

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.453 of 2021**

Arising Out of PS. Case No.-27 Year-2006 Thana- DEHRI TOWN District- Rohtas

Pradeep Kumar Srivastava @ Pradip Kumar Srivastava S/O Late Shiv Shankar Lal Srivastava R/O Village-Patel Chowk, P.S.-Bhabhua, District-Kaimur

... .. Petitioner/s

Versus

1. The State Of Bihar Through Its The Chief Secretary, Home, Bihar Patna Bihar
2. The State Sentence Remission Board Through Its The Principal Secretary, Home, Bihar, Patna. Patna.
3. The Law Secretary, Deptt. Of Law, Bihar, Patna. Patna.
4. The Inspector General Of Prison And Reforms Services, Old Secretariat, Govt. Of Bihar, Patna. Patna.
5. The Superintendent, Mandal Kara, Aurangabad. Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Umeshanand Pandit,Advocate
For the Respondent/s : Mr.Saroj Kumar Sharma,AC to AAG-3

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

Date : 15-09-2021

Heard learned counsel for the petitioner and Mr. Saroj Kumar Sharma, learned AC to AAG-3.

Petitioner in the present case is seeking a writ in the nature of mandamus directing the respondents to quash the order dated 03.04.2020 in so far as it relates to the petitioner (Annexure '6' to the writ application) whereby the State Sentence Remission Board (hereinafter referred to as 'The Board') has rejected the request of the petitioner for his premature release on the ground that in terms of the policy



decision of the Government as contained in Notification No. 3106 dated 10th December, 2002, paragraph (iv)(kha) the case of the petitioner is not fit to be considered for premature release. The relevant part of the decision is under challenge.

It appears from the record that the petitioner has been convicted vide judgment dated 25.05.2006 for the offences under Section 364A and 379/34 of the Indian Penal Code. He has been sentenced to undergo rigorous imprisonment for life with fine.

According to the petitioner, he submitted an application dated 30.11.2019 for consideration of his case for premature release. The Principal Probation Officer in the District Probation Office, Bhabhua (Kaimur) called for a recommendation from the Superintendent, Mandal Kara, Aurangabad. An opinion was also sought from the learned District and Sessions Judge, Aurangabad. The Principal Probation Officer, Babhua (Kaimur) submitted his report wherein he recorded that in course of his inquiry it did not transpire that the petitioner has got any connection with any organization involved in commission of illegal act and from local inquiry he came to a conclusion that the case of the petitioner may be considered for his premature release. The



District and Sessions Judge, Rohtas, Sasaram advised the Superintendent, Mandal Kara, Aurangabad that he can take a decision in accordance with the Prison Rules. The Superintendent of Police, Bhabhua also sent his recommendation to the Remission Board for consideration (Annexure '5' and '6' to the writ application).

Learned counsel submits that despite all the materials on the record suggesting that the petitioner is not involved with any organization in commission of crime and his case be considered by the Remission Board, the Remission Board has rejected his application on the solitary ground that his case could not be covered under clause (iv) (ka) of the policy decision dated 10th December, 2002. It is specifically stated in paragraph '14' of the writ application that one Motilal Yadav and Prem Prakash Yadav who were convicted and sentenced for life imprisonment under Section 364A IPC were released from prison after departmental decision vide letter no. 3874 dated 01.06.2018. Further Vijay Yadav has been released in the same matter by decision of the concerned department vide letter no. 2716 dated 24.04.2020. Annexure '10' to the writ application has been placed before this Court to substantiate the statements made in paragraph '14' of the writ application. In case of Vijay



Yadav, he was convicted under Section 364A/34 IPC and the Remission Board has recorded as under:-“ (1) सभी प्रतिवेदन अनुकूल (2) दि० 03.05.2018 की बैठक की अनुशंसा के आलोक में सह-अभियुक्त प्रेम प्रकाश यादव एवं मोती लाल यादव कारामुक्त हो चुका है। (3) तद्आलोक में असमय कारामुक्ति की अनुशंसा की जाती है।”

Learned counsel, thus, submits that the State-respondents have acted arbitrarily in applying the same set of rules in case of the petitioner in a different manner. It is further pointed out that in the counter affidavit, there is no denial of the statements made in paragraph ‘14’ of the writ application.

Mr. Saroj Kumar Sharma, learned AC to AAG-3 has pressed his counter affidavit before this Court. Learned counsel has though defended the action of the respondents but at the same time does not dispute that the petitioner is not an accused of rape, dacoity or terrorist acts. He has, however, tried to impress upon this Court that the allegations which have been proved against the petitioner are heinous in nature, thus his conviction may also be brought within the same category though it is not specifically stated in clause (iv) (ka) of the notification dated 10th December, 2002 (Annexure ‘A’) to the counter affidavit.

Learned counsel is unable to answer the statements made in paragraph ‘14’ of the writ application.



After hearing learned counsel for the petitioner and learned AC to AAG-3, this Court finds substance in the submission of learned counsel for the petitioner. The relevant part of the notification as contained in Annexure 'A' dated 10th December, 2002 reads as under:-

“(iv) समय-पूर्व रिहाई के लिए अयोग्यता

निम्नांकित 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 अपराधो, आदि जैसे अपराधो के सिद्धदोष बंदी।

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

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).

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.

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 application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.09.2021
Transmission Date	18.09.2021

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

