

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.722 of 2023**

Arising Out of PS. Case No.-301 Year-2003 Thana- KOTWALI District- Patna

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MUNNA SINGH @ AJAY SHARMA SON OF CHANDRIKA SINGH  
RESIDENT OF VILLAGE- SIMAR, PS- JANIPUR, DISTT- PATNA

... .. Petitioner

Versus

1. THE STATE OF BIHAR THROUGH THE CHIEF SECRETARY , GOVT OF BIHAR, PATNA BIHAR
2. THE STATE SENTENCE REMISSION BOARD THROUGH THE PRINCIPAL SECRETARY, HOME DEPARTMENT, GOVT OF BIHAR PATNA, BIHAR
3. THE JOINT SECRETARY-CUM-DIRECTOR (ADMINISTRATION) HOME DEPARTMENT (PRISON) BIHAR, PATNA BIHAR
4. THE SECRETARY LAW DEPARTMENT , GOVERNMENT OF BIHAR, PATNA BIHAR
5. THE ADDITIONAL DIRECTOR GENRAL FO POLICE, CRIMINAL INVESTIGATION DEPARTMENT, BIHAR, PATNA BIHAR
6. THE ASSISTANT INSPECTOR GENERAL, JAIL AND REFORMS SERVICE, BIHAR, PATNA BIHAR
7. THE JAIL SUPERINTENDENT, MODEL CENTRAL JAIL, BEUR, PATNA BIHAR

... .. Respondents

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*Indian Penal Code---Sections 364, 364A, 365, 34, 120B---The Prison Act, 1894---Section 59, Section 433A---Bihar Jail Manual, 2012---Rule 529---petitioner in physical custody for over 16 years and with remission---completed more than 20 years with remission---Probationary Officer, Superintendent of Police, Patna, Presiding Judge of trial court, Jail Superintendent, Model Central Jail, Beur, Patna, recommended premature release of petitioner---proposal sent to State Sentence Remission Board for consideration for premature release---Board rejected the proposal---offence of kidnapping for ransom heinous offence---2002, 2012, 2016 policy---Board ignored Supreme Court's decision and High Court's decisions.*

*Held: Decision of State Sentence Remission Board quashed and set aside ---Matter remitted to the Board for a fresh consideration of the proposal of the petitioner for premature release ---Board directed to take fresh decision within a period of two months.*

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... .. Respondents

<b>Appearance :</b>		
For the Petitioner	:	Mr. Rajesh Ranjan, Advocate Mr. Kanika, Advocate
For the Respondent	:	Mr. Suman Kumar Jha, AC to AAG-3

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**  
**and**  
**HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

**Date : 08-04-2024**

The present writ petition has been listed before us pursuant to the order dated 24.11.2023 passed by the learned Single Judge, whereby the learned Single Judge has observed that the issue involved in the present petition be decided by the larger



Bench in view of the conflicting decision rendered by two different Benches of the learned Single Judge.

2. The present writ petition has been filed by the petitioner-prisoner under Article 226 of the Constitution of India, in which the petitioner has challenged the decision dated 09.09.2022 taken by the State Sentence Remission Board (hereinafter referred to as 'the Board'). By the impugned decision, the Board has rejected the proposal for premature release of the petitioner on the ground that the case of the petitioner would be covered under Clause (iv) (क) of the Notification No. 3106 dated 10.12.2002 issued by the Home (Special) Department, Government of Bihar. Petitioner has prayed that the impugned decision be quashed and set aside and thereby respondents be directed to reconsider the case of the petitioner for premature release.

3. The factual matrix of the present case is as under: -

3.1. It is the case of the petitioner that he has been convicted by the learned Additional Sessions Judge-III, Patna, on 17.09.2008 in Sessions Trial No. 816 of 2015 for the offence punishable under Sections 364A, 34 and 120B of the Indian Penal Code (hereinafter referred to as 'the IPC') and has been ordered to undergo life imprisonment and to pay a sum of Rs. 50,000/- as



fine. The petitioner has also been convicted and sentenced under Section 365 of the IPC and he has been ordered to undergo rigorous imprisonment for seven years. Both the sentences are to run concurrently.

3.2. It is the case of the petitioner that he is in physical custody for more than 16 years and with remission he has completed more than 20 years. Petitioner, therefore, had earlier submitted an application before the competent authority with a request that his case be considered for premature release. The Probationary Officer vide Letter No. 261 dated 30.08.2021 recommended for premature release of the petitioner on the basis that there is full possibility of rehabilitation of the petitioner with the help of villagers and relatives.

3.3. It is stated that the Superintendent of Police, Patna, as well as the Presiding Judge of the trial court recommended the case of the petitioner for premature release. After obtaining necessary recommendations from the prescribed authorities, the Jail Superintendent, Model Central Jail, Beur, Patna, sent the proposal to the Board for consideration of the case of the petitioner for his premature release in connection with Session Trial No. 816 of 2002.



3.4. It is the grievance of the petitioner that the Board has rejected the proposal for premature release of the petitioner on the ground that the case of the petitioner would be covered under Clause (iv) (क) of the Notification No. 3106 dated 10.12.2002 issued by the Home (Special) Department, Government of Bihar. It is also the grievance of the petitioner that while deciding the proposal of the petitioner, the Board did not consider the decision rendered by this Court in the case of *Pradeep Kumar Srivastava @ Pradip Kumar Srivastava vs. The State of Bihar and Ors.* reported in **2022 (1) PLJR 217**. The petitioner has, therefore, preferred the present petition.

4. We have heard Mr. Rajesh Ranjan assisted by Ms. Kanika appearing on behalf of the petitioner and Mr. Suman Kumar Jha, learned AC to AAG-3 for the respondents.

5. **Submissions of learned counsel for the petitioner:**

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5.1. Learned counsel for the petitioner would submit that Clause (iv) (क) of the remission notification would not take within its ambit the case of the petitioner and the Board has no authority of law to extend the scope of Clause (iv) (क) on its own without there being any statutory nature of the classification of the offence and a guideline to that effect having statutory flavor.



It is pointed out that a case of convict under Section 364A/34 read with Section 120B of the IPC has not been specifically mentioned in Clause (iv) (क) of the remission notification.

5.2. Learned counsel further submits that by Notification dated 10.12.2002, earlier, in exercise of power under Section 59 of the Prison Act, 1894 (hereinafter referred to as 'the Act'), Rule 529 of Bihar Jail Manual was substituted. It was earlier known as Bihar & Orissa Jail Manual which came to be published for the first time in the year 1927. The Jail Manual was superseded in exercise of power under Section 59 of the Act, Bihar Prison Manual 2012 (hereinafter referred to as the 'Manual of 2012') was framed for administration of prison in the State of Bihar. Chapter '15' Part 'B' of the Manual of 2012 deals with the matter relating to premature release. At this stage, it is submitted that Rule 481 of the Manual of 2012 provides for category of prisoners who shall be eligible for consideration of review of sentence and premature release, the categories of prisoners who will be covered under Section 433A has been substituted vide Amendment notification dated 26.05.2016. Thus, it is contended that after the substituted provision, the case of the petitioner would not be covered under either Clause (a), (b) or (c).



5.3. Learned counsel would further submit that while rejecting the proposal of premature release of the petitioner, the respondent Board did not consider the decision rendered by this Court in the case of ***Pradeep Kumar Srivastava @ Pradip Kumar Srivastava*** (supra) as well as the decision rendered by the Hon'ble Supreme Court in the case of ***Rajo @ Rajwa @ Rajendra Mandal Vs. The State of Bihar and others*** (Writ Petition (Criminal) No(s). 252/2023).

5.4. At this stage, it is also submitted that the learned Single Judge of this Court once again taken the similar view in the case of ***Ajit Kumar Mishra Vs. The State of Bihar & Ors.*** reported in **2023 (5) BLJ 783**. It is submitted that in identical case, this Court quashed and set aside the decision taken by the respondent Board and the matter was remanded to the Board with a direction to reconsider the case of the concerned petitioner.

5.5. At this stage, learned counsel has referred to the supplementary affidavit filed on behalf of the petitioner and the documents annexed with the said affidavit. It is submitted that in the meeting held on 27.11.2023, the respondent Board reconsidered the decision taken in the case of ***Ajit Kumar Mishra*** (supra) as per direction of this Court and thereafter granted benefit of remission to the said petitioner.



5.6. Learned counsel, therefore, urged that the impugned decision taken by the Board be quashed and set aside and matter be remanded back to the Board for deciding afresh the proposal for premature release of the petitioner.

6. **Submissions canvassed by learned counsel for the respondents: -**

6.1. Learned counsel for the respondents has mainly contended that no error is committed by the respondent Board while taking the impugned decision and, therefore, this Court may not interfere with the same. It is pointed out by learned counsel for the respondents from the counter affidavit filed on behalf of respondents No. 3, 6 and 7 that the learned Single Judge has dismissed the petition vide order dated 05.08.2022 passed in Cr. W.J.C. No. 1330 of 2021 filed by the co-convict of the petitioner, i.e., Chitranjan Kumar @ Babloo vs. The State of Bihar and Others. It is contended that co-convict of the petitioner, Chitranjan Kumar @ Babloo, was also convicted by the said common order passed by the concerned trial court for the offences punishable under Section 364, 364A, 34 and 120B of the IPC along with the petitioner and similar proposal for premature release of the co-convict was dismissed by the Board relying upon the same clause of the policy and when the co-convict preferred





the petition before this Court challenging the said decision, the learned Single Judge has dismissed the said petition and the said order has attained finality. Thus, when the learned Single Judge has dismissed the similar type of petition filed by the co-convict on the similar ground, the present petition may not be entertained.

6.2. Learned counsel for the respondents has referred to the policy of 2002, copy of which is placed on record and thereafter contended that offence of kidnapping for ransom is a heinous offence like the offence of rape, dacoity, terrorist crime and for the said reason the Board has rejected the proposal for premature release of the petitioner. It is submitted that the date of conviction of the petitioner is 17.09.2008 and, therefore, his case would come within the purview of notification No. 3106 dated 10.12.2002 and not under policy of 2012 or 2016 as contended by learned counsel for the petitioner.

6.3. Learned counsel for the respondents further submits that as this Court directed the Board to reconsider the case of *Ajit Kumar Mishra* (supra), a decision has been taken by the Board in favour of the said prisoner. However, in the present case, when the learned Single Judge has dismissed the petition filed by the co-convict, there is no reason for the Board to take a different view.



6.4. Learned counsel for the respondents, therefore, urged that the present petition be dismissed.

7. **Discussion**: -

7.1. We have considered the submission canvassed by learned counsel appearing for the parties. We have also perused the materials placed on record. It would emerge from the records that the petitioner has been convicted by the concerned trial court vide order dated 17.09.2008 for the offence punishable under Sections 364A, 365, 34 and 120B of the IPC. It is also not in dispute that the petitioner is in physical custody for more than 16 years and with remission he has completed more than 21 years. It further transpires from the record that the petitioner submitted an application before the competent authority for considering his case for premature release. The Probationary Officer vide letter No. 261 dated 30.08.2021 recommended for premature release of the petitioner. Similarly, Superintendent of Police, Patna, as well as the Presiding Judge of the trial court recommended the case of the petitioner for his premature release. After obtaining necessary recommendation from the prescribed authorities, the Jail Superintendent, Model Central Jail, Beur, Patna, sent the proposal to the Board for consideration of the case of the petitioner for his



premature release in connection with the Sessions Trial No. 816 of 2002.

7.2. The Board rejected the proposal for premature release of the petitioner vide impugned decision in the following terms: -

“1. फिरौती के 01 व्यक्ति का अपहरण किया गया । 2. गृह (विशेष) विभाग, बिहार की अधिसूचना संख्या 3108 दिनांक 10.12. 2002 की कंडिका—(iv) (क) में प्रावधानिक है कि बलात्कार डकैती, आतंकवादी अपराधों, आदि जैसे अपराधों को सिद्धदोष बंदी समय पूर्व रिहाई के लिए विचार योग्य नहीं हो सकेंगे।

3. विचारोपरांत असमय कारा का प्रस्ताव अस्वीकृत करने का अनुशंसा किया जाता है।”

7.3. Thus, from the aforesaid decision taken by the Board, it is revealed that the Board has placed reliance upon Notification No. 3106 dated 10.12.2002 and more particularly Clause (iv) (क). The relevant part of the said clause is being extracted, hereinunder for ready reference: -

“(iv) समय— पूर्व रिहाई के लिए अयोग्यता

निम्नलिखित श्रेणी के सिद्धदोष बंदी, जो आजीवन कारावास का दंड भुगत रहे हो, समय—पूर्व रिहाई के लिए विचार— योग्य नहीं हो सकेंगे —।

(क) बलात्कार, डकैती, आतंकवादी अपराधों, आदि जैसे अपराधों के सिद्धदोष बंदी।



(ख) वैसे बंदी, जो पूर्व चिंतन किये गये विषयों एवं सुनियोजित ढंग से हत्याएं आयोजित करने के लिए सिद्धदोष हो।

(ग) वैसे पेशेवर हत्यारे, जिन्हें भाड़े पर हत्या कराने का दोषी पाया गया हो।

(घ) वैसे सिद्धदोष बंदी जो तस्करी कार्य में अंतर्लिप्त रहते हुए हत्या करता हो अथवा कर्तव्य पर रहने वाले लोक सेवकों की हत्या का दोषी हो।”

7.4. At this stage, we would also like to observe that in exercise of the power conferred by Section 59 of the Act, the Government of Bihar has framed the manual of 2012 in supersession of the first Jail Manual. Chapter 15 of the Manual of 2012 is in two parts. While Part-A deals with general provision of release, Part ‘B’ contains Rules 474 to 487, which are relevant for the purpose of premature release. This part provides for constitution of the Remission Board, the meetings of the Board, the provisions for dealing with the proposal for premature release. Category of prisoners covered under Section 433A of the Code in the exception list.

7.5. At this stage, it is also relevant to note that categories of convicts covered under Section 433A of the Code have been substituted vide amendment Notification No. 3194 dated 26.05.2016. For the purpose of this case, in order to appreciate the changes brought about by the Notification dated



26.05.2016 in the exception list, we would like to refer and reproduce Rule 481 of the Manual of 2012 hereunder: -

*“481. The following categories of prisoners shall be eligible to be considered for a review of sentences and premature release by the Board:*

*i. Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A CrPC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment i.e. without the remissions. 2 [The following categories of convicted prisoner covered under Section 433A Cr.P.C. undergoing life sentence would not be entitled to be considered for premature release even after undergoing imprisonment for 20 years including remission:]*

*1 [(a) Such convicts who have been imprisoned for life for rape, rape with murder, dacoity with murder, murder involving offence under the Protection of Civil Rights Act, 1955, murder for dowry, murder of a child below 14 years of age, multiple murder, murder committed after conviction while inside the prison, murder during parole, murder in terrorist incident, murder in smuggling operation, 2 [xxx]]*

*(b) Gangsters, contract killers, smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-meditation and with exceptional violence or perversity.*

*c) Convicts whose death sentence has been commuted to life imprisonment.*

*ii. All other convicted male prisoners not covered by section 433A Cr.PC undergoing the*



*sentence of life imprisonment shall be considered for premature release after they have served at least 14 years of imprisonment inclusive of remission but only after completion of 10 years actual imprisonment i.e. without remissions.*

*iii. The female prisoners not covered by section 433A Cr.PC undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 10 years of imprisonment inclusive of remissions but only after completion of 7 years actual imprisonment i.e. without remissions.*

*3 [(iv) In such cases in which life sentence has been awarded by specifying that the convict shall undergo life sentence till the end of his life without remission or commutation, benefit of remission or commutation shall not be given to convict.]*

*3 [(v) In such cases in which life sentence has been awarded by specifying that the convict shall not be released by granting remission or commutation till he completes a fixed term of 20 years or 25 years or like, remission or commutation shall not be granted to a convict until he completes the fixed term as prescribed in the sentence.]”*

7.6. At this stage, we would also like to refer to

Rule 478 of the aforesaid Manual which provides as under: -

*“478. While considering the case of premature release of a particular prisoner the Board shall keep in view the general principles of remission of sentences, as laid down by the State Government or by the courts, as also the earlier precedents in the matter. The paramount consideration before the Board being the welfare of the society at large. The Board shall not ordinarily decline a premature release of a prisoner merely on the ground that the police have not recommended his/her release. The*



*Board shall take into account the circumstances in which the offence was committed by the prisoner; whether he/she has the propensity to commit similar or other offences again; socio-economic condition of the convict's family and possibility of further violence or offence on his/her release, progress in victim reconciliation programmes and chances of reclaiming the convict as a useful member of the society.”*

7.7. From the aforesaid provision contained in the Manual of 2012, it is revealed that in the substituted Manual of 2012 under Rule 481(a), there is nothing like ‘etc.’ or ‘आदि’, which was present in Clause (iv) (क) of the Notification dated 10.12.2002. At this stage, it is pertinent to note that the respondent Board has placed reliance upon the word ‘etc.’ under the said clause. It transpires from the record that on earlier occasion the case of convicts under Section 364A of the IPC have been considered for premature release, however, in some of the cases, the respondent Board rejected the proposal while taking shelter under Clause (iv) (क) of the Notification dated 10.12.2002.

7.8. This Court in the case of **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava** (supra) has considered the notification containing the exception list. In the said case petitioner was convicted under Sections 364A and 379/34 of the IPC and was sentenced to undergo rigorous imprisonment for life with fine.



This Court in the said case noticed uncontroverted submissions in paragraph '14' of the said writ application that one Moti Lal Yadav and Prem Prakash Yadav who were convicted and sentenced for life imprisonment under Section 364 IPC were released from prison after departmental Letter No. 3874 dated 01.06.2018. Further one Vijay Yadav was released in the same manner by the decision of the concerned department by Letter No. 2716 dated 24.04.2020.

7.9. This Court, in the case of **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava** (supra), while considering Clause (iv) (क) and (ख) of Notification No. 3106 held in paragraph '10' and '11' of it's judgment as under:-

*"10. It is evident from a reading of Annexure 'A' th the category of cases as enumerated under sub-clause (kha) are those cases in which the policy with regard to the premature release does not permit any consideration. An offence committed under Section 364A of the IPC is not specifically provided under paragraph (iv) (ka) has to be read 'Ejusdem generis' i.e. the birds of the same feather Patna High Court CR. WJC No. 722 of 2023 dt.24-11-2023 10/17 flock together and by applying that rule of principle of interpretation and word 'vkfn' may only be taken to mean and understand the offences of the similar category such as rape, dacoity and terrorist acts. Perhaps it is for this reason that the cases of Vijay Yadav and others as mentioned in paragraph '14' of the writ application would have been considered. It appears to this Court that the Remission Board while considering the case of the*





*petitioner has not acted with objectivity and has simply rejected his prayer for premature release by referring to the Notification dated 10th December, 2002 and paragraph (iv) (ka)."*

*"11. it is pertinent to mention here that the sub-clause (kha) has to be read together with sub-clause (ka) and only then the Remission Board may arrive on a proper conclusion as to in which cases the benefit of premature release may be granted in terms of the policy. In fact having sensed this position that the State has not denied the specific statements made in paragraph '14' of the writ application, at one stage learned AC to AAG-3 also submitted that the case may be remanded to the State Remission Board for fresh consideration."*

7.10. It transpires from a bare reading of paragraph '11' of the judgment in the case of **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava** (supra) that learned counsel for the respondents was unable to meet out the specific statement made in paragraph '14' of the said writ application and he had submitted for remanding the case to the State Remission Board for fresh consideration. The judgment in the case of **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava** (supra) has attained finality.

7.11. At this stage, we would also like to refer to the decision rendered by the learned Single Judge in the case of **Ajit Kumar Mishra** (supra). In the said case the facts were identical. The learned Single Judge, after considering all the aforesaid



relevant provisions of notification of 2002, Manual of 2012 and the relevant Rules, observed in paragraph 35, 36 and 37 as under: -

*“35. This Court finds that on the date of consideration of the case of the petitioner on 23.12.2020, Rule 481 (i) (a) of the Manual of 2012 had already removed the difficulty, if any, in interpretation of the word ‘etc.’ or ‘आदि’ which was occurring under clause (iv) (d) of the Remission Notification dated 10.12.2002. There was no scope for the Board to read a conviction under 364A IPC in the exception list either in clause (iv) (d) of the Remission Notification dated 10.12.2002 or under the substituted Manual of 2012. There were precedents also available before the Board showing that in other cases of convicts under Section 364A IPC, the Board had granted premature release. It is not the case of the Board that the conviction of this petitioner was for the offence under Section 364A IPC with pre-meditation of mind. The case of the petitioner has been rejected under clause (iv) (d) of the Remission Notification dated 10.12.2002 without appreciating that the ambiguity and vagueness in the word ‘etc.’ present in the said clause had already been removed in the Manual of 2012.*

*36. This Court, therefore, finds that the Remission Board has not only rejected the proposal for premature release of the petitioner without providing any cogent reason, the decision is also in the teeth of the judgments of the Hon’ble Supreme Court and this Court which were to be looked into as precedents. Rule 478 of the Manual of 2012 clearly casts a duty upon the Board to keep in view the general principles of remission of sentences as laid down by the State Government or by the Courts, as also the earlier precedents in the matter and the paramount consideration before the Board being the welfare of the society at large, the Board shall not*



*ordinarily decline a premature release of a prisoner merely on the ground that the police had not recommended his/her release. In this case even that ground was not available because all the authorities who had submitted their respective reports had recommended for premature release of the petitioner.*

*37. The impugned decision as contained in the minutes dated 23.12.2020 is, therefore, not sustainable. It is accordingly quashed and the matter is remitted to the Board for a fresh consideration of the proposal of the petitioner for premature release keeping in view the reports which have been taken note of hereinabove and the discussions made by this Court in this judgment citing precedents.”*

7.12. At this stage, it is relevant to observe that in the case of **Ajit Kumar Mishra** (supra), after quashing and setting aside the decision taken by the Board, when this Court remanded the matter to the Board for a fresh consideration of the proposal of the concerned petitioner for premature release, the respondent Board has reconsidered the case of Ajit Kumar Mishra in the meeting held on 27.11.2023 and thereafter granted benefit of premature release. Thus, it appears that the Board has given the benefit of premature release to the concerned petitioner, i.e., Ajit Kumar Mishra, during pendency of the present petition. The petitioner has filed supplementary affidavit to that effect and annexed the decision of the Board in case of Ajit Kumar Mishra.



Learned counsel for the respondents is not in a position to dispute the aforesaid aspect.

7.13. At this stage, we would also like to refer the decision rendered by the Hon'ble Supreme Court in the case of ***Rajo @ Rajwa @ Rajendra Mandal*** (supra). The Hon'ble Supreme Court has observed in paragraph 23 and 25 of the said decision as under: -

*23. This court, on earlier occasion, had grappled with the situation of different remission policies/rules prevailing at different points of the convict's sentence – i.e., when the policy on the date of conviction, and on the date of consideration for premature release, are different. It has been held that the policy prevailing on the date of the conviction, would be applicable. However, in Jagdish (supra) it was also recognised that if a more liberal policy exists on the date of consideration, the benefit should be provided:*

*“43. [...] The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a*



*“lifer” for premature release, he should be given benefit thereof.”*

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xxx

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*25. In light of these findings and the precedents discussed above, it would be appropriate if the Remission Board reconsidered the petitioner’s application for remission afresh, considering the reports of the police and other authorities, the post-prison record of the petitioner, the remissions earned (including that which is earned for good conduct) his age, health condition, family circumstances, and his potential for social engagement, in a positive manner. The concerned presiding judge is hereby directed to provide an opinion on the petitioner’s application for premature release, by examining the judicial record, and provide adequate reasoning, taking into account the factors laid down in Laxman Naskar (supra), within one month from the date of this judgment. With the benefit of this new report, the Remission Board may reconsider the application – without entirely or solely relying on it, but treating it as valuable (maybe weighty) advice that is based on the judicial record. Given the long period of incarceration already suffered by the writ petitioner and his age, the Remission Board should endeavour to consider the application at the earliest and render its decision, preferably within three months from the date of this judgment. A copy of this judgment shall be marked by the Registry of this Court, to the Home Secretary, Government of Bihar, who is the chairperson of the Remission Board, as well as the concerned Presiding Judge, through the Registrar, High Court of Judicature at Patna High Court.”*

7.14. At this stage, we would also like to consider the submission canvassed by learned counsel for the respondents.

It is contended that in the case of co-convict of the petitioner,



namely, Chitranjan Kumar @ Babloo, the Board took the similar decision and thereby rejected the proposal for premature release. The said decision was challenged by the co-convict by filing writ petition before this Court and this Court dismissed the said petition and thereby did not interfere with the decision taken by the Board. It is also contended that the said order has attained finality and, therefore, the petitioner is not entitled to claim premature release.

7.15. We are of the view that the aforesaid contention is not required to be accepted. Firstly, for the reason that the learned Single Judge of this Court in the case of ***Pradeep Kumar Srivastava @ Pradip Kumar Srivastava*** (supra), which is a reported decision has considered the case of similarly situated prisoner, who is also convicted under Section 364A of the IPC and on similar ground while relying upon Notification of 2002, the case of the said petitioner was also not entertained by the Board. Learned Single Judge of this Court considered various provisions of the Manual of 2012, 1984 Policy as well as 2002 Notification and after considering various decisions rendered by the Hon'ble Supreme Court quashed and set aside the similar decision taken by the Board. It is pertinent to note that the decision taken in the case of ***Pradeep Kumar Srivastava @ Pradip Kumar Srivastava*** (supra) has attained finality and in fact the Board has given the



benefit of premature release of the said convict Pradeep Kumar Srivastava @ Pradip Kumar Srivastava.

7.16. It is not in dispute that while arguing the case of co-convict of the petitioner, namely, Chitranjan Kumar @ Babloo, the respondents did not place the judgment rendered in the case of ***Pradeep Kumar Srivastava @ Pradip Kumar Srivastava*** (supra) before the learned Single Judge of this Court, therefore, another learned Single Judge took the different view and thereby rejected the petition filed by the co-convict of the petitioner, Thus, we are of the view that the decision taken by the learned Single Judge in the case of Chitranjan Kumar @ Babloo can be termed as *per incuriam*.

7.17. As discussed hereinabove, while the present petition was listed before another learned Single Judge, the said learned Single Judge referred the issue to the larger Bench in view of two conflicting decisions taken by two different learned Single Judges.

7.18. At this stage, further development, which had taken place, is also required to be discussed. As observed hereinabove, in identical matter in case of ***Ajit Kumar Mishra*** (supra) once again the learned Single Judge has quashed and set aside the similar decision of the Board after considering the new



policy of the Government as per Manual of 2012. In case of *Ajit Kumar Mishra* (supra), learned Single Judge quashed and set aside the decision of the Board and remanded the matter to the Board for reconsideration and thereafter the Board has in the meeting held in November, 2023 granted benefit of premature release to the said prisoner.

8. **Conclusion**: -

8.1. Thus, in view of the aforesaid discussions, we are of the view that the view taken by the learned Single Judge in the case of *Pradeep Kumar Srivastava @ Pradip Kumar Srivastava* (supra) as well as *Ajit Kumar Mishra* (supra) is a correct view and in fact the respondent State has implemented the said decision. Thus, the said decisions have attained finality.

8.2. In view of the aforesaid discussion, the impugned decision dated 09.09.2022 taken by the State Sentence Remission Board is hereby quashed and set aside. The matter is remitted to the Board for a fresh consideration of the proposal of the petitioner for premature release keeping in view the reports which have been taken note of hereinabove and the discussions made by this Court in this judgment citing the precedents. The respondent Board shall take fresh decision and pass a final order





within a period of two months from the date of receipt/production  
of a copy of this judgment and order.

9. This writ petition, therefore, stands allowed.

**(Vipul M. Pancholi, J)**

**(Sunil Dutta Mishra, J)**

Pawan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	08.04.2024.
Transmission Date	08.04.2024.

