

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1120 of 2024

Arising Out of PS. Case No.- Year-0 Thana- District- Muzaffarpur

Shambhu Rai @ Shambhu Yadav, Son Of Late Jalim Ray, R/O Village- Susta
Tok, P.S.- Gayaghat, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government Of Bihar, Patna Bihar
2. The Secretary Sentence Remission Board Through The Principal Secretary, Home Department Government Of Bihar, Patna, Bihar
3. The Joint Secretary-Cum-Director(Administration), Home Department (PRISON), Bihar, Patna Bihar
4. The Secretary, Law Department, Government Of Bihar, Patna Bihar
5. The Additional Director General Of Police, Criminal Investigation Department, Bihar, Patna Bihar
6. The Inspector General, Jail And Reform Services, Bihar, Patna Bihar
7. The Assistant Inspector General, Jail And Reform Services, Bihar, Patna Bihar
8. The Jail Superintendent, Shahid Khudi Ram Bose Central Jail, Muzaffarpur Bihar
9. The Jail Superintendent, Open Jail, Buxar Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Vijay Kumar Singh, Advocate Mr. Abhinav Shandilya, Advocate
For the Respondent/s	:	Mr. Raju Patel, AC to AG

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 23-09-2025

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

2. The instant writ petition has been filed by the
petitioner seeking following reliefs :

“(I). For issuance of an appropriate writ in the



*nature of **CERTIORARI** for quashing the decision of State Remission Board dated 15.02.2024, so far it relates to the petitioner, whereby and where under the State Remission Board was pleased to reject the proposal of the petitioner for his pre-mature release on the ground that there is no favourable report of the Presiding Officer of the learned convicting court as also in view of clause- (iv) (kha) of Notification No. 3106 dated 10.12.2022 according to which the pre-mediated offences committed by any convict is not entitled for his pre-mature release.*

*(II) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities to grant pre-mature release to the petitioner, who convicted for life vide judgment and order dated 27/28.08.2008 passed in Sessions Case No. 557 of 1993 arising out of Gaighat P.S. Case No. 29 of 1990 by the learned Additional District and Sessions Judge, Fast Track Court No. 3, Muzaffarpur on the ground that the petitioner had already completed 14 years of his physical incarceration on 04.08.2022 and 20 years with remission on 05.08.2022 as also all the prescribed Authorities except the Presiding Officer of the Convicting Court had recommended for pre-mature release of the petitioner.*



(III) For issuance of any other appropriate writ/writs, order/orders direction/directions for which the writ petitioners would be entitled under the facts and circumstances of the case”.

3. The learned counsel for the petitioner submits that the petitioner was an accused in Gaighat P.S. Case No. 29 of 1990 registered for the offences under Section 302 of the I.P.C. and Section 3/4 of the Explosive Substances Act. He has been convicted by the learned Additional Sessions Judge, Fast Track Court No.3, Muzaffarpur under Section 302 of the I.P.C. and Section 3/4 of the Explosive Substance Act vide judgment of conviction dated 27.08.2008 passed in Sessions Trial No. 557 of 1993 and has been sentenced to undergo rigorous imprisonment for life with fine vide order of sentence dated 28.08.2008. Being aggrieved by the aforesaid judgment and order, the petitioner filed Cr. Appeal (DB) No. 1241 of 2008 before this Court, which upheld and confirmed the judgment and order of the learned trial court vide judgment dated 17.03.2015. The learned counsel further submits that after completion of required period of incarceration for consideration of premature release, the respondent no. 9 requested the prescribed authorities to submit recommendations for premature release of the petitioner. Thereafter, the Probation Officer and Jail Superintendent as well



as the Senior Superintendent of Police, Muzaffarpur have recommended the case of the petitioner for his premature release. But the Presiding Officer did not recommend the case of the petitioner for his premature release on the ground that his premature release might cause disturbance of peace in the village. After obtaining the reports from all the prescribed authorities, the Jail Superintendent sent the proposal of the petitioner for his premature release to the Bihar State Sentence Remission Board (hereinafter referred to as 'the Board'). The Board in its meeting dated 15.02.2024 rejected the proposal of the petitioner for his premature release.

4. The learned counsel further submits that the Board in a routine and mechanical manner, rejected the proposal of premature release of the petitioner on the basis of the opinion of the learned Presiding Judge of the convicting court as well as in view of clause (iv) (*kha*) of Notification No. 3106 dated 10.12.2002, according to which in case of the premeditated offences, a convict is not entitled for his premature release. The learned counsel further submits that notwithstanding the fact that there is favourable report of all the prescribed authorities except the Presiding Officer of the convicting court and there is no adverse report against the petitioner by the Jail



Superintendent under whose control, the petitioner has spent his life for long 16 years and in this interregnum, the conduct and behaviour of the petitioner is good, his case for premature release was not considered. The learned counsel further submits that the petitioner had already completed 14 years of his physical incarceration on 04.08.2022 and 20 years with remission on 05.08.2022. The learned counsel further submits that the petitioner had already completed 69 years of age, as such, in view of clause (iii) (d) also, the petitioner is entitled for his pre-mature release.

5. The learned 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 adverse opinion of learned Presiding Judge of convicting court, all the statutory authorities had recommended for premature release of the petitioner. Thus, the Board has also not applied its own mind *vis-a-vis* the facts of the case and acted mechanically by just referring to the opinion of learned Presiding Judge and hence, the decision of the Board is against the settled principles of law. In support of his contention, the learned counsel refers to the decisions of learned Division Bench of this Court in the cases of ***Ravi Pratap Mishra vs. The State of Bihar and Ors.***



(Cr.W.J.C.No. 272 of 2017), Meena Devi vs. The State of Bihar and Ors. (Cr.W.J.C.No.30/2017) and Sheikh Harun vs. The State of Bihar and Ors. (Cr.W.J.C.No.1149 of 2017).

6. The learned counsel further submits that the adverse opinion of the Presiding Judge could not be a ground for rejection of the application for premature release of the petitioner and relies on the decision of the Hon'ble Supreme Court in the case of ***Rajo @ Rajwa @ Rajendra Mandal v. State of Bihar & Ors., 2023 SCC OnLine SC 1068.***

7. The learned counsel reiterates that the petitioner has spent a substantial period of his sentence of 16 years and there is no serious apprehension about his future conduct on his release as would be evident from the report of Probation Officer, Superintendent of Police as well as Jail Superintendent. Therefore, the opinion of the learned Presiding Officer of the convicting court is immaterial since the opinion of the learned Presiding Officer is based on sentiments only.

8. The learned counsel further submits that since the petitioner had already completed the age of 69 years, he is entitled for his premature release in view of clause (iii) (d) of the Notification dated 10.12.2002.

9. The learned counsel further submits that according to



the prosecution case as alleged in the FIR and mentioned in the judgment of the learned trial court upon which the petitioner has been convicted for life, it is abundantly clear that the petitioner has not been convicted for murder in a premeditated manner and organized manner, as such, provisions as contemplated in paragraph (iv) (*kha*) of the aforesaid notification dated 10.12.2002 could not be applied in the case of the petitioner.

10. The learned counsel further submits that in view of aforesaid law settled by the learned Division Bench of this Court in the case of ***Ravi Pratap Mishra and Meena Devi (supra)***, the impugned decision of the Board cannot be sustained in the eyes of law and, therefore, the same is fit to be set aside.

11. The learned counsel further submits that the action of the Board for not granting premature release of the petitioner is discriminatory in nature since the Board on the basis of pick and choose method granted premature release to the life convict even in the heinous offences.

12. 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 opinion of the learned Presiding Judge of convicting court and in the light of clause (iv) (*kha*) of the Notification



dated 10.12.2002, is quite sustainable in the eyes of law.

13. The learned counsel further submits that clause (iv) (*kha*) of the aforesaid notification dated 10.12.2002 clearly stipulates that a prisoner who has been convicted for organized murder in a premeditated manner is ineligible for his premature release. So the Board has considered this case as a case of premeditated murder with prior meeting of minds and thereby rejected the proposal of the petitioner.

14. The learned counsel further submits that in the light of the Clause 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, so the petitioner may apply afresh for premature release and the Board would reconsider such prayer in accordance with law.

15. Thus, learned counsel reiterates 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.



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

17. As already noted, the proposal of premature release of the petitioner was rejected on the ground of adverse opinion of the learned Presiding Judge of convicting court and in the light of clause (iv) (*kha*) of the aforesaid Notification dated 10.12.2002. Now, this Court is required to examine as to whether the decision of the Board is in consonance with the guidelines and parameters expressed from time to time by the Hon'ble Supreme Court as well as this Court.

18. 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.

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”.

19. Similarly, the Hon’ble Supreme Court in the case of ***Ram Chander vs. The State of Chhattisgarh & Anr, (2022) 12 SCC 52***, 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)

“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?”

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.”

20. Now, clause (iv) of the Notification dated 10.12.2002 reads as under :

“(iv) Ineligibility for premature release.

The following category of convicted prisoners undergoing life sentence may not be considered eligible for premature release:-

(a) Prisoners convicted of the heinous offences such as rape, dacoity, terrorist crimes etc.

(b) Prisoners who have been convicted for organised murder in a premeditated manner and in an organised manner.

(c) Professional murderers who have been found guilty of murder by hiring.

(d) Convicted prisoners, who commit murder



while involving in smuggling operations or who are guilty of murderer of public servants on duty.”

21. In my view, the stand taken by the Board is misconceived as the provision contained in clause (iv) of the Notification dated 10.12.2002 has been given for such convicts who are the gangsters, contract killers and others who engage themselves in organized crime and commit murder for their benefit in a premeditated manner. In the Prison Manual published in the year 2016, the provision has been incorporated in the column mentioning gangsters and contract killers, smugglers, drug traffickers and racketeers etc. So, it is not an ordinary convict who was found involved in premeditated murder. Further there is no material to show premeditation. 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.]"



22. Conjoint reading of the aforesaid provisions indicate that the word ‘murder committed with premeditation’ has been included in the column meant for gangsters, contract killers, smugglers, drug traffickers and racketeers etc. The judgment of conviction, in the case of the petitioner, nowhere shows that the petitioner is involved in such type of activity that he could be branded as perpetrator of murder in an organized manner. Hence, the rejection of prayer for premature release of the petitioner on the above-noted ground is not sustainable.

23. While considering an application for premature release in the light of extant 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.

24. 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 of the matter and subvert the concept of remission. It is likely to defeat the purpose behind



the premature release i.e. reformation.

25. 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 opinion of the learned Presiding Judge without advertting to the reports of other authorities makes the impugned order bad in law. 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 23 years with remission. Further, while considering his prayer for 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. Therefore, all these factors are to be 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.

26. 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 which is not in consonance with the judicial pronouncements of the Hon'ble Supreme Court.

27. Therefore, this writ application succeeds. The decision of the Board dated 15.02.2024, so far it concerns the petitioner, is quashed.

28. 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.

29. 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.6). 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 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/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.09.2025
Transmission Date	NA

