

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2271 of 2024

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

Rajendra Prasad Yadav, S/o Late Budhdev Singh Yadav & Late Budhdev Singh, Resident of Village - Madho Bigha, P.S- Atri, District- Gaya

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar
2. The Principal Secretary, Home (Prison) Govt. of Bihar Patna
3. The Inspector General Prison, Govt. of Bihar Patna
4. The Bihar State Sentence Remission Board, Patna through its Chairman Bihar
5. The District Magistrate, Gaya Bihar
6. The Senior Superintendent of Police, Gaya Bihar
7. The Jail Superintendent, Central Jail, Gaya Bihar
8. The S.D.P.O. Neemchak Bathani, Distt.- Gaya Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Advocate Mr. Bhola Kumar, Advocate Mr. Majid Mahboob Khan, Advocate
For the State	:	Mr. Sanjiv Kumar, AC to AG
For the Informant	:	Mr. Ramakant Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 08-09-2025

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 the facts mentioned in this application should be treated 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 to be the part of the main writ petition.

Cr.W.J.C.No.2271 of 2024

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

“(a) For issuance of a writ in the nature of mandamus commanding the respondent No.6 to send his report/opinion regarding premature release of the petitioner after providing remission to respondent No. 7 who had requested the respondent No. 6 vide letter No. 9226 dated 23.12.2023, letter No. 1177 dated 09.02.2024 and letter No.6527 dated 13.08.2024.

(b) For issuance of writ in the nature of mandamus commanding the respondent No. 7 to send proposal before the respondent No.3 and 4 for premature release after remission in the light of Home (Spl.) department's notification No. 3106 dated 10.12.2002.

(c) For issuance of any other writ/writs, command/commands, direction/directions, order/orders as your lordships deem fit and proper in the facts of the instant case.



5. Now, by way of amendment, the petitioner sought for quashing of the resolution/decision dated 29.01.2025 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 has been convicted for the offences under Section 302 with allied sections of the Indian Penal Code after facing trial vide Sessions Trial No. 329 of 2009/ 304 of 2006 arising out of Atri P.S. Case No.15 of 2005 and has been sentenced to undergo rigorous imprisonment for life. The learned senior counsel further submits that the Board in a routine and mechanical manner, by just referring to the report of Senior Superintendent of Police, Gaya, rejected the proposal of premature release of the petitioner, though he had already completed about 22 years in custody with remission and at present 72 years age and suffering from heart ailment and had gone under bypass surgery.

7. The learned senior counsel further submits that from perusal of rejection order dated 29.01.2025, it is apparent that the proposal of premature release of the petitioner was rejected by the Board on the grounds of adverse report of the Senior



Superintendent of Police, Gaya, several applications submitted against the release of the petitioner and pending criminal cases against the petitioner. The learned senior counsel further submits that the report of the Senior Superintendent of Police, Gaya is based on the report submitted by the SDPO, Neemchak Bathani, Gaya received vide letter no. 2992/2024 dated 15.09.2024 whereby and whereunder the SDPO, Neemchak Bathani reported against the premature release of the petitioner. The learned senior counsel further submits that irony of the situation is that earlier report of the SDPO dated 21.06.2024 favourable to the premature release of the petitioner had been ignored by the Senior Superintendent of Police, Gaya, who obtained another report from the same SDPO, apparently for frustrating the claim of the petitioner. It seems the Senior Superintendent of Police, Gaya forced the SDPO to submit a report against the petitioner. The learned senior counsel further submits that so far as mentioning the criminal cases against the petitioner in column 14 as one of the grounds for rejection of the claim of premature release is concerned, even those cases have been taken into consideration in which the petitioner has already been acquitted. The learned senior counsel reiterates that the Board has relied on the report of the Senior Superintendent of Police,



Gaya, which is based on 2nd report of the same SDPO, Neemchak Bathani, Gaya, who had earlier submitted a report for premature release in favour 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 Senior Superintendent of Police, Gaya, 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 Senior Superintendent of Police and hence, the decision of the Board is against the settled principle 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)***. Elaborating on the parameters and guidelines prescribed by the various decisions of the Hon'ble Supreme Court for consideration of cases by the Board for remission, the learned senior counsel refers to the decisions of the Hon'ble Supreme Court 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.

8. 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 Senior Superintendent of Police, Gaya is sustainable in the eyes of law. The learned counsel further submits that the report of the Senior Superintendent of Police, Gaya vide letter no. 9069 dated 23.09.2024 is based on the letter no. 2992 dated 15.09.2024 of SDPO, Nimchak Bathani, Gaya clearly keeps the case of the petitioner beyond the purview of guidelines of the Hon'ble Supreme Court in the case of ***Laxman Naskar v. Union of India, (2000) 2 SCC 595***, because of the simple reason that there is probability of crime being repeated, the petitioner has potential to commit crime in future and keeping the convict in prison will be very much fruitful for maintaining the peace in society at large.

9. The learned counsel further submits that in the light of the Rule VI (d) of Notification No. 3106 dated 10.12.2002, wherein it has been mentioned that 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.

10. Thus, learned counsel reiterates that after consideration of recommendation of the Remission Board based on adverse report of the Senior Superintendent of Police, Gaya and considering the fact that the petitioner is a habitual offender having long criminal history, 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, this Court may not interfere with the same.

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

12. As already noted, the proposal of premature release of the petitioner was rejected on the ground of adverse report of the Senior Superintendent of Police, applications submitted against the premature release of the petitioner and also on the ground of pendency of criminal cases against the petitioner. Now, this Court is required to examine as to whether the decision of the Board based on the report submitted by the Senior Superintendent of Police, Gaya is in consonance with the



views expressed by the Hon'ble Supreme Court in its decisions.

13. 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”.

14. 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 Senior Superintendent of Police, Gaya in the facts of the present case.

15. Similarly, the Hon’ble Supreme Court in the case of **Ram Chander** (supra), in paragraphs 21 & 22, held as under :-

“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."

16. 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.]"

17. Relevant clause (iii) of Notification No. 3106 dated 10.12.2022 of the Home (Special) Department is extracted here-in-below for ready reference :

“(iii) Eligibility for premature release.

Prisoners of the following categories shall be eligible for consideration for premature release by the State Sentence Remission Board :-



(a) Every convicted prisoner whether male or female, undergoing sentence of life imprisonment and covered by the provisions of Section 433A of CrPC shall be eligible to consider for premature release immediately after serving the sentence of 14 years of actual imprisonment without the remission.

(b) All other convicted male prisoners 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 and after completion of 10 years actual imprisonment without remissions.

(c) All other convicted female prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 10 years of imprisonment inclusive of remission and after completion of 7 years of actual imprisonment without remissions.

(d) Convicted prisoner undergoing the sentence of life imprisonment on attaining the age of 65 years provided he or she has served at least 7 years of imprisonment including the remissions.

(d) The convicted prisoners undergoing the sentence or imprisonment for life and who are suffering from terminal diseases like cancer, aids, irreversible kidney failure, cardio respiratory disease, deadly and any other infectious disease as certified by a Board of Doctors, on completion of 5 years of actual sentence or 7 years of sentence including remissions”.

18. 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.

19. 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.

20. In the case of ***Anuj Kumar Gupta @ Sethi Gupta vs. State of Bihar & Ors, 2022 (1) BLJ 67***, a Coordinate Bench of this Court having found that the petitioner had spent twenty two years in custody, set aside the decision of the Remission Board and directed the Board to take a fresh decision for premature release of the petitioner in the very next meeting of the Board.

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 Senior Superintendent of Police, Gaya and further reliance on applications against premature release of the petitioner and criminal cases against the petitioner without advertent 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 about 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 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 Senior Superintendent of Police, Gaya 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 29.01.2025, so far it concerns the petitioner, is quashed. The matter is remitted to the Board to take a fresh consideration of the matter.

24. This Court directs the Board to obtain fresh reports from the authorities concerned within a period of two months from the date of receipt/production of a copy of this order on all the parameters which has been recorded by the Hon'ble Supreme Court in the cases 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 and not later than
31.12.2025.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.09.2025
Transmission Date	NA

