

Governor's pardon power overrides 433A: SC

It is applicable even if prisoner has not undergone 14 years of imprisonment

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The Supreme Court on Tuesday held that the Governor of a State can pardon prisoners, including those on death row, even before they have served a minimum 14 years of prison sentence.

In fact, the Governor's power to pardon overrides a provision in the Code of Criminal Procedure – Section 433A – which mandates that a prisoner's sentence can be remitted only after 14 years of jail, a Bench of Justices Hemant Gupta and A.S. Bopan-

na observed in a judgment.

“Section 433A of the Code cannot and does not in any way affect the constitutional power conferred on the President/Governor to grant pardon under Articles 72 or 161 of the Constitution... If the prisoner has not undergone 14 years or more of actual imprisonment, the Governor has a power to grant pardon... de hors the restrictions imposed under Section 433A... Such power is in exercise of the power of the sovereign, though the Governor is bound to act on the aid

and advice of the State Government,” the court observed.

In fact, the court noted that the sovereign power of a Governor to pardon a prisoner under Article 161 is actually exercised by the State government and not the Governor on his own.

“The advice of the appropriate government binds the Head of the State,” Justice Gupta observed in the judgment which referred to the Supreme Court's Constitution Bench judgment in the Rajiv Gandhi assassination

case on the power of remission.

“The action of commutation and release can thus be pursuant to a governmental decision and the order may be issued even without the Governor's approval. However, under the Rules of Business and as a matter of constitutional courtesy, it may seek approval of the Governor, if such release is under Article 161 of the Constitution,” the court noted.

The Bench was considering the feasibility of remission policies in Haryana.