

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.153 of 2024

Arising Out of PS. Case No.-1 Year-2006 Thana- PHULWARIYA District- Gopalganj

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ASHOK YADAV SON OF LATE BACHCHA YADAV RESIDENT OF
VILLAGE - SONGADHAWA, P.S. - FULWARIA (SRIPUR O.P.),
DISTRICT - GOPALGANJ

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE CHIEF SECRETARY,
GOVERNMENT OF BIHAR, PATNA BIHAR
2. THE STATE SENTENCE REMISSION BOARD THROUGH THE
PRINCIPLE SECRETARY, HOME DEPT., GOVT. OF BIHAR PATNA
3. THE JOINT SECRETARY-CUM-DIRECTOR (ADMINISTRATION),
HOME DEPT. (PRISON), BIHAR, PATNA BIHAR
4. THE SECRETARY, LAW DEPARTMENT, GOVT. OF BIHAR, PATNA
BIHAR
5. THE ADDL. DIRECTOR GENERAL OF POLICE, CRIMINAL
INVESTIGATION DEPT., BIHAR, PATNA BIHAR
6. THE INSPECTOR GENERAL, JAIL AND REFORMS SERVICES,
BIHAR, PATNA BIHAR
7. THE ASST. INSPECTOR GENERAL, JAIL AND REFORMS SERVICE,
BIHAR, PATNA BIHAR
8. THE JAIL SUPERINTENDENT, MANDAL KARA, GOPALGANJ BIHAR

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ratnakar Pandey
For the Respondent/s : Mr.A.G.

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
CAV JUDGMENT

Date : 10-10-2025

Heard the parties.

2. By way of this writ application the petitioner has
prayed for the following relief:-

*(i) For Issuance of an appropriate writ
in the nature of CERTIORARI for quashing the
decision of the State Remission Board dated*



12.09.2023 so far it relates to the petitioner, whereby and whereunder the State Remission Board has been pleased to reject the proposal of the petitioner for his pre-mature release inter alia on the ground that under clause (iv) (ka) and (kha) of notification No. 3106 dated 10.12.2002 the petitioner is not eligible for grant of pre-mature release.

(ii) For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent Authorities to consider the case of the petitioner for pre-mature release and release him in connection with Sessions Trial No. 55 of 2006 arising out of Fulwaria P.S. Case No. 1 of 2006 on the ground that now the petitioner has already completed more than 22 years of sentence with remission and more than 17 years of his physical incarceration, taking into consideration that the case of the petitioner has been covered under 1984 Policy prevailing at the relevant time of his conviction since the petitioner was convicted on 10.4.2006 and the notification no. 3106 dated 10.12.2002 came into force with effect from 2.7.2007.

3. The petitioner is aggrieved by the rejection of his application for early release as he has completed 19 years in actual imprisonment.

4. The petitioner was convicted under section 364,



302, 201 of the Indian penal Code and were sentenced to death by the learned District & Sessions Judge, Gopalganj in Sessions Trial No. 55 of 2006 arising out of Phulwari P.S. Case No. 1 of 2006 vide Judgement dated 05.04.2006 and order on the point of sentence dated 10.04.2006. Subsequently, this court in Cr. Appeal (DB) No. 329 of 2006 had commuted the death sentence of the petitioner to life imprisonment.

5. The petitioner had previously approached this court through Cr.W.J.C. No. 103 of 2022, for pre mature release after completing 14 years of actual imprisonment and the same was disposed vide order dated 18.07.2023. The relevant paragraphs of the aforesaid order read as under: -

“8. From perusal of the impugned order of the State Remission Board dated 19.05.2021 so far as it relates to the petitioner, it transpires that the proposal of premature release of the petitioner has been rejected by merely quoting the provisions of Clause IV (क) of the Remission Policy and no further reasons have been assigned by the Board as to how the nature of offences committed by the petitioner comes under the purview of any other offence having similar effect of rape, dacoity and terrorist activities and as such is covered under Clause IV (क) of the Remission Policy. The impugned order is cryptic and non-speaking in nature, as such, in my opinion, the same is not sustainable under the law.

9. Accordingly, the impugned order of State Remission Board dated 19.05.2021 so far as it relates to the petitioner is set aside and the matter is remanded back to



the State Remission Board for reconsideration of the proposal of premature release of the petitioner, in accordance with law.

10. It is made clear that the proposal of premature release of the petitioner shall be considered and disposed by a reasoned order by the State Remission Board within a period of six months from the date of receipt/production of a copy of this order.”

6. The contention of the petitioner is that his case is squarely covered by the judgment of this Court passed in the case of ***Ajit Kumar Mishra Vs. The State of Bihar and Ors. (Cr.W.J.C. 1195 of 2021)*** and ***Pradeep Kumar Srivastava Vs. The State of Bihar and Ors. (Cr.W.J.C. 453 of 2021)***.

7. Learned counsel for the State Mr. Prabhu Narayan Sharma, in view of the judgment of this Court in the case of ***Ajit Kumar Mishra Vs. The State of Bihar and Ors.*** and ***Pradeep Kumar Srivastava Vs. The State of Bihar and Ors.*** could not defend the impugned order rejecting the prayer of the petitioner.

8. I have heard and considered the submission of the parties.

9. This Court in the case of ***Ajit Kumar Mishra Vs. The State of Bihar and Ors*** has held as under: -

23. Before dealing with the amendments brought into the relevant rule governing the case of



*premature release, this Court would briefly take note of the settled law that grant of remission, commutation, pardon, reprieves or suspension of sentence is purely an executive function (see **Gopal Vinayak Godse v. State of Maharashtra [1961] 3 SCR 440; Maru Ram v. Union of India [1981] 1 SCR 1196**). It has been held by the Hon'ble Supreme Court that the executive power is traceable to Article 72 and 161 of the Constitution of India which is exercised by the President of India and Governor of the State respectively to grant pardons and to suspend or remit or commute sentence in certain cases. Section 433 Cr.P.C. confers a statutory power upon the appropriate Government to commute (a) a sentence of death, for any other punishment provided by the Indian Penal Code; (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine; (c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine; (d) a sentence of simple imprisonment, for fine.*

24. Section 433-A imposes a restriction on powers of remission or commutation in certain cases. This provision has been inserted by Act 45 of 1978 w.e.f. 18.12.1978. Since, in this judgment, this Court is going to deal with the categories of the convict prisoners who have been brought under the purview of Section 433-A CrPC, it is worth quoting the provision hereunder for a read reference:-

“[433-A. Restriction on powers of remission or commutation in certain cases.-

Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishment provided by laws or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.]

*25. In the case of **Jagdish** (supra), the Hon'ble Supreme Court has very eloquently explained the framework of all executive power and how to exercise the same. Paragraph '28' of the judgment is being quoted*



hereunder for a ready reference:

“28. Nevertheless, we may point out that the power of the sovereign to grant remission is within its exclusive domain and it is for this reason that our Constitution makers went on to incorporate the provisions of Article 72 and Article 161 of the Constitution of India. This responsibility was cast upon the executive through a constitutional mandate to ensure that some public purpose may require fulfilment by grant of remission in appropriate cases. This power was never intended to be used or utilised by the executive as an unbridled power of reprieve. Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate. The act of remission of the State does not undo what has been done judicially. The punishment awarded through a judgment is not overruled but the convict gets benefit of a liberalised policy of State pardon. However, the exercise of such power under Article 161 of the Constitution or under Section 433-A CrPC may have a different flavour in the statutory provisions, as short-sentencing policy brings about a mere reduction in the period of imprisonment whereas an act of clemency under Article 161 of the Constitution commutes the sentence itself.”

26. In the aforementioned background, when the Rule 529 of the first Jail Manual came to be substituted w.e.f. 28.12.2002 which is the date of publication of the notification, the amended provision provided for certain exceptional categories of convict prisoners who would be debarred from getting a premature release. The relevant part of the notification/Remission Notification dated 10.12.2002 are quoted hereunder:-

“(vi) 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।”

27. Earlier, there had been a controversy as to the date on which the amended Remission Notification amending Rule 529 of the Jail Manual actually came to be implemented. On the basis of the pleadings on the record, this Court considered this issue in the case of **Surendra Mahto Vs. The State of Bihar & Ors.** reported in 2021 (4) **PLJR 393** and after going through the earlier Hon'ble Division Judgment of this Court, it has been held that the notification dated 10.12.2002 was not implemented prior to 25.09.2007, in fact the affidavit of the then Principal Secretary, Department of Home, Government of Bihar filed in Cr.WJC No. 2530 of 2017 (Naresh Sahani versus the State of Bihar and Others) which has been placed before this Court and forms part of the records of the said case admits this position and refers the period between 28.12.2002 and 24.09.2007 as the period during which life convicts were released by the Jail Superintendents themselves after calculating 14 years of actual custody and 20 years with remission. It is specific stand in the said affidavit that from 25.09.2007 and onwards the life convicts were released by the State after recommendation of the Board.

28. This issue with regard to the implementation of the Remission Notification dated 10.12.2002 once again came to be considered in case of **Md. Alauddin Ansari** (supra) and in the case of **Sikander Mahto** (supra), this Court after detail discussion has concluded that once the State has given the benefit of 1984 Policy to the convicts of the period after publication of Remission Notification and prior to 25.09.2007, the same benefit may be granted to the similarly situated persons. Even as the State complied with the judgments of this Court, at a much belated stage, the State was advised to file special leave petitions in the



*Hon'ble Supreme Court to challenge the judgments of this Court in the case of **Md. Alauddin Ansari** (supra) and **Sikander Mahto** (supra) but those special leave petitions have been dismissed on the ground of delay leaving the question of law open.*

*29. In the case of **Pradeep Kumar Srivastava** (supra), an identical case of the convict under Section 364A and 379/34 IPC came to be considered, this Court took note of the several instances where the Board had considered the proposals for premature release of the convicts under Section 364-A IPC. The submissions of the learned counsel for the petitioner as noted above with regard to the statements made in paragraph '14' of the said writ application citing the names of Motilal Yadav, Prem Prakash Yadav and Vijay Yadav who were granted release by the Remission Board are correct. In this regard, the relevant paragraphs '10', '11' and '12' are quoted hereunder for a ready reference:-*

"10. It is evident from a reading of Annexure 'A' that 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). The word 'आदि' at the end of sub-clause (ka) has to be read 'Ejusdem generis' i.e. the birds of the same feather flock together and by applying that rule of principle of interpretation the word 'आदि' 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."

"12. In the light of the discussions hereinabove the decision dated 03.04.2020 taken by State Remission Board as contained Annexure '6' to the writ application with respect to this petitioner is hereby quashed. The State Remission Board shall now consider the case of the petitioner afresh within a period of two months from the date of receipt/communication of this order keeping in view the discussions made in the judgment hereinabove. Such decision shall be reasoned one considering all aspects of the matter and will be communicated to the petitioner forthwith after the decision is rendered within the time frame."

This judgment has also attained finality.

30. *Apart from the aforementioned precedents available for consideration in the present case, there is one more issue which is required to be taken note of, discussed and then the conclusion is required to be drawn with regard to the application of the substituted Manual of 2012 which have come into force. The significance of the post 10.12.2002 notification and effect of coming into force of Manual of 2012 by which the first Jail Manual was superseded would be significant. In exercise of powers conferred by Section 59 of the Act of 1894 (as amended), the Government of Bihar has framed the Manual of 2012 in supersession of the first Jail Manual. Chapter 15 in the Manual of 2012 is in two parts. While Part 'A' deals with general provisions for release, Part 'B' contains Rule 474 to 487 which are relevant for the purpose of premature release. This Part provides for constitution of Remission*



Board, the meetings of the Board, procedure for dealing with the proposals for premature release, category of prisoners who shall be eligible for release by the Board and the categories of prisoners covered under Section 433-A CrPC in the exception list.

31. Categories of convicts covered under Section 433-A CrPC 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, this Court deems it just and proper to 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.]”

32. *To understand the mandate of Manual of 2012 to the Remission Board in the matter of consideration of the cases of premature release, Rule 478 is relevant and it guides the Board with regard to the considerations required to be given to the proposals coming before the Board for grant of premature release. Rules 478 of Manual of 2012 reads 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.”

10. Subsequently in the case of **Ajit Kumar Mishra** (*Supra*), the co-ordinate Bench of this Court after quoting the minutes of the meeting dated 23.12.2020 had thereafter concluded as under:

34. At this stage, it is worth mentioning that recently once again Rule 481(i) (a) of the Manual of 2012 has been amended vide Notification No. 2894 dated 10.04.2023 published on 11.04.2023. By this amendment, the words “or murder of a public servant on duty” present in sub-clause (a) of clause (i) of Rule 481 has been omitted. Immediately, after omitting the said part, the benefit of liberal provision has been given to 27 life convicts and they have been released. This clearly establishes the fact that the Remission Board has given the benefit of the amended provision of Rule 481 to the life convicts who were otherwise covered under the exceptional category of the Remission Notification and the



Remission Policy of the Government on the date of conviction and sentence. So far as this aspect is concerned, the judgment of the Hon'ble Supreme Court in the case of Jagdish (supra) has held that the policy prevailing on the date of conviction would be applicable but at the same time, it was also recognised that if a more liberal policy exists on the date of consideration, the benefit should be provided. Recently in the case of Rajo @ Rajwa @ Rajendra Mandal Vs. The State of Bihar and others reported as 2023 INSC 771 (Writ Petition (Criminal) No(s). 252/2023), the Hon'ble Supreme Court has held in paragraph '23' of its judgment 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 conviction²⁰, 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.”

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) (क) of the Remission Notification dated 10.12.2002. There was no scope for the Board to read a conviction under 364-A IPC in the exception list either in clause (iv) (क) 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 364-A 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) (क) 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.

11. In view of the afore-quoted judgments, the impugned order cannot be sustained.

12. Accordingly, the impugned order dated 12.09.2023 passed by Bihar State Remission Board is hereby quashed.

13. The petitioner is given liberty to approach the authorities for remission in light of the aforesaid judgment and if such an application is filed, the same shall be considered by the remission board in accordance with law and in light of the



judgment of this Court in the case of *Ajit Kumar Mishra Vs. The State of Bihar and Ors. (Supra)*. The application of the petitioner shall be disposed of within three months of its filing.

(Sandeep Kumar, J)

Vikas/-

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