IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.3170 of 2025

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Ritlal Rai @ Ritlal Yadav Son of Late Ramashish Rai Resident of Khothwan, Malighat, P.S.- Khagaul, District - Patna, Bihar

... ... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Inspector General, Prisons and Correctional Services, Bihar, Patna.
4. The Assistant Inspector General, Prisons and Correctional Services, Bihar, Patna.
5. The District Magistrate, Patna, Bihar.
6. The Senior Superintendent of Police, Patna, Bihar.

... ... Respondents

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Appearance :
For the Petitioner : Mr. Rajiv Kumar Verma, Sr. Advocate
Mrs. Priyanka Singh, Advocate
For the Respondents : Mr. Kinkar Kumar, S.C.-9
Mrs. Vagisha Pragya Vacaknavi, AC to SC-9
Ms. Sushmita Sharma, AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
Date : 27-04-2026

In the instant petition, petitioner seeks following relief(s):-

"A. A writ in the nature of certiorari or any other appropriate writ/s, order/s, direction/s, quashing the following: -

(i) The order dated 30.10.2025 issued by the Assistant Inspector General, Prisons and Correctional Services, Bihar, Patna, purportedly in exercise of powers under Section 29(3) of the Prisoners Act, 1900 read with Rule 781(vii) of the Bihar Prison Manual, 2012, whereby the earlier transfer order dated 30.04.2025, transferring the petitioner from Adarsh Central Jail, Beur, Patna to Special Central Jail, Bhagalpur (Tritya Khand) has been extended

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for a further period of six months, on the basis of the report/recommendation of the District Magistrate, Patna and the Senior Superintendent of Police, Patna, as contained in Annexure-P/1 to the present petition.

B. A writ in the nature of Mandamus, or any other appropriate writ/s, order/s, direction/s, commanding the respondents as follows:-

(i) To declare the impugned order dated 30.10.2025 (Annexure-P/1) as illegal, void and non est in the eye of law;

(ii) To restrain the Respondents from giving effect to or acting in furtherance of the impugned order dated 30.10.2025 (Annexure-P/1);

(iii) To hold and declare that the impugned order cannot operate or be given effect to, the same being in the teeth of the judicial order dated 07.08.2025 passed in Special Case No. 271 of 2018 by the learned District and Additional Sessions Judge-III cum Special Judge, M.P./M.L.A. Court, Patna;

(iv) To forthwith direct the Respondents to lodge and keep the petitioner at Adarsh Central Jail, Beur, Patna, and not at Special Central Jail, Bhagalpur.

(C). To any other relief/s which the petitioner is found entitled to."

2. Learned counsel for the petitioner submits that a plain reading of Rule 781(vii) of the Bihar Prison Manual, 2012 unequivocally vests the power of transfer of prisoners exclusively in the Inspector General, Prisons and Correctional Services, to be exercised in conformity with Section 29(3) of the Prisoners Act, 1900 and in accordance with general or special orders issued by the State Government. In the present case,

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however, the impugned order has been passed by the Assistant Inspector General, Prisons and Correctional Services, Bihar, Patna who lacks the statutory competence and jurisdiction to exercise such power. Consequently, the impugned order, as contained in Annexure-P/1, is *ultra vires*, illegal and in direct violation of Rule 781 (vii) of the Bihar Prison Manual, 2012. He further submits that impugned order passed by the Assistant Inspector General, Prisons and Correctional Services, Bihar, Patna was not in consonance with the statutory provisions.

3. On the aforesaid aspect, learned counsel for the petitioner has placed his reliance on the judgment passed by the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh Vs. Singhara Singh and Others*** reported in ***AIR 1964 SC 358 (V 51 C 45)*** in which at para 7 and 8 it has been held as under :-

> "7. In Nazir Ahmed's case, 63 Ind App 372 : (AIR 1936 PC 253(2)) the Judicial Committee observed that the principle applied in Taylor v. Taylor, (1876) 1 Ch. D 426 to a Court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under Section 164 and, therefore, held that the magistrate could not give oral evidence of the confession made to him

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which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Ss. 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that "it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves."

8. The rule adopted in Taylor v. Taylor (1876) 1 Ch. D 426 is well recognised and is founded on sound principle. Its result is that if a statute had conferred a power to do an act and had laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in S. 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of S. 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on magistrates the power to record statements or

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confessions, by necessary implication, prohibited a magistrate from giving oral evidence of the statements or confessions made to him."

4. While quoting the said citation, learned counsel for the petitioner submits that if authority is assigned to do a certain thing in a manner which is provided under statutory provisions the same must be done in a way which is provided under statutory provisions. Learned counsel for the petitioner further submits that rule of executive business cannot override the statutory provisions as the Constitution is the mother of all laws.

5. On the aforesaid aspect, learned counsel for the petitioner has placed his reliance on the judgment passed by Hon'ble Supreme Court in the case of ***Partha Das and Others Vs. State of Tripura and Others with Sujan Roy and Others Vs. State of Tripura and Others*** reported in ***2025 SCC OnLine SC 1844*** in which at para 40 it has been held as under :-

> *"40. Applying the above principles of law, it can safely be concluded that executive instructions issued under Article 166(1) Constitution of India cannot override the act done under the statute and the rules made thereunder. The executive instructions can only supplement the provisions of the act and the rules in case of any ambiguity or if gaps are to be filled but such executive instructions cannot supplant the specific provisons which already occupy the field...."*

6. While quoting the aforesaid judgment, learned counsel for the petitioner submits that if there are no gaps in the statutory provisions, on the said aspect executive instruction

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cannot be added to supplant specific provision which has already occupied the field and, in no way, executive business can override the statutory provisions where there is specific and clear-cut statutory provisions.

7. Learned counsel for the petitioner has also placed his reliance on the judgment passed by the Hon'ble Supreme Court in the case of ***State of Maharashtra & Ors. etc. etc. Vs. Saeed Sohail Sheikh etc. etc.*** *reported in* ***AIR 2013 SC 168*** in which at para 25 it has been held as under :-

> "25. Reference may also be, at this stage made, to Section 309 of the Code which, *inter alia*, empowers the Court after taking cognizance of an offence or commencement of the trial to remand the accused in custody in cases where the Court finds it necessary to postpone the commencement of trial or inquiry. The rationale underlying both these provisions is that the continued detention of the prisoner in jail during the trial or inquiry is legal and valid only under the authority of the Court/Magistrate before whom the accused is produced or before whom he is being tried. An undertrial remains in custody by reasons of such order of remand passed by the concerned Court and such remand is by a warrant addressed to the authority who is to hold him in custody. The remand orders are invariably addressed to the Superintendents of jails where the undertrials are detained till their production before the Court on the date fixed for that purpose. The prison where the undertrial is detained is thus a prison identified by the competent Court either in terms of Section 167 or Section 309 of the Code. It is axiomatic that transfer of the prisoner from any such place of detention would be

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> permissible only with the permission of the Court under whose warrant the under trial has been remanded to custody."

8. By quoting the said judgment, learned counsel for the petitioner has stressed that the transfer of the prisoner from any such place of detention would be permissible only with the permission of the Court under whose warrant the under trial has been remanded to custody. In this way, by citing the said judgment, learned counsel for the petitioner has submitted that the court is the authority to make the order of transfer. In this way, the impugned order, which is annexed as Annexure P/1, is illegal, void and *non est* in the eye of law.

9. Learned counsel for the petitioner submits that impugned order dated 30.10.2025 is without having any jurisdiction of law as the Assistant Inspector General, Prisons and Correctional Services, Bihar, Patna is not authorized to pass the order of transfer from Adarsh Central Jail, Beur, Patna to Special Central Jail, Bhagalpur (Tritya Khand). He further submits that according to Section 29(3) of the Prisoners Act, 1900 read with Rule 781 (vii) of the Bihar Prison Manual, 2012, the impugned order cannot be sustained when the very foundation, namely, recommendation is neither justifiable nor tenable as they are founded merely on general expressions such as "law and order", "public interest" and "administrative

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grounds” without any factual foundation or application of mind and, hence, impugned order suffers from patent arbitrariness and non-application of mind and is liable to be treated as a ‘nullity’ in the eye of law. Learned counsel for the petitioner has also raised issue of speedy trial and investigation is fundamental right emanating from Article 21 of the Constitution of India and the Hon’ble Supreme Court, in catena of decisions, has consistently emphasized that speedy trial is an integral component of the fair, just and reasonable procedure guaranteed under Article 21, and any action that results in undue delay amounts to a violation of the said fundamental right. Learned counsel for the petitioner is aggrieved by the act of authority which amounts to violation of said fundamental right and the respondent did not take the permission of judicial courts before extending the petitioner’s detention at Special Central Jail, Bhagalpur for a further period of six months and the impugned order is merely a mechanical order and the same is non-speaking, vague and cryptic.

10. Learned counsel for the State submits that through counter affidavit he has quoted para 7 where it is mentioned that the petitioner was transferred to Special Central Jail (Sector III), Bhagalpur along with two other prisoners on the basis of

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recommendation contained in letter No. 1140/sa dated 26.04.2025 of the District Magistrate, Patna and letter No. 4426/Go dated 17.04.2025 of the Senior Superintendent of Police, Patna, in view of their involvement in several criminal cases and apprehended law and order issues at Model Central, Jail, Beur, Patna. He further submits through para 8 that the petitioner was initially transferred for a period of six months on administrative grounds, vide letter No. 4821 dated 01.05.2025, considering the law and order situation at Model Central Jail, Beur, Patna as well as public interest (copy of letter No. 4821 dated 01.05.2025 is annexed and marked as Annexure-R-1 to 4/A). He further submits through para 9 that upon expiry of the six month' period on 29.10.2025, the petitioner's transfer was extended for further six months vide Memo No. 7935 dated 30.10.2025 (Annexure-P/1), on the basis of recommendation contained in letter no. 2517/General dated 30.10.2025 of the District Magistrate, Patna and letter No. 14159/confidential dated 29.10.2025 of the Senior Superintendent of Police, Patna. The transfer extension was necessitated due to credible information regarding criminal conspiracy during the petitioner's stay in Model Central Jail, Beur, Patna. He further submits through paras 10 and 11 that the transfer of the

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petitioner was made in exercise of powers conferred under Section 29(2) of the Prisoners Act, 1900 and Rule 781(vii) of the Bihar Prison Manual, 2012 duly approved by the Inspector General of Prisons. Copy of Rule 781(vii) of Bihar Prison Manual, 2012 is annexed as Annexure R-1 to 4/B to the present counter affidavit. The petitioner has multiple criminal cases pending against him, which includes 11 cases mentioned in para 22 of the writ petition, 25 cases as per register dated 23.11.2025 and 8 cases as per entry register dated 10.02.2020 and on account of said reason, the administrative decision has been taken for further extension of transfer. He further submits through para 12 that in pursuance of the department order, as soon as the date for production of the petitioner is received by the Superintendent, Special Central Jail, Bhagalpur, letter is immediately written to Superintendent, Adarsh Central Jail, Beur, Patna to ensure physical production and if physical production is not required, then, produce the petitioner through V.C. He further submits that the petitioner has been produced physically/through V.C. in Courts on different dates as informed by the Jail Superintendent, Special Central Jail, Bhagalpur vide letter No. 612 dated 20.01.2026. Copy of letter no. 612 dated 20.01.2026 is annexed as Annexure-R-1 to 4/C to the present

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counter affidavit. He further submits that so far as the petitioner's allegations of illegality and violation of judicial orders are concerned, the same are wholly baseless and misconceived. The transfer order is purely administrative in nature and the same is necessitated in the interest of law and order, public safety and security of other prisoners and the contention of learned counsel for the petitioner is not justified in the light of aforesaid aspects. He further submits that there is no violation of any judicial order dated 07.08.2025 passed in Special Case No. 271 of 2018 by the learned Special Judge, M.P./M.L.A. Court, Patna. The said judicial order did not restrict or limit the power of the competent authority to make administrative transfers under the Prisoners Act, 1900 and Bihar Prison Manual, 2012.

11. He further submits that, in the light of aforesaid facts and circumstances of the case, the petitioner is not entitled to any reliefs:-

i. Quashing of Memo No. 7935 dated 20.10.2025;

ii. Restraining the respondents from giving effect to the impugned order;

iii. Directions to lodge the petitioner at Adarsh Central Jail, Beur, Patna instead of Special Central Jail, Bhagalpur.

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and the writ petition, being devoid of any merit, is fit to be dismissed.

12. Learned counsel for the State has also contended that the judgment in the case of **Saeed Sohail Sheikh** (supra) is not identical with the present case as in Maharashtra there is no rule framed by the State of Maharashtra for transferring the prisoners from one jail to another jail, whereas in Bihar, there is specific provision by the State Government, Bihar for transferring the prisoners from one jail to another jail. So, in the present case, the concerned authority has merely circulated the order under his name where it is mentioned that after obtaining necessary approval of Inspector General, Prisons and Correctional Services, Bihar, Patna on the proposal of extension of period of incarceration in transferee jail, impugned order vide Memo No. 7935 dated 30.10.2025 has only been issued under the signature of Assistant Inspector General, Prisons and Correctional Services, Bihar, Patna for the purpose of circulation, but the said order has been duly approved by Inspector General, Prisons and Correctional Services, Bihar, Patna which is already evident from the impugned order itself.

बिहार सरकार
कारा एवं सुधार सेवाएँ निरीक्षणालय
गृह विभाग (कारा)

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आदेश

जिला पदाधिकारी, पटना के पत्रांक–2517/सा0 दिनांक–30.10.2025 एवं वरीय पुलिस अधीक्षक, पटना के पत्रांक–14159/गो0 दिनांक–29.10.2025 के द्वारा प्रतिवेदित है की आदर्श केन्द्रीय कारा, बेउर, पटना में संसीमित बंदी रीतलाल यादव, पे0–स्व0 रामाशीष यादव, सा0–कॉथवा, थाना–खगौल, जिला–पटना को विभागीय आदेश ज्ञापांक–3161 दिनांक–30.04.2025 के द्वारा आदर्श केन्द्रीय कारा, बेउर, पटना से विशेष केन्द्रीय कारा, भागलपुर (तृतीय खंड) में स्थानांतरित किया गया था। जिसकी कलावधी दिनांक–29.10.2025 को समाप्त हो चुकी है। इनके वापस पटना आने पर काराधीन रहते हुए आपराधिक षडयंत्र रचने की सूचना है। इनके विरूद्ध विभिन्न थानों में आपराधिक कांड दर्ज है। ये अभियुक्त दबंग प्रवृति के है। इनके स्थानीय कारा में रहने पर कारा में लोक व्यवस्था, शांति व्यवस्था तथा विधि–व्यवस्था की समस्या उत्पन्न होने के संभावना बनी रहती है। इनके द्वारा आसन्न बिहार विधान सभा निर्वाचन के अवसर पर प्रत्यक्ष–अप्रत्यक्ष रूप मतदाता का प्रभावित करने एवं कारा में अराजकता की स्थिति उत्पन्न करने का प्रयास किया जा सकता है। ऐसी परिस्थिति में प्रशासनिक दृष्टिकोण इनका केन्द्रीय कारा, भागलपुर की अवधि विस्तार करने की अनुशंसा की जाती है। तद्आलोक में जिला पदाधिकारी, पटना एवं वरीय पुलिस अधीक्षक, पटना द्वारा बंदी रीतलाल यादव, पे0–स्व0 रामाशीष यादव को अवधि विस्तार करने का अनुरोध किया गया है।

2. जिला पदाधिकारी, पटना एवं वरीय पुलिस अधीक्षक, पटना द्वारा पूर्व में प्राप्त प्रतिवेदन/अनुशंसा के आलोक में आदर्श केन्द्रीय कारा, बेउर, पटना में संसीमित निम्न बंदी को उनके नाम के समक्ष यथा–स्तम्भ 04 में अंकित कारा में स्थानांतरित किया गया था, जो निम्नवत् है :–

क.	आदर्श केन्द्रीय कारा, बेउर, पटना से स्थानांतरित बंदी के नाम/पिता का नाम	विभागीय स्थानांतरण आदेश ज्ञापांक/दिनांक/अवधि	स्थानान्तरित कारा का नाम
1	2	3	4
1	रीतलाल यादव, पे0–स्व0 रामाशीष यादव	3161/30.04.2025 छः माह के लिए	विशेष केन्द्रीय कारा, भागलपुर (तृतीय खण्ड)

3. जिला पदाधिकारी, पटना एवं वरीय पुलिस अधीक्षक, पटना के प्रतिवेदन/अनुशंसा के आलोक में सम्यक् विचारोपरांत कारा की विधि व्यवस्था, लोकहित एवं जनहित में प्रशासनिक दृष्टिकोण से, बिहार कारा हस्तक, 2012 के नियम–781 की कंडिका– (vii) एवं बंदी अधिनियम की धारा 1900 की संशोधित धारा 29 (3) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए आदर्श केन्द्रीय कारा, बेउर, पटना से विशेष केन्द्रीय कारा, भागलपुर (तृतीय खण्ड) में स्थानांतरित बंदी रीतलाल यादव, पे0–स्व0 रामाशीष यादव को अगले छः माह के लिए स्थानांतरित कारा में ही अवधि विस्तार किया जाता है।

4. जिला पदाधिकारी, पटना एवं वरीय पुलिस अधीक्षक, पटना से अनुरोध है कि विभागीय पत्रांक–1103 दिनांक–09.03.2017 एवं विभागीय पत्रांक–7125 दिनांक–15.12.2017 के आलोक में उक्त स्थानांतरित बंदी को विचाराधीन वादों में निर्धारित तिथियों पर स्थानीय न्यायालय में ससमय उपस्थापन की व्यवस्था सुनिश्चित किया जाय।

5. अधीक्षक, आदर्श केन्द्रीय कारा, बेउर, पटना को निदेश दिया जाता है कि बंदी के स्थानांतरण के पूर्व यह सुनिश्चित कर लेंगे की

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माननीय न्यायालय का उक्त बंदी के वाद निष्पादन के संबंध में कोई दिशा–निदेश नहीं है। साथ ही विभागीय पत्रांक–1226 दिनांक–17.03.2017 के द्वारा निर्गत निदेश के आलोक में उक्त बंदी के स्थानांतरण की सूचना संबंधित न्यायालय को देते हुए प्रत्येक निर्धारित तिथि पर उपस्थापन एवं रिमांड संबंधी कार्रवाई सुनिश्चित करेंगे। पूनः संबंधित अधीक्षक को निदेशित किया जाता है कि विभागीय पत्रांक–4680 दिनांक–01.06.2023 के आलोक में बंदी को विडियो–कॉन्फ्रेंसिंग के माध्यम से माननीय न्यायालय में उपस्थापन शत–प्रतिशत कराना सुनिश्चित करेंगे।

उपरोक्त पर महानिरीक्षक कारा एवं सुधार सुवाएँ का अनुमोदन प्राप्त है।

13. Learned counsel for the State has placed his reliance on the judgment passed by the Hon'ble Supreme Court in the case of ***Union of India and Another Vs. P.K. Roy and others*** *reported in* ***AIR 1964 Madh Pra 307*** in which the relevant portion of para 10 reads as under :-

> 10…… "The principle of the maxim "delegatus non potest delegare" has therefore no application to the present case. The maxim deals with the extent to which a statutory authority may permit another to exercise a discretion entrusted by the statute to itself. It is true that delegation in its general sense does not imply a parting with statutory powers by the authority which grants the delegation, but points rather to the conferring of an authority to do things which otherwise that administrative authority would have to do for itself. If, however, the administrative authority named in the statute has and retains in its hands general control over the activities of the person to whom it has entrusted in part the exercise of its statutory power and the control exercised by the administrative authority is of a substantial degree there is in the eye of law no "delegation" at all and the maxim "delegatus non potest delegare" does not apply (see Fowler (John) and Co. (Leeds) v. Duncan. 1941 – Ch 450). In other words if a statutory authority empowers a delegate to undertake

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> preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own….."

14. He has cited relevant portion of para 10 of the judgment. By quoting the said judgment, it has been submitted that the Inspector General, Prisons and Correctional Services, Bihar, Patna has already passed the order dated 30.10.2025. Merely order was communicated under the signature of Assistant Inspector General, Prisons and Correctional Services, Bihar, Patna and on the basis of proposal extended by office after necessary approval of Inspector General, Prisons and Correctional Services, Bihar, Patna, the said order was communicated on the same day. In this way, there is no question of delegation of power. Only earlier order was extended by the authority who has been assigned to do so under the statutory provision, but communication was made through the signature of Assistant Inspector General, Prisons and Correctional Services, Bihar, Patna. Thus, there is no question that the Assistant Inspector General, Prisons and Correctional Services, Bihar, Patna has acted in the derogation of statutory provision and the impugned order is justified and legal.

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15. Learned counsel for the State has also placed reliance on the decision of this Court rendered in **LPA No. 2294 of 2015** (*Amrawati Devi Vs. State of Bihar Through The Principal Secretary, Urban Development and Town Planning Department, Government of Bihar, Patna*) in which at para 31 it has been held as under:-

> "31. Rule 22 of the Rules empowers the Minister to arrange, by way of standing order, with the Principal Secretary concerned as to what matters or classes of matters are to be brought to his notice. Therefore, even if the decision was required to be taken by the Minister in terms of Rules 21 and 22 of the Rules, the fact remains that once the Minister had approved the decision of the Principal Secretary, it was an approval in terms of Rule 22 of the Rules. The standing orders are required to be issued in a class of cases to bring certainty to the affairs of the Department; but in an individual case, the approval of the Minister would mean delegation to the Principal Secretary and, thus, there is compliance of the Rules as well. Though the Rules have been held to be mandatory, the fact remains that the decision approving an order passed by the Principal Secretary by the Minister does not contradict any of the provisions of the Rules; rather, it supplements such Rules. It is well settled that there cannot be any action contradictory to the Rules, but the action can always be supplemented. Therefore, approval by the Minister of an order passed by the Principal Secretary complies with the rigours of the Rules as well and, therefore, in either situation, we find that the order of the learned Single Bench is not sustainable."

16. By quoting the citation, he has submitted that

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once there is approval by the Superior authority, no question can be raised that it was against the statutory provision as the decision fulfilled the rigours of statutory provision.

17. After hearing the arguments of the learned counsel for the parties as well as on perusal of the material available on record, it is found that Annexure P/1 is the bone of contention between the petitioner and respondents and other issues raised by the petitioner are arising out of Annexure P/1. For deciding the Annexure P/1, it is necessary to cite the relevant provision of Bihar Prison Manual, 2012 :-

> "**29. Removal of prisoners -** (1) The [State Government] may, by general or special order provide for the removal of any prisoner confined in a prison-
>
> (a) under sentence of death, or
>
> (b) under, or in lieu of, a sentence of imprisonment or transportation, or
>
> (c) in default of payment of a fine, or
>
> (d) in default of giving security for keeping the peace or for maintaining good behavior, to any other prison in [the State [x x x].
>
> (2) (Subject to the orders, and under the control, of the State Government] the Inspector-General of Prisons may, in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the State to any other prison in the State] [x x x].]
>
> **[Bihar Amendment** - In its application to the State of Bihar, in S. 29, after sub-section (2), add the following sub-section, namely:-
>
> (3) Subject to the orders, and under the control

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of the State Government any person who is detained in custody in a prison due to pending inquiry, investigation or trial under any writ, warrant or order of any Court may, by order, be directed to be removed-

(a) from one subsidiary jail to another subsidiary jail or district jail in the district, by the District Magistrate;

(b) from the one district Jail to another subsidiary Jail in the district, by the District Magistrate:

(c) from a subsidiary jail or a district Jail in one district to a subsidiary Jail or a district Jail in another district, by the District Magistrate of the District from which the person is removed with the consent of the District Magistrate of such other district;

(d) by the State Government or the Inspector General of Prisons:-

(i) from the Central Jail to another Central Jail or to a District Jail or a subsidiary Jail;

(ii) from the district Jail to another district Jail or a Central Jail or a subsidiary Jail; or

(iii) from one subsidiary Jail to another subsidiary Jail or to a district Jail or a Central Jail."

Rule 781. Inspector General, Prisons and Correctional Services. - The key functions and powers of the Inspector General, Prisons & Correctional Services shall be as follows:

i. Inspector General, Prisons & Correctional Services shall ensure implementation of the provisions of the applicable Acts and prison policies as laid down by the State Government through other officers appointed for assisting him/her at the headquarters, districts and at the prisons under his/her control.

ii. Inspector General, Prisons & Correctional Services shall plan, organise, direct, coordinate and control the various prison services.

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iii. Inspector General, Prisons & Correctional Services shall define the functions and fix lines of authority and channels of command of prison and headquarter personnel.

iv. Inspector General, Prisons & Correctional Services shall inspect prisons with special reference to care, welfare, training and treatment of inmates, prison security, staff discipline, staff welfare and adherence to these Rules in prison administration.

v. Inspector General, Prisons & Correctional Services shall act as a medium of communication between State Government and every personnel of the Prisons & Correctional Services Department. Except in cases specially excepted, every communication from any officer of the Prisons & Correctional Services Department, intended for the perusal of State Government, shall be submitted through him/her.

vi. Inspector General, Prisons & Correctional Services shall have authority to sanction all ordinary working expenses of the Department within the limits of budget grants.

vii. Inspector General, Prisons & Correctional Services shall have authority to transfer prisoners from any prison in Bihar to another prison within the State vide Section 29(2) of Prisoners Act, 1900, or in accordance with general or special orders issued by the Government to a prison in any other State. He/she is also authorised to sanction the removal of prisoners from the permanent buildings of any prison into temporary quarters during emergencies.

789. **Assistant Inspector General (H.Q.)** - The post of Assistant Inspector General, (H.Q.) shall be filled by promotion from Bihar Jail Services cadre.

790. In addition to the duties and responsibilities elsewhere prescribed in this Manual, the

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general duties and responsibilities of the Assistant Inspector General, (H.Q.) shall be as follows:-

(i) Assistant Inspector General, Prison (H.Q.) will be the drawing and disbursing officer of prison and correctional department and accounts.

(ii) He/she will be the first appellate authority under Right to Information Act.

791. **Assistant Inspector General, Prisons (Region)** – Assistant Inspector General, Prisons (Region) shall have power to revise or modify any punishment awarded by a Superintendent of a prison to prison officers.

792.(v) Assistant Inspector General, Prisons (Region) shall ensure that all prisons in his/her region duly observe the provisions of this manual strictly and shall be responsible for implementing all the directions of the Deputy Inspector General (Prison Administration), Inspector General, Prison and Correctional Services and State Governments in this regard."

18. In the light of the relevant provisions, there is statutory provision for removal of prisoners, subject to the orders and under the control of the State Government any person who is detained in custody in a prison due to pending inquiry, investigation or trial under any writ, warrant or order of any Court may, by order, be directed to be removed by the State Government or Inspector General from the Central Jail to another Central Jail or to a District Jail or a subsidiary Jail; from the district Jail to another district Jail or a Central Jail or a subsidiary Jail; or from one subsidiary Jail to another subsidiary Jail or to a district Jail or a Central Jail.

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19. The key functions and powers of the Inspector General, Prisons and Correctional Services have specifically been provided under Rules 781(i) of the Bihar Prison Manual, 2012 and as per the said Rule, Inspector General, Prisons and Correctional Services is to ensure the implementation of the provision of the applicable Act and prison policies.

20. On the bare perusal of Rule 781(i), it is crystal clear that for the implementation of the provisions of the applicable acts and prison policies as laid down by the State Government, vests in Inspector General, Prisons. For such purposes, I.G. Prisons may take assistance from the officers appointed to assist him/her at the headquarters, districts and at the prisons under his/her control. It has also been mentioned in sub Rule (vii) of the Rule 781 that Inspector General, Prisons & Correctional Services shall have authority to transfer prisoners from any prison in Bihar to another prison within the State vide Section 29(2) of Prisoners Act, 1900, or in accordance with general or special orders issued by the Government to a prison in any other State. He/she is also authorized to sanction the removal of prisoners from the permanent buildings of any prison into temporary quarters during emergencies.

21. The responsibilities of the Assistant Inspector

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General, Prisons (Regions) are prescribed under Rule 792(v) of the Bihar Prison Manual, 2012. In terms thereof, the Assistant Inspector General, Prisons (Regions) shall ensure that all prisons in his/her region duly observe the provisions of this manual strictly and shall be responsible for implementing all the directions of the Deputy Inspector General (Prison Administration), Inspector General, Prison and Correctional Services and State Governments in this regard.

22. In this way, after discussing the relevant provisions, the Assistant Inspector General, Prisons (Regions) has to act in accordance with the direction given by the IG, Prison and the Annexure P/1 which has been cited by the petitioner reads as follows:-

बिहार सरकार
कारा एवं सुधार सेवाएँ निरीक्षणालय
गृह विभाग (कारा)
आदेश

जिला पदाधिकारी, पटना के पत्रांक–2517/सा0 दिनांक–30.10.2025 एवं वरीय पुलिस अधीक्षक, पटना के पत्रांक–14159/गो0 दिनांक–29.10.2025 के द्वारा प्रतिवेदित है की आदर्श केन्द्रीय कारा, बेउर, पटना में संसीमित बंदी रीतलाल यादव, पे0–स्व0 रामाशीष यादव, सा0–कॉथवा, थाना–खगौल, जिला–पटना को विभागीय आदेश ज्ञापांक–3161 दिनांक–30.04.2025 के द्वारा आदर्श केन्द्रीय कारा, बेउर, पटना से विशेष केन्द्रीय कारा, भागलपुर (तृतीय खंड) में स्थानांतरित किया गया था। जिसकी कलावधी दिनांक–29.10.2025 को समाप्त हो चुकी है। इनके वापस पटना आने पर काराधीन रहते हुए आपराधिक षडयंत्र रचने की सूचना है। इनके विरूद्ध विभिन्न थानों में आपराधिक कांड दर्ज है। ये अभियुक्त दबंग प्रवृति के है। इनके स्थानीय कारा में रहने पर कारा में लोक व्यवस्था, शांति व्यवस्था तथा विधि–व्यवस्था की समस्या उत्पन्न होने के संभावना बनी रहती है। इनके द्वारा आसन्न बिहार विधान सभा निर्वाचन के अवसर पर प्रत्यक्ष–अप्रत्यक्ष रूप मतदाता का प्रभावित करने एवं कारा में अराजकता की स्थिति उत्पन्न करने का प्रयास किया जा सकता है। ऐसी परिस्थिति में प्रशासनिक दृष्टिकोण इनका केन्द्रीय कारा, भागलपुर की

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अवधि विस्तार करने की अनुशंसा की जाती है। तद्आलोक में जिला पदाधिकारी, पटना एवं वरीय पुलिस अधीक्षक, पटना द्वारा बंदी रीतलाल यादव, पे0–स्व0 रामाशीष यादव को अवधि विस्तार करने का अनुरोध किया गया है।

2. जिला पदाधिकारी, पटना एवं वरीय पुलिस अधीक्षक, पटना द्वारा पूर्व में प्राप्त प्रतिवेदन/अनुशंसा के आलोक में आदर्श केन्द्रीय कारा, बेउर, पटना में संसीमित निम्न बंदी को उनके नाम के समक्ष यथा–स्तम्भ 04 में अंकित कारा में स्थानांतरित किया गया था, जो निम्नवत् है :–

क.	आदर्श केन्द्रीय कारा, बेउर, पटना से स्थानांतरित बंदी के नाम/पिता का नाम	विभागीय स्थानांतरण आदेश ज्ञापांक/दिनांक/अवधि	स्थानान्तरित कारा का नाम
1	2	3	4
1	रीतलाल यादव, पे0–स्व0 रामाशीष यादव	3161/30.04.2025 छः माह के लिए	विशेष केन्द्रीय कारा, भागलपुर (तृतीय खण्ड)

3. जिला पदाधिकारी, पटना एवं वरीय पुलिस अधीक्षक, पटना के प्रतिवेदन/अनुशंसा के आलोक में सम्यक् विचारोपरांत कारा की विधि व्यवस्था, लोकहित एवं जनहित में प्रशासनिक दृष्टिकोण से, बिहार कारा हस्तक, 2012 के नियम–781 की कंडिका– (vii) एवं बंदी अधिनियम की धारा 1900 की संशोधित धारा 29 (3) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए आदर्श केन्द्रीय कारा, बेउर, पटना से विशेष केन्द्रीय कारा, भागलपुर (तृतीय खण्ड) में स्थानांतरित बंदी रीतलाल यादव, पे0–स्व0 रामाशीष यादव को अगले छः माह के लिए स्थानांतरित कारा में ही अवधि विस्तार किया जाता है।

4. जिला पदाधिकारी, पटना एवं वरीय पुलिस अधीक्षक, पटना से अनुरोध है कि विभागीय पत्रांक–1103 दिनांक–09.03.2017 एवं विभागीय पत्रांक–7125 दिनांक–15.12.2017 के आलोक में उक्त स्थानांतरित बंदी को विचाराधीन वादों में निर्धारित तिथियों पर स्थानीय न्यायालय में ससमय उपस्थापन की व्यवस्था सुनिश्चित किया जाय।

5. अधीक्षक, आदर्श केन्द्रीय कारा, बेउर, पटना को निदेश दिया जाता है कि बंदी के स्थानांतरण के पूर्व यह सुनिश्चित कर लेंगे की माननीय न्यायालय का उक्त बंदी के वाद निष्पादन के संबंध में कोई दिशा–निदेश नहीं है। साथ ही विभागीय पत्रांक–1226 दिनांक–17.03.2017 के द्वारा निर्गत निदेश के आलोक में उक्त बंदी के स्थानांतरण की सूचना संबंधित न्यायालय को देते हुए प्रत्येक निर्धारित तिथि पर उपस्थापन एवं रिमांड संबंधी कार्रवाई सुनिश्चित करेंगे। पूनः संबंधित अधीक्षक को निदेशित किया जाता है कि विभागीय पत्रांक–4680 दिनांक–01.06.2023 के आलोक में बंदी को विडियो–कॉन्फ्रेंसिंग के माध्यम से माननीय न्यायालय में उपस्थापन शत–प्रतिशत कराना सुनिश्चित करेंगे।

<u>उपरोक्त पर महानिरीक्षक कारा एवं सुधार सुवाएँ का अनुमोदन प्राप्त है।</u>

(Emphasis supplied on the last line)

23. The approval was made by the Inspector General, Prisons & Correctional Services, Bihar, Patna on the

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aforementioned aspect and said approval remained undisputed. From the very verbatim of the said Annexure, it is quite evident that Office has extended the proposal regarding the transfer of the petitioner from Aadarsh Central Jail, Beur, Patna to Special Central Jail, Bhagalpur (Tritya Khand) on the basis of confidential report of the Senior Superintendent of Police, Patna coupled with the recommendation of the District Magistrate, Patna, Inspector General, Prisons & Correctional Services formed the opinion and approved the said proposal. The approval granted by the concerned authority clearly reflects that he has taken the decision on the basis of official proposal and after approval, the said order was communicated through Annexure P/1. Rule 781(vii) authorises Inspector General, Prisons & Correctional Services to transfer the petitioner from Aadarsh Central Jail, Beur, Patna to Special Central Jail, Bhagalpur (Tritya Khand) and under Rule 792(v) the Assistant Inspector General, Prisons (Region) is also responsible for implementing all the directions of Deputy Inspector General (Prison Administration), Inspector General, Prison and Correctional Services and State Government in this regard.

24. In the present case, it is crystal clear that the main contention of the learned counsel for the petitioner is that the

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order of transfer of the petitioner from Aadarsh Central Jail, Beur, Patna to Special Central Jail, Bhagalpur (Tritya Khand) was passed by the Assistant Inspector General, Prisons (Region), but after going through Annexure P/1, it is crystal clear that Inspector General, Prisons & Correctional Services has approved the proposal as extended by office on the basis of material available on record and the Assistant Inspector General, Prison has merely circulated the said order under his signature. In this way, communication of order is not delegation and the said proposal was approved by none else than Inspector General, Prisons & Correctional Services himself.

25. The core legal distinction between the communication and delegation: An officer who is authorised to assist the senior officials by virtue of rule which is mentioned in Rule 792(v) of the Bihar Prison Manual, 2012 is also bound to follow the direction. In this way, a subordinate officer who merely transmits or communicates the decision of a competent authority acts as a conduit, not as a delegate. He is bound to follow the direction of the senior under the said rule. It cannot be held that the subordinate officer has taken a decision. In the present case, the subordinate officer has performed his statutory duty by circulating the order of the senior which has been

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specifically enshrined in the relevant rule. The statutory power is exercised by the Inspector General, Prisons & Correctional Services and the Assistant Inspector General, Prisons (Region) only gives its expression and this is qualitatively different from delegation where decision making power itself is transferred. Here, the decision has been taken by the Inspector General, Prisons & Correctional Services who has approved the official proposal on the basis of material available on record and subsequently the said order was communicated through the Assistant Inspector General, Prisons (Region) under his signature.

26. The classical principle is captured in the Latin maxim ***Delegatus non potest delegare*** - a delegate cannot further delegate. However, this maxim applies only where there is an actual transfer of decision-making power. In the present case, decision has already been taken by the Inspector General, Prisons and Correctional Services. So, the very maxim "***Delegatus non potest delegare***"--- delegate cannot further delegate, does not apply here as the Assistant Inspector General, (Prisons) has not taken any decision. So, the very objection of the petitioner's counsel is not justified and legal.

27. From the very impugned order, it is quite evident

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that on the approval of the I.G., Prisons and Correctional Services, the order has been communicated under the signature of Assistant Inspector General, Prisons which is quite evident from Annexure P/1. The impugned order is only extension of order of incarceration in the said jail where he had been transferred earlier vide Memo No. 3161 dated 30.04.2025 and the same has been issued only after obtaining the necessary approval of the I.G., Prisons and Correctional Services, under the signature of Assistant Inspector General, Prisons (Region). Even, the petitioner has not raised any objection on the point of approval. In this way, the impugned order has also quoted the reason as to why there was extension of earlier order in view of the letters of Senior Superintendent of Police, Patna. On the basis of recommendation contained in letter no. 2517/General dated 30.10.2025 of the District Magistrate, Patna and letter no. 14159/confidential dated 29.10.2025 of the Senior Superintendent of Police, Patna and the reason for extension was necessitated due to credible information regarding criminal conspiracy during the petitioner's stay in the Model Central Jail, Beur, Patna. It has been submitted in para 11 of the counter affidavit that petitioner has multiple criminal cases pending against him, which includes 11 cases mentioned in para 22 of

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the writ petition, 25 cases as per entry register dated 23.11.2025 and 8 cases as per entry register dated 10.02.2020 and on the said aspect administrative decision was taken to transfer and the confidential report of Senior Superintendent of Police, Patna was quite evident in the light of the facts and circumstance of the case.

28. Learned counsel for the petitioner has also raised the issue of speedy trial and he has become the victim of unnecessary delay in the proceeding of the trial.

29. It is necessary to quote Article 21 of the Constitution of India which reads as under:-

> ***"21. Protection of life and personal liberty****. - No person shall be deprived on his life or personal libverty except according to procedure established by law."*

30. Article 21 is not an absolute right. The State can impose restrictions on the right to life and liberty, but such restrictions must be fair, reasonable and just, and imposed as per the procedure established by law.

31. The foundational constitutional text is: "No person shall be deprived of his life or personal liberty except according to procedure established by law." The operative words are "except according to procedure established by law." Deprivation is permissible - what is required is that it follow a just, fair, and

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reasonable procedure.

32. On the said aspect of Article 21 of the Constitution of India, learned counsel for the State has already submitted that whenever direction was given by the Court, the said aspect was effectively implemented either through the physical appearance or through VC and the question of Article 21 is the part and parcel of fundamental rights enshrined in the Constitution of India which has not been ignored in the light of the facts and circumstances of the present case where the VC facility as well as physical appearance was provided through the concerned court in the present case. There was no question of hampering the trial as petitioner was produced through VC or physically whenever is required. So, there is no question of delay in proceeding of trial and no proceeding of court has been hampered and one cannot ignore the right of the petitioner on one hand and the right of the society or victim on the other hand.

33. In the present case, the authority has taken every precautions not to delay the proceeding of court as submitted by the learned counsel for the State and order of the Assistant Inspector General, Prisons, Bihar, Patna which has been challenged, is not in any way, in derogation of power authorized

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under the statutory provisions. The relevant provision has been quoted which clearly reflects that the person/authority has only communicated the order after the necessary approval from the concerned I.G., Prisons and Correctional Services, Bihar, Patna and the Assistant Inspector General, Prisons, Bihar, Patna has not acted in derogation of power rather he has communicated under his signature on the basis of approval of I.G., Prisons and Correctional Services, Bihar, Patna which clearly reflects that after necessary approval, order was communicated. The communication of order is not delegation of power which has been raised by the learned counsel for the petitioner and petitioner has not disputed the aspect of necessary approval of I.G., Prisons and Correctional Services. Furthermore, the judgments relied upon by the learned counsel for the petitioner are inapplicable to the present case, the factual matrix herein being materially distinct from those cited authorities.

34. It goes without saying precisely that the essential legal distinction between *communication* and *delegation* is well settled. An officer authorised to assist superior authorities, by virtue of Rule 792(v) of the Bihar Prison Manual, 2012, is bound to act in conformity with their directions. A subordinate officer who merely transmits or communicates the decision of a

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competent authority acts as a conduit and not as a delegate, and is under a statutory obligation to give effect to such directions. It cannot, therefore, be contended that such subordinate has exercised independent decision-making authority.

35. In the present case, the subordinate officer has discharged his statutory function by circulating the order of the superior authority, as contemplated under the relevant rule. The statutory power stands exercised by the Inspector General, Prisons and Correctional Services, whereas the Assistant Inspector General, Prisons (Region), has merely conveyed or given effect to the said decision. This is fundamentally distinct from a case of delegation, where the power of decision-making itself is transferred. Here, the decision was duly taken by the Inspector General, Prisons and Correctional Services, upon consideration of the material available on record, and the official proposal was accordingly approved. The subsequent communication of the said order through the Assistant Inspector General, Prisons (Region), is thus procedural in nature and does not dilute or alter the locus of the decision-making authority.

36. The settled principle encapsulated in the Latin maxim *delegatus non potest delegare* that a delegate cannot further delegate-applies only where there is a transfer of

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decision-making authority. In the present case, no such transfer has occurred. The decision stood duly taken by the Inspector General, Prisons and Correctional Services, Bihar, Patna in exercise of his statutory powers. The Assistant Inspector General, Prisons (Region), Bihar, Patna has neither exercised independent discretion nor assumed any decision-making role, but has merely communicated the decision so taken. In these circumstances, the aforesaid maxim has no application.

37. A plain reading of the impugned order clearly establishes that, upon due approval of the Inspector General, Prisons and Correctional Services, the order was communicated under the signature of the Assistant Inspector General, Prisons (Region), as is evident from Annexure-P/1. The impugned order is, in substance, a continuation of the earlier order of incarceration in the said jail, pursuant to the petitioner's prior transfer vide Memo No. 3161 dated 30.04.2025, and has been issued only after obtaining the requisite approval of the Inspector General, Prisons and Correctional Services.

38. Notably, no objection has been raised by the petitioner on the aspect of such approval. The impugned order also discloses the reasons necessitating the continuation of the earlier arrangement, founded upon the communications of the

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Senior Superintendent of Police, Patna. In particular, reliance has been placed on the recommendation contained in Letter No. 2517/General dated 30.10.2025 of the District Magistrate, Patna, and Letter No. 14159/confidential dated 29.10.2025 of the Senior Superintendent of Police, Patna. The extension was necessitated on account of credible information regarding criminal conspiracy during the petitioner's stay in Model Central Jail, Beur, Patna.

39. A bare perusal of the relevant provisions makes it clear that the concerned authority has merely communicated the order upon obtaining due and requisite approval from the Inspector General, Prisons and Correctional Services, Bihar, Patna. The Assistant Inspector General, Prisons (Region), Bihar, Patna has not exercised any independent decision-making authority but has acted strictly in accordance with such approval, and the order bears his signature only by way of formal communication.

40. It is, therefore, evident that the communication of the order cannot be equated with delegation of power, as sought to be contended by the learned counsel for the petitioner. Notably, the petitioner has not disputed the factum of prior approval by the Inspector General, Prisons and Correctional

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Services, Bihar, Patna.

41. In the backdrop of the aforesaid discussion, and upon a careful appraisal of the statutory framework, the governing legal principles and the material placed on record, this Court is of the considered view that the impugned action has been taken strictly in accordance with law. The decision-making authority has been duly exercised by the competent officer, and the subsequent communication thereof cannot, in any manner, be construed as an impermissible delegation of power. The procedural safeguards mandated under Article 21 of the Constitution of India stand duly observed and no prejudice or infraction of the petitioner's rights is made out. The transfer of the petitioner, founded upon relevant material including administrative recommendations and security considerations, reflects a *bona fide* and reasoned exercise of statutory power. The contentions advanced on behalf of the petitioner is devoid of substance and unsupported by the legal position. Hence, the petitioner has not made out a case so as to interfere with the impugned order and the contention of the learned counsel for the State is quite tenable and sustainable in the light of the given facts and circumstances of the present case.

42. Accordingly, in the considered opinion of this

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Court, the impugned order calls for no interference and stands affirmed in law. Consequently, the present criminal writ petition stands dismissed.

43. Pending interlocutory application(s), if any, shall also stand disposed of.

(Alok Kumar Pandey, J)

alok/
amit kumar/-

AFR/NAFR	AFR
CAV DATE	23.04.2026
Uploading Date	27.04.2026
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