



2025:AHJ-4 KO:85253-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. WRIT PETITION No. - 4532 of 2025

Devesh Agnihotri

.....Petitioner(s)

Versus

State Of U.P. Thru. The Prin. Secy. Home Ministry
Of Home Affairs Lko. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Yash Gupta
Counsel for Respondent(s)	:	G.A.

Court No. - 11

HON'BLE ABDUL MOIN, J.

HON'BLE MRS. BABITA RANI, J.

1. Heard Sri Shahbaz Singh, learned counsel for the petitioner and learned AGA appearing for the respondents.

2. Instant petition has been filed praying for the following main reliefs:-

"i. Issue a writ, order or direction for immediate release of the petitioner by setting aside/quashing of the order dated 21.07.2023 rejecting the release of the petitioner-convicted in S.T. No.-292/2006 by Orders of this Hon'ble Court under Article 226 of the Constitution or;

ii. issue a writ, order or direction in the nature of mandamus directing the Respondents to consider and decide the premature release of the Petitioner as per the applicable policy/rules, preferably within a period of two weeks from the date of the order and;

iii. issue a writ, order or direction directing the Respondents to treat the Petitioner at par with the co-accused who have already been granted premature release, and to apply the same yardstick in considering the premature release of the Petitioner or;

iv. Issue a writ, order or direction directing the Respondents to release the Petitioner forthwith on the grounds stated in this petition considering that he has already undergone more than 18 years actual imprisonment and more than 23 years of imprisonment remission, wherein the co-accused in

the same case have already been granted premature release."

3. There is consensus at bar that the relevant facts of the case have already been noted in the order dated 08.12.2025. For convenience, the order dated 08.12.2025 is reproduced below:

"6. Under challenge the order dated 21.07.2023, copy of which is annexed as Annexure No.1 to the petition, whereby the release application of the petitioner under Form-A had been rejected.

7. The contention of the petitioner is that the petitioner had been convicted under Sections 302, 149, 201 and 120-B I.P.C. by the competent court vide judgment and order dated 26.03.2007, a copy of which is annexed as Annexure No.2 to the petition. The judgment has attained finality by the dismissal of the appeal by this Court and S.L.P. by Hon'ble the Supreme Court. The petitioner has submitted an application for release in terms of Form-A of the U.P. Prisoners Release on Probation Act, 1938 (hereinafter referred to as 'Act 1938'), but the said application had been rejected vide order impugned 21.07.2023 by the respondent by contending that as the petitioner had committed heinous offence as such he cannot be released.

8. The contention of the learned counsel for the petitioner is that two other persons, who were convicted along with the petitioner, namely, Shri Sheokesh Giri and Shri Vivek Sharma have been released under the provisions of the Act 1938 while the release application of the petitioner had been rejected on the aforesaid ground. In this regard, the petitioner has annexed the release order of Shri Sheokesh Giri as Annexure-8 to the petition to contend that the said order duly indicates that the conduct of the said convict has been seen which has been found to be good.

9. Likewise, reliance has been placed on the release order of Shri Vivek Sharma. A specific averment to the said effect has been made in paragraph 8(e) of the writ petition to which incidentally there is no denial in paragraph 19 of the counter affidavit which has been filed by the respondents.

10. The argument of learned counsel for the petitioner is that the release

of all the convicts as had been convicted along with the petitioner vide judgment and order dated 26.03.2007, are governed by the Act 1938, consequently there cannot be any occasion for release of two convicts citing their good conduct and in rejecting the application of the petitioner by means of the order impugned without indicating the conduct of the petitioner in jail.

11. Learned counsel for the petitioner has placed reliance on the jail report, a copy of which has been filed as Annexure No.10 (Page No. 193) to contend that even his conduct in the jail has been good and reformatory.

12. Learned counsel for the petitioner further states that since the year 2016 the petitioner is in Model Jail.

13. Although the pleadings have already been completed and there was no requirement for the learned A.G.A. to seek instructions in the matter, but on the specific request of learned A.G.A., he is granted three days' time to seek instructions with regard to the aforesaid grounds as raised by the petitioner.

14. List in the next week.

15. Learned counsel for the petitioner would have liberty of making a mention for taking up the case out of turn."

4. From perusal of the aforesaid order, it emerges that the petitioner is aggrieved by the order dated 21.07.2023, a copy of which is Annexure-1 to the writ petition, whereby the application of the petitioner for release despite being convicted has been rejected.

5. Admittedly, the reason as emerges from perusal of the order impugned is that as the petitioner has committed a heinous crime as such his application for release has been rejected.

6. There is no dispute that the petitioner has been convicted by the learned trial court for the offences under Sections 302, 149, 201, 120-B and 148 IPC which judgment has attained finality with the dismissal of the appeal filed by the petitioner before this Court and dismissal of SLP by the

Hon'ble Supreme Court.

7. The policy governing the release of a convicted prisoner admittedly is the policy dated 01.08.2018 as amended vide orders dated 28.07.2021 and 27.05.2022, copies of which have been filed cumulatively is Annexure-7 to the writ petition.

8. The Act governing the release of a prisoners is the United Provinces Prisoners Release of Probation Act, 1938 (Act, 1938). In pursuance to Section 9 of the Act, 1938, the rules namely Uttar Pradesh Prisoners Release of Probation Rules, 1938 (Rules, 1938) have also been framed. Rule 4 of the Rules, 1938 indicates the eligibility for release while Rule 6 pertains to the procedure for release.

9. Subsequent thereto, the State Government has issued a policy regarding the premature release of life imprisonment convicted prisoners every year on Republic Day (26 January) as amended from time to time vide policies as referred to above.

10. As per Section 2 of the Act, 1938, where a person is confined in prison under the sentence of imprisonment and where it appears to the State Government **from his antecedents and his conduct in prison** that he is likely to abstain from crime and lead a peaceable life, the State Government may permit him to be released on certain conditions.

11. Thus, from perusal of Section 2 of the Act, 1938 it appears that the consideration for the release of a prisoner are both his antecedents and his conduct in the prison.

12. However, from perusal of the order impugned dated 21.07.2023 it emerges that although the competent authority has considered the antecedents of the petitioner which led to he being convicted by the learned trial court and though the competent authority has also referred to Section 2 of the Act, 1938 yet by only considering his antecedents/his heinous crime, his application has been returned and rejected.

13. It is not the case of the respondents that the petitioner is not eligible for premature release or he falls within the prohibited category inasmuch

as it is the respondents themselves who have considered the release of the petitioner but have rejected it on the ground as contained in the order impugned i.e. after considering his antecedents/ heinous crime.

14. As already indicated above, Section 2 of the Act, 1938 categorically provides for consideration of antecedents and the **conduct** of the prisoner. The jail conduct of the petitioner, as already indicated above, indicated by the medical officer of the Model Jail, Lucknow, a copy of which is part of Annexure-10 (Page-193 onwards of the writ petition) as well as by the Jail Superintendent (Page 200 of the writ petition) has been indicated as good and reformatory. Further, as per report of the Superintendent of the Jail, it emerges that the petitioner is in Model Jail.

15. The respondents while filing counter affidavit have not indicated anything adverse regarding the conduct of the petitioner and thus from the report of the Jail Superintendent as well as Medical Officer, it emerges that there is no dispute that the conduct of the petitioner in jail is good and reformatory.

16. At this stage, learned A.G.A. states on the basis of instructions and which have already been noted in our order dated 15.12.2025 that the case of the petitioner for his premature release has been forwarded vide proposal dated 30.09.2025 on 27.10.2025 to her Excellency the Governor which proposal is still pending for consideration before her Excellency the Governor.

17. From perusal of the aforesaid discussion, it emerges that (a) the respondents themselves have treated the petitioner as not falling in the prohibitory category and have considered the case of the petitioner for premature release; (b) his application has been rejected vide order impugned dated 21.07.2023 on the ground of his heinous crime; and (c) Section 2 of the Act, 1938 provides for consideration of premature release by considering the prisoners' **antecedents and conduct in jail**. However, the application of the petitioner has been rejected vide order impugned dated 21.07.2023 only on the ground of the heinous crime committed by the him without considering his conduct in jail which is thus contrary to Section 2 of the Act, 1938. Thus, it is apparent that the

order impugned dated 21.07.2023 merits to be quashed on this ground alone and is accordingly quashed.

18. Quashing of the order impugned would have entailed sending back the matter to the competent authority for a fresh consideration considering the provisions of the Act, 1938, Rules, 1938 as well as policy as amended from time to time issued by the State Government. However, as the respondents themselves have indicated that the application of the petitioner for premature release is already pending for consideration before her Excellency the Governor and all such eligible persons are to be released on 26th January accordingly the writ petition is **disposed of** with an expectation that the competent authority would pass suitable orders on the application of the petitioner as forwarded to her Excellency the Governor on 27.10.2025 keeping in view the aforesaid discussion, expeditiously.

(Mrs. Babita Rani,J.) (Abdul Moin,J.)

December 17, 2025

A. Katiyar