the detenu after having served 32 days of sentence stood released on bail under orders of this Court. Now the impediment of voluntary and timely surrender stands in his way to claim the remission of 4 months. The revision petition was dismissed on 14th February, 1984 and the Chief Judicial Magistrate concerned stood intimated about the result of the case and the cancellation of bail order,—*vide* letter issued by this Court on 22nd March, 1984. It was expected to have reached the Court concerned in a couple of days whereafter warrants of re-arrest are presumed to have been issued. It is the conceded position that under warrants of arrest, the detenu was taken in custody by the police on 12th March, 1985. The arrest of the detenu on that date cannot, by any means and for the reasons stated heretofore, be termed as surrender, much less timely or voluntarily. The detenu has thus failed by his conduct to rightfully earn the conditioned special remission of 3rd October, 1983,—*vide* order (Annexure R-2). He has consequentially to undergo the unexpired sentence of imprisonment.

(9) Before concluding the judgment, a letter of the Haryana Government to the Inspector General of Prisons dated 11th/14th January, 1985 (Annexure R-3) need be adverted to on which emphasis was laid by the State wherein attention has been invited to Paragraph 637 of the Punjab Jail Manual which provides that convicts who are on bail and whose sentence has been suspended are excluded from the remission system. This was pleaded by the respondent as a complete answer to the claim of the detenu. On the other hand, it was pleaded on behalf of the detenu that Paragraph 5 thereof specifically excluded the remission already granted to the prisoners prior to the issue of these instructions and those had not to be forfeited, and such remissions already granted would stand to the credit of the petitioner. These instructions are good so far as the working of the remission system is concerned, the scope of which has been spelt out earlier. But these instructions in no way impinge on the power of the State Government exercised under section 161 of the Constitution. That question does not arise here. Similarly, the bar to forfeit the earlier grant of remissions prior to the issuance of instructions (Annexure R-3) have to be understood in the light of the curtailed maximum remission upto one-sixth awardable. These instructions are thus of no avail to either side.

(10) To conclude, it is held that a prisoner on bail cannot claim special remission towards prison sentence, derived in absentia while on bail, unless he voluntarily and timely surrenders himself to the Court or Jail Authorities before the issuance of a warrant of re-arrest.

(11) For the foregoing reasons, this petition fails and is hereby dismissed without any order as to costs.

N.K.S.

FULL BENCH

Before P. C. Jain, C.J., S. P. Goyal and I. S. Tiwana, JJ.

STATE OF PUNJAB,...*Appellant.*

versus

POHU AND ANOTHER,...*Respondents.*

Regular First Appeal No. 882 of 1984.

September 24, 1985.

Land Acquisition Act (I of 1894)—Sections 23 and 24—Evidence Act (I of 1872)—Sections 35, 65 and 91—Acquisition of land for a public purpose—Assessment of compensation to be paid—Criterion for such assessment—Sale instance relied upon by the parties—Average price of such instances—Whether generally a good criterion for determining the market price—Price of the highest sale instance —When alone to be considered—Mutation—Whether evidence of the terms and conditions of the sale.

Held, that the market price of the acquired land has to be assessed according to the average price of the relevant or comparable sale instances relied upon by the parties and not according to a sale instance which might be fetching the maximum price, except where sale instances have been produced by the Government and are relied upon, then a particular sale deed representing the highest value should be preferred unless there are other strong circumstances which may justify resorting to a different course.

(Para 12)

State of Punjab *vs.* Mohinder Singh.

R.F.A. No. 604 of 1983 decided on February 23, 1977.

(OVER RULED)