IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.876 of 2024

Arising Out of PS. Case No.-341 Year-2006 Thana- BANKA District- Banka

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Gokul Yadav, Son Of Mahendra Yadav, Resident of Village- Chakadih, P.S. -Banka, District -Banka

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Dept of Home, Govt. of Bihar, Old Secretariat, Bihar
2. Director General Of Police, Bihar, Patna Bihar
3. The Additional Director General Of Police Cum Special Secretary, Home, Govt. Of Bihar, Patna Bihar
4. The Inspector General Of Prision Bihar, Patna Bihar
5. Deputy Inspector General Of Police, Prison And Reform Services Bihar Patna Bihar
6. The Law Secretary Govt. Of Bihar, Patna Bihar
7. District Magistrate, Banka Bihar
8. Superintendent Of Police, Banka Bihar
9. The Jail Superintendent District Jail , Banka Bihar
10. Probation Officer, Banka Bihar

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Y.C. Verma, Sr. Advocate
Mr. Brij Nandan Prasad, Advocate
For the Respondent/s : Mr. Raju Patel, AC to AG

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 15-09-2025

I.A.No.01 of 2025

Heard learned senior counsel for the petitioner and learned counsel for the State.

2. This interlocutory application has been filed with a prayer to amend the writ petition and treat the facts mentioned in this application to be a part of the main writ application.

3. In the light of averment made in this interlocutory application, the same is allowed and the averments made in this interlocutory application will be treated as part of the main writ petition.

Cr.W.J.C.No.876 of 2024

4. Initially, the instant writ petition has been filed by the petitioner seeking following reliefs :

> *"A. A writ in the nature of Certiorari or any other appropriate writ, order/orders, direction quashing the followings :-*
> *(i) The order issued by deputy Inspector General of Police, Prison and Reform Services, Bihar, Patna, communicating recommendation of Bihar Remission Board in compliance with the order passed in Cr.W.J.C. No. 964 of 2022, rejecting the proposal for premature release of the petitioner accompanied with the letter bearing no. 1397 dated 15.02.2024, issued by deputy Inspector General of Prison and Reform services Bihar, Patna, addressed to all the concerned authority.*
> *B. A writ in the nature of Mandamus or any other appropriate writ, order/orders, direction commanding the respondents for the followings:-*
> *(i) To consider the case of the petitioner afresh case for grant of remission and his forthwith*

release, as he was rotting in jail since 14.11.2006 (except availing of provision bail from 11.02.10 to 18.10.10).
C. To any other relief/s to which the petitioner is found entitled to :-".

5. Now, by way of amendment, the petitioner has also sought for quashing of the resolution/decision dated 27.11.2023 of the State Remission Board (hereinafter referred to as the 'Board') whereby and whereunder the proposal for premature release of the petitioner has been rejected.

6. The learned senior counsel appearing on behalf of the petitioner submits that the petitioner is an accused in Banka P.S. Case No. 341 of 2006 registered under Sections 302/34 of the I.P.C. and Section ¾ of the Explosive Substances Act. He has been convicted by the learned Presiding Officer of Fast Track Court No. II, Banka vide judgment of conviction dated 16.06.2009 passed in Sessions Trial No. 975 of 2007 under Sections 302/34 of the I.P.C. and Section ¾ of the Explosive Substance Act and has been sentenced to undergo rigorous imprisonment for life vide order of sentence dated 19.06.2009. Being aggrieved by the aforesaid judgment and order, the petitioner filed Cr. Appeal (DB) No. 590 of 2009 before this Court, which upheld and confirmed the judgment and order of

the learned trial court vide judgment dated 22.06.2015. Being aggrieved by the aforesaid judgment dated 22.06.2015, the petitioner preferred S.L.P No. 2542 of 2016 before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the SLP filed by the petitioner and upheld the order of the learned trial court as well as of this Court.

7. The learned senior counsel further submits that the Board in a routine and mechanical manner, by just referring to the report of Superintendent of Police, Banka, rejected the proposal of premature release of the petitioner, though he had already completed more than 22 years in custody with remission.

8. The learned senior counsel further submits that it appears that the report of the Probation Officer is in favour of the petitioner. The report of Superintendent of Police, Banka shows that the petitioner, in case of release, would again indulge in murder and *dacoity*. But the said report of the Superintendent of Police, which is based on the report of the SHO, was an *ex-parte* one as the Superintendent of Police did not visit the village and even the SHO did not visit the village neither made any enquiry nor serve any notice to family members. It appears the report of the Superintendent of Police is table work,

groundless and without any foundation as no independent inquiry was held.

9. The learned senior counsel further submits that from perusal of rejection order dated 27.11.2023, it is apparent that the proposal of premature release of the petitioner was rejected by the Board mainly on the ground of adverse report of the Superintendent of Police, Banka. The learned senior counsel further submits that the report of the Superintendent of Police, Banka is based on the report submitted by the SHO concerned whereby and whereunder the SHO reported against the premature release of the petitioner. The learned senior counsel further submits that the Board has not applied its mind to the facts presented before it and has failed to appreciate that except for the report of Superintendent of Police, Banka, all the statutory authorities had recommended for premature release of the petitioner. Thus, the Board has not applied its own mind *vis-a-vis* the facts of the case and acted mechanically by just referring to the report of the Superintendent of Police and hence, the decision of the Board is against the settled principles of law. In support of his contention, the learned senior counsel refers to the decision of a Coordinate Bench of this Court dated 20.03.2024 passed in the case of ***Md. Azimuddin @ Ajimuddin***

vs. The State of Bihar (Cr.W.J.C.No. 146 of 2022) which, in turn, copiously referred to the parameters and guidelines prescribed by the decisions of the Hon'ble Supreme Court for consideration of cases by the Board for remission, in the cases of ***Rajo @ Rajwa @ Rajendra Mandal v. State of Bihar & Ors., 2023 SCC OnLine SC 1068*** & ***Ram Chander vs. The State of Chhattisgarh & Anr, (2022) 12 SCC 52.***

10. On the other hand, learned counsel for the State submits that the recommendation of the Board rejecting the proposal of the premature release of the petitioner due to adverse report of the Superintendent of Police, Banka and following the guidelines of the Hon'ble Supreme Court in the case of ***Laxman Naskar v. Union of India, (2000) 2 SCC 595***, are quite sustainable in the eyes of law.

11. The learned counsel further submits that in the light of the Rule VI (d) of Notification No. 3106 dated 10.12.2002, rejection of the case of a prisoner for premature release on one or more occasion by the Board will not be a bar for reconsideration of his case. However, the reconsideration of the case of a convict already rejected could be done only after the expiry of a period of one year from the date of last consideration of his case, the petitioner may apply afresh for premature

release and the Board would reconsider such prayer in accordance with law.

12. Thus, learned counsel reiterates that after consideration of recommendation of the Remission Board based on adverse report of the Superintendent of Police, Banka, the proposal for premature release has been rejected by the competent authority. Thus, learned counsel submits that no error has been committed by the Board while arriving at the impugned decision and, therefore, there is no occasion for this Court to interfere with the same.

13. I have given my thoughtful consideration to the rival submission of the respective parties and perused the records.

14. As already noted, the proposal of premature release of the petitioner was rejected on the ground of adverse report of the Superintendent of Police. Now, this Court is required to examine as to whether the decision of the Board, based on the report submitted by the Superintendent of Police, Banka is in consonance with the guidelines and parameters expressed from time to time by the Hon'ble Supreme Court.

15. The Hon'ble Supreme Court in the case of ***Rajo @ Rajwa @ Rajendra Mandal*** (supra), in paragraph 19 & 20 held

as under :-

> *"**19**. In this court's considered view, overemphasis on the presiding judge's opinion and complete disregard of comments of other authorities, while arriving at its conclusion, would render the appropriate government's decision on a remission application, unsustainable. The discretion that the executive is empowered with in executing a sentence, would be denuded of its content, if the presiding judge's view - which is formed in all likelihood, largely (if not solely) on the basis of the judicial record - is mechanically followed by the concerned authority. Such an approach has the potential to strikes at the heart, and subvert the concept of remission - as a reward and incentive encouraging actions and behaviour geared towards reformation - in a modern legal system.*
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> ***20.** All this is not to say that the presiding judge's view is only one of the factors that has no real weight; but instead that if the presiding judge's report is only reflective of the facts and circumstances that led to the conclusion of the convict's guilt, and is merely a reiteration of those circumstances available to the judge at the time of sentencing (some 14 or more years earlier, as the case may be), then the appropriate government should attach weight to this finding, accordingly. Such a report, cannot be relied on as carrying predominance, if it focusses on the crime, with little or no attention to the criminal. The appropriate government, should take a holistic view of all the opinions received (in terms of the relevant*

rules), including the judicial view of the presiding judge of the concerned court, keeping in mind the purpose and objective, of remission".

16. From the aforesaid paragraphs, it is evident that the Board is not supposed to rely on opinion of only one of the authorities. Though, the said view of the Hon'ble Supreme Court was on the point of primacy given to the opinion of the Presiding Judge, but the same holds true even for the opinion of the Superintendent of Police in the facts of the present case.

17. Similarly, the Hon'ble Supreme Court in the case of ***Ram Chander*** (supra), in paragraphs 21 & 22, has made the law under Section 432 Cr.P.C. amply clear :-

> ***"21.*** *In Sriharan [Union of India v. V. Sriharan, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695] a Constitution Bench of this Court held that the procedure stipulated in Section 432(2) is mandatory. The Court did not specifically hold that the opinion of the Presiding Judge would be binding, but it held that the decision of the Government on remission should be guided by the opinion of the Presiding Officer of the court concerned. The Court had framed the following question : (SCC p. 118, para 143)*
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> *"143. ... Question (vi) : Whether suo motu exercise of power of remission under Section 432(1) is permissible in the scheme of the section, if yes, whether the procedure prescribed in sub-section (2) of the same section is mandatory or not?"*
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> ***22.*** *Answering the above question, the Court*

held as follows : (Sriharan case [Union of India v. V. Sriharan, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695] , SCC pp. 120-21, paras 148-50)

"148. Keeping the above principles in mind, when we analyse Section 432(1)CrPC, it must be held that the power to suspend or remit any sentence will have to be considered and ordered with much more care and caution, in particular the interest of the public at large. In this background, when we analyse Section 432(1)CrPC, we find that it only refers to the nature of power available to the appropriate Government as regards the suspension of sentence or remission to be granted at any length. Extent of power is one thing and the procedure to be followed for the exercise of the power is different thing. There is no indication in Section 432(1) that such power can be exercised based on any application. What is not prescribed in the statute cannot be imagined or inferred. Therefore, when there is no reference to any application being made by the offender, that cannot be taken to mean that such power can be exercised by the authority concerned on its own. More so, when a detailed procedure to be followed is clearly set out in Section 432(2). It is not as if by exercising such power under Section 432(1), the appropriate Government will be involving itself in any great welfare measures to the public or the society at large. It can never be held that such power being exercised suo motu any great development act would be the result. After all, such exercise of power of suspension or remission is only going to grant some relief to the offender who has been found to have committed either a heinous

crime or at least a crime affecting the society at large. Therefore, when in the course of exercise of larger constitutional powers of similar kind under Articles 72 and 161 of the Constitution it has been opined by this Court to be exercised with great care and caution, the one exercisable under a statute, namely, under Section 432(1)CrPC which is lesser in degree should necessarily be held to be exercisable in tune with the adjunct provision contained in the same section. Viewed in that respect, we find that the procedure to be followed whenever any application for remission is moved, the safeguard provided under Section 432(2)CrPC should be the sine qua non for the ultimate power to be exercised under Section 432(1)CrPC.

149. By following the said procedure prescribed under Section 432(2), the action of the appropriate Government is bound to survive and stand the scrutiny of all concerned, including the judicial forum. It must be remembered, barring minor offences, in cases involving heinous crimes like, murder, kidnapping, rape, robbery, dacoity, etc. and such other offences of such magnitude, the verdict of the trial court is invariably dealt with and considered by the High Court and in many cases by the Supreme Court. Thus, having regard to the nature of opinion to be rendered by the Presiding Officer of the court concerned will throw much light on the nature of crime committed, the record of the convict himself, his background and other relevant factors which will enable the appropriate Government to take the right decision as to whether or not suspension or remission

of sentence should be granted. It must also be borne in mind that while for the exercise of the constitutional power under Articles 72 and 161, the Executive Head will have the benefit of act and advice of the Council of Ministers, for the exercise of power under Section 432(1)CrPC, the appropriate Government will get the valuable opinion of the judicial forum, which will definitely throw much light on the issue relating to grant of suspension or remission.

150. Therefore, it can safely be held that the exercise of power under Section 432(1) should always be based on an application of the person concerned as provided under Section 432(2) and after duly following the procedure prescribed under Section 432(2). We, therefore, fully approve the declaration of law made by this Court in Sangeet [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] in para 61 that the power of appropriate Government under Section 432(1) of the Criminal Procedure Code cannot be suo motu for the simple reason that this section is only an enabling provision. We also hold that such a procedure to be followed under Section 432(2) is mandatory. The manner in which the opinion is to be rendered by the Presiding Officer can always be regulated and settled by the High Court concerned and the Supreme Court by stipulating the required procedure to be followed as and when any such application is forwarded by the appropriate Government. We, therefore, answer the said question to the effect that the suo motu power of remission cannot be exercised under Section 432(1), that it can only be initiated based on an application of

the persons convicted as provided under Section 432(2) and that ultimate order of suspension or remission should be guided by the opinion to be rendered by the Presiding Officer of the court concerned."

18. At this stage, this Court would like to refer to Rules 478 & 481 of the Bihar Prison Manual which provide 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."

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 433-A 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:]

["(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,

(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.

[(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]

(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.]"

19. While considering an application for premature release in the light of aforesaid Rules, the Board has to keep in mind the general principles of remission of sentences as laid down by the State Government or by the judicial pronouncement of the Courts.

20. Coming to the facts of the present case, it is evident from the impugned order that the Board has not at all applied its own mind as is required in view of the judgment of the Hon’ble Supreme Court in the case of ***Rajo alias Rajwa alias Rajendra***

Mandal (supra). The Board is not supposed to act mechanically as such approach, according to the Hon'ble Supreme Court, has the potential to strike at the heart and subvert the concept of remission. It is likely to defeat the purpose behind the premature release i.e. reformation.

21. On going through the entire records which are available before this Court, this Court is of the considered opinion that the case of the petitioner for grant of premature release is required to be considered afresh by applying the parameters which have been pointed out by the Hon'ble Supreme Court in the case of ***Rajo alias Rajwa alias Rajendra Mandal and Ram Chander*** (Supra). The heavy reliance on the report of the Superintendent of Police, Banka without adverting to the reports of other authorities makes the impugned order bad. The reasons taken by the Board for denying the benefit of remission to the petitioner runs contrary to the principles laid down by the Hon'ble Supreme Court in the cases of ***Rajo alias Rajwa alias Rajendra Mandal and Ram Chander*** (Supra). The petitioner has remained in incarceration for more than 22 years with remission, but while considering his premature release, the Board has to consider the age of the petitioner, his state of health and his family bonding and relationship and possibility of

reintegration. The purpose of premature release is reformatory. All these factors are taken into account. The Hon'ble Supreme Court in the cases of ***Rajo alias Rajwa alias Rajendra Mandal*** (Supra) has further observed that the Board should not entirely rely either on the learned Presiding Judge or the report prepared by the police and benefit of a report contemporaneously prepared by a qualified psychiatrist after interacting or interviewing the convict would also serve the ends of justice. In this case, this Court finds that no effort has been made to consider the aforesaid aspects of the matter.

22. In the light of discussion made hereinbefore, this Court is of the considered view that the impugned order has been passed by the Board in a routine and mechanical manner by just referring to the report of the Superintendent of Police, Banka which is not in consonance with the judicial pronouncements of the Hon'ble Supreme Court.

23. Therefore, this writ application succeeds. The decision of the Board dated 27.11.2023, so far it concerns the petitioner, is quashed.

24. However, considering the fact that more than one year has elapsed since the petition for premature release of the petitioner was rejected by the Board, it would be in fitness of

things that the petitioner apply afresh for premature release and the Board would reconsider such prayer within the four corners of law.

25. Hence, this Court directs the petitioner to file a fresh application for his premature release before the Inspector General of Prison, Bihar, Patna (respondent no.4). If such application is filed, the Inspector General of Prison, Government of Bihar, Patna is directed to refer the case of the petitioner before the Board within one month thereafter. Thereafter, the Board is directed to obtain fresh reports from the authorities concerned within a period of one month thereafter on all the parameters which has been recorded by the Hon'ble Supreme Court in the case of ***Rajo alias Rajwa alias Rajendra Mandal*** **(Supra)**. Thereafter, appropriate decision be taken by the Board in accordance with law and also considering the observations and findings recorded in the present writ application within a period of one month.

(Arun Kumar Jha, J)

V.K.Pandey/-

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CAV DATE	NA
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