

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI MANOJ KUMAR GUPTA
AND
HON'BLE SRI JUSTICE ASHISH NAITHANI

WRIT PETITION (CRIMINAL) NO. 06 OF 2025

24TH APRIL, 2026

Dharmendra Petitioner

Versus

State of Uttarakhand and others Respondents

Counsel for the petitioner : Mr. M.K. Ray and Mr. Harsh Taneja,
learned counsel

Counsel for the respondents /
review applicants : Mr. J.S. Virk, learned Deputy
Advocate General for the State

The Court made the following:

ORDER: (per Sri Manoj Kumar Gupta, C.J.)

1. Heard learned counsel for the parties on delay
condonation application.

2. The delay in filing the review application is
satisfactorily explained in the affidavit filed in support of
the application.

3. Accordingly, the delay is condoned. Delay
Condonation Application (I.A. No. 03 of 2026) is allowed.

Review Application (MCRC No. 02 of 2026)

4. The petitioner was convicted by judgment and
order dated 30.04.2010, passed by learned Additional

Sessions Judge / First Fast Track Court, Roorkee, District Haridwar in Sessions Trial No. 92 / 2008, for the offences punishable under Section 364A, 302 and 201 IPC. He filed the instant writ petition contending that he had remained incarcerated for last 17 years and yet his case has not been considered by the competent authority for premature release. The writ petition has been disposed of by a Co-ordinate Bench by judgment and order dated 12.03.2025 with the following observations and directions :

“In that view of the matter, the non-consideration of the petitioner’s case appears to be unjustified. In the light of the directions issued by the Hon’ble Apex Court noted supra, there shall a direction to the respondent/State to refer the case of the petitioner to the Competent Authority for consideration of his premature release, in accordance with the policy noted supra. The respondents shall place the case of the petitioner before the Competent Authority for reconsideration of his case within six weeks. We direct the reconsideration of the petitioner’s case, in view of the law laid down by the Hon’ble Apex Court, as noted supra, wherein it has been held in paragraph no. 22 that there cannot be rejection of any application for remission or premature release, without affording an opportunity of hearing.”

5. The present review application has been filed by the State with the submission that the matter regarding remission or premature release of a convict does not

require affording any opportunity of hearing. The submission is that the direction issued by this Court for giving opportunity of hearing relying on paragraph 22 of the judgment of the Apex Court in **IN RE: POLICY STRATEGY FOR GRANT OF BAIL, Suo Motu Writ Petition (Crl.) No. 04 of 2021 with Special Leave Petition (Crl.) 529 of 2021** is based on misreading and thus an error apparent has been committed in issuing the said direction.

6. In order to appreciate the submission it would be advantageous to quote paragraphs 21 and 22 of the said judgment of the Supreme Court:

“21) We, therefore, record the following conclusions:

a) Where there is a policy of the appropriate Government laying down guidelines for consideration of the grant of premature release under Section 432 of the CrPC or Section 473 of the BNSS, it is the obligation of the appropriate Government to consider cases of all convicts for grant of premature release as and when they become eligible for consideration in terms of the policy. In such a case, it is not necessary for the convict or his relatives to make a specific application for grant of permanent remission. When the jail manual or any other departmental instruction issued by the appropriate Government contains such policy guidelines, the aforesaid direction will apply;

b) We direct those States and Union Territories that do not have a policy dealing with the grant

of remission in terms of Section 432 of the CrPC or Section 473 of the BNSS to formulate a policy within two months from today;

c) Appropriate Government has the power to incorporate suitable conditions in an order granting permanent remission. Consideration of various factors, which are mentioned in the paragraph 13 above by way of illustration, is necessary before finalizing the conditions. The conditions must aim at ensuring that the criminal tendencies, if any, of the convict remain in check and that the convict rehabilitates himself in the society. The conditions should not be so oppressive or stringent that the convict is not able to take advantage of the order granting permanent remission. The conditions cannot be vague and should be capable of being performed;

d) Order granting or refusing the relief of permanent remission must contain brief reasons. The order containing reasons should be immediately communicated to the convict through the office of the concerned prison. The copies thereof should be forwarded to the Secretaries of the concerned District Legal Services Authorities. It is the duty of the prison authorities to inform the convict that he has the right to challenge the order of rejection of the prayer for the grant of remission.

e) As held in the case of ***Mafabhai Motibhai Sagar***, an order granting permanent remission cannot be withdrawn or cancelled without giving an opportunity of being heard to the convict. An

order of cancellation of permanent remission must contain brief reasons;

f) The District Legal Services Authorities shall endeavour to implement NALSA SOP in its true letter and spirit.

g) Further, the District Legal Services Authorities shall also monitor implementation of conclusion (a) as recorded above. For this purpose, the District Legal Services Authorities shall maintain the relevant date of the convicts and as and when they become eligible to a consideration for grant of premature release, they shall do the needful in terms of conclusion (a). The State Legal Services Authorities shall endeavour to create a portal on which the data as aforesaid can be uploaded on real time basis.

22) In terms of what we have held earlier, various issues raised regarding the grant of permanent remission stand answered on the above terms. Other issues will be considered on the dates already fixed.”

7. The judgment of the Supreme Court (*supra*) in paragraph 21(d) lays down the legal position that an order granting or refusing the relief of permanent remission must contain brief reasons. The same should be duly communicated to the convict. In paragraph 21(e), the Supreme Court has reiterated the legal position laid down in ***Mafabhai Motibhai Sagar*** that an order granting permanent remission cannot be withdrawn or cancelled without giving an opportunity of hearing to the convict.

The order of cancellation of permanent remission must contain brief reasons also.

8. The instant case is not a case where any order of permanent remission is sought to be withdrawn or cancelled. It is nowhere provided in the judgment of the Supreme Court that an opportunity of hearing is to be granted to the convict while reconsidering his application for remission or premature release. Thus we find that there has been a clear misreading of the law laid down by the Supreme Court while issuing direction that the petitioner be afforded opportunity of hearing while considering his case for remission / premature release. Accordingly, the said observation is hereby set aside. Accordingly, the review application stands disposed of. The State shall forthwith proceed to reconsider the petitioner's case for remission or premature release in terms of the order dated 12.03.2025 though it would not be required to afford opportunity of hearing to the petitioner while reconsidering the matter.

MANOJ KUMAR GUPTA, C.J.

ASHISH NAITHANI, J.

Dt: 24TH APRIL, 2026
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