

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.924 of 2021

Arising Out of PS. Case No.-162 Year-2002 Thana- SAHEBPUR KAMAL District-
Begusarai

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1. Md Sultan, Son of Md. Habib, Resident of Village- Ahmadganj, Bakhadda, P.S.- Sahebpur Kamal, District- Begusarai.
 2. Md. Tabbsum Ara, Wife of Md. Sultan, Resident of Village- Ahmadganj, Bakhadda, P.S.- Sahebpur Kamal, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. Of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The State Sentence Remission Board through its Chairman, Government of Bihar, Patna-1
4. The Secretary- Cum- Law Remembrance, Law Department, Government of Bihar, Patna-1
5. The Director General of Police, Police Department, Government of Bihar, Patna.
6. The Director, Probation Service, Government of Bihar, Patna-1
7. The Inspector General of Police (Prison), Jail Reforms, Government of Bihar, Patna-1
8. Superintendent of Jail, Central Jail, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vishal Vikram Rana, Advocate. Ms. Misha Bharti, Advocate Mr. Utkarsh Vikram Rana, Advocate. Mr. Akash Priye, Advocate. Mr. Saurav Dev, Advocate.
For the State	:	Mr. Manish Kumar, G.P.-4 Mr. Deepak Kumar, A.C. to G.P.-4.

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 10-02-2026

The present writ petition has been preferred by the
petitioners for quashing of the order dated 5.3.2020 passed by
the State Sentence Remission Board, Bihar, directing the



respondents authorities to consider the petition of the petitioners for remission.

2. The relevant facts as transpiring from the record is that the petitioners Md. Sultan and Tabassum Arra along with other co-accused were found guilty by learned Trial Court. However, Md. Sultan was found guilty under Section 364-A read with Section 149 of the Indian Penal Code and Section 120B of the Indian Penal Code, whereas, the petitioner Tabassum Aara was found guilty under Section 368 read with Section 149 of the Indian Penal Code and Section 120-B of the Indian Penal Code as per the judgment dated 07.09.2005 passed by learned Fast Track Court-I, Begusarai, in Sessions Trial No. 304 of 2003 arising out of Sahebpur Kamal P.S. Case No. 162 of 2002 and by the order of sentence dated 13.09.2005 passed by learned Trial Court, both the petitioners were sentenced to rigorous imprisonment for life and fine of Rs.10,000/- for their offence.

3. The judgment of conviction and order of sentence passed by learned Trial Court was upheld by this Court in Criminal Appeal (D.B.) No. 709 of 2005 vide judgment dated 14th September, 2011.

4. It is the case of the petitioners that they are in



custody since 22.10.2002. As such, as of now, the petitioners' custody comes to almost 23 years, 03 months and 19 days. It is further case of the petitioners that their petition for remission was put up before the State Sentence Remission Board, Bihar, Patna, but the Board, vide resolution dated 05.03.2020, rejected the application of the petitioners for recommendation of remission in view of the observations made by the concerned authorities. The Jail Superintendent, as per the resolution of the State Sentence Remission Board, has recommended remission for the petitioners in view of the reformation. However, the concerned Superintendent of Police, Probation Officer as well as Trial Court have given their opinion against grant of any remission to the petitioners in view of heinous nature of the offence, and hence, State Sentence Remission Board has rejected the petition of the petitioners for remission, holding that the offence committed by the petitioners are similar to the offence of rape, dacoity, terrorist etc. for which Remission has been prohibited as per rules.

5. I heard learned counsel for the petitioners Shri Vishal Vikram Rana and learned Government Pleader-4, Shri Manish Kumar.

6. Learned counsel for the petitioners submits that



the resolution of the State Sentence Remission Board dated 05.03.2020 is arbitrary and devoid of any merit. The Jail Superintendent is the best authority to see any reformatory change in the prisoner and other authorities like Superintendent of Police, Trial Court and even Probation Officer, when the petitioners were in jail, had no occasion to see the change in the conduct and personality of the petitioners/prisoners. Hence, the opinion of the Jail authority should have been taken seriously, more particularly, in view of the fact that the petitioners have been in jail for more than 23 years and age of the petitioners No. 1 and 2 being 75 and 70 years respectively.

7. However, learned Standing Counsel for the State defends the resolution of the State Sentence Remission Board, Bihar, Patna, submitting that the offences committed by the convicts/petitioners are very serious and heinous in nature. They have committed offence of abducting four young children for extortion and they, along with other convicts, had kept the victims in a tunnel for about five months and three days. Hence, in view of such heinous offence, the petitioners do not deserve to be given any remission. He further submits that the offence committed by the petitioners is as bad as such offence for which remission is prohibited as per rules like dacoity, rape and



terrorist activity etc.

8. Before I consider the rival submissions of the Parties, it would be pertinent to consider the relevant statutory provisions and judicial precedents.

**Statutory provisions in regard to remission
in case of life sentence.**

9. Section 432 Cr.PC deals with power of the Appropriate Government to suspend or remit sentences. It also provides the procedure for grant of remission by the Appropriate Government. However, Section 433 A put some restrictions on powers of the Government to grant remission or commutations in certain cases providing that a convict of an offence for which death is one of the punishments provided by law or whether sentence of death imposed on the convict has been commuted under Section 433 into life imprisonment, such convict cannot be released from prison unless he had served at least fourteen years of imprisonment. Section 432 and 433 A Cr.PC reads as follows:

“432. Power to suspend or remit sentences :

(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the



presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with;

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and,

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above Sub-Sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in section 433, the expression “appropriate Government” means,

(a) in cases where the sentence is for an offence against, or the order referred to in Sub-Section (6) is passed under, any law relating to a matter to which the



executive power of the Union extends, the Central Government;

(b) in other cases the Government of the State within which the offender is sentenced or the said order is passed.”

(Emphasis Supplied)

“433A. Restriction on powers of remission or commutation in certain cases : Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishment provided by laws or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.”

(Emphasis Supplied)

10. Bihar Prison Manual, 2012 framed for administration of prisons in the State of Bihar in the exercise of powers under Section 59 of the Prisons Act, 1894, provides for remission policy of the Bihar Government.

11. Chapter XIII of the Bihar Prison Manual deals with remission. Chapter XIV of the manual deals with release of prisoners. Part B of Chapter XV deals with premature release.

12. Rule 474 of the Manual provides for premature release of life convicts. As per it, Bihar State Sentence Remission Review Board is an authority to review the remission awarded to the prisoners and to recommend premature release of life convicts in appropriate cases. It also provides composition of the Review Board.

13. Rule 478 deals with what should be considered



by the Review Board while recommending premature release of the life convicts. It reads as follows:

“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.”

(Emphasis Supplied)

14. Hence, it goes without saying that as per rule 478, the paramount consideration before the Board is the welfare of the society at large and the Boards are not required to decline the premature release of a prisoner merely on the ground that the police have not recommended his/ her release. The Board is required to 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 or her release, progress in victim reconciliation programmes and chances of



reclaiming the convict as useful member of the society.

15. Rule 481 provides for the categories of prisoners who are eligible or not for premature release. After amendment in 2023, it reads as follows:

“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 Cr.PC 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. **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 atleast 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.”

(Emphasis Supplied)

16. Rule 482 provides the procedure which is required to be followed for processing of the cases for consideration of the Remission Board. It reads as follows:

“482. The following procedure shall be followed for processing of the cases for consideration of the Remission Board:

(i) After receiving application for remission from or on behalf of life convict, the concerned Superintendent of Prison shall initiate the case for premature release as per the criterion laid down by the State Government in that behalf but application received prior to four months from the date when the prisoner would become eligible for consideration of premature release shall not be considered.

(ii) The Superintendent shall cause a comprehensive note prepared in each case, giving the background of the prisoner, and details of the offence for which he/she was convicted and sentenced. The note shall also reflect fully on the conduct and behaviour of the prisoner in the prison during the period of his/her incarceration, and during his/her release on probation! leave, change in his/her behavioural pattern, and prison offences, if any, committed by him/her and punishment awarded to him/her for such offences. A report shall also be made about his/her physical and mental health or any serious ailment with which the prisoner is suffering.



(iii) The Superintendent shall make a reference to the Superintendent of Police of the district where the prisoner was ordinarily residing at the time of committing the offence (for which he/she was convicted and sentenced) or where he/she is likely to resettle after release from the prison. However, in case the place of his/her residence is not where he/she committed the offence a reference shall also be made to the Superintendent of Police of the district in which the offence was committed. In either case, he shall forward a copy of the note prepared by him to enable the Superintendent of Police to express his/her views in regard to the desirability of the premature release of the prisoner.

(iv) On receipt of the reference, the concerned Superintendent of Police shall have an inquiry made in the matter through senior officers of appropriate ranks and based on his/her own assessment shall make his/her recommendations. In case the Superintendent of Police is not in favour of premature release of the prisoner, he/she shall justify the same with cogent and material reasons. They shall return the reference to the Superintendent within 30 days of the receipt of the reference.

(v) The Superintendent shall also make a reference to the Director Probation Services. On receipt of the reference, the Director Probation Services shall either hold or cause to be held an enquiry through a Probation officer, for the desirability or otherwise of premature release of the prisoner, taking into consideration his/her family and social background, his/her acceptability by his/her family members and the society, prospects of his/her rehabilitation and leading a meaningful life as a good citizen. In every case the Director Probation Services shall justify his/her recommendation with cogent and material reasons.

(vi) The Superintendent shall obtain opinion of the Presiding Judge of the Court (before or by which the conviction was had or confirmed) whether to allow or reject the application for remission."

(vii) On receipt of the report/recommendations of the Superintendent of Police and Probation Officer and opinion of Presiding Judge of the Court (before or by which the conviction was had or confirmed), Superintendent shall put up the case to the Inspector General of Prisons and Correctional Services. The Inspector General of Prisons and Correctional Services shall examine the case, in view of the opinion of Presiding



Judge of the Court (before or by which the conviction was had or confirmed) and report/recommendations of the Superintendent of Police and Probation Officer regarding the premature release of a prisoner or otherwise. While doing so he/she shall keep in view the general or special guidelines laid down by the State Government for the State Sentence Remission Board. It shall be given proper attention to the various norms laid down and guidelines given by the Supreme Court of India and various High Courts in the matter of premature release of prisoners.

(viii) Where the life sentences is given under any central law or any other similar offence under central law, the State Government shall not have the powers to exercise remissions or commutations.”

Relevant Case Laws

17. In Rajo alias Rajwa alias Rajendra Mandal Vs. State of Bihar and Others, as reported in **2023 SCC OnLine SC 1068**, **Hon’ble Apex Court** has held that the executive powers of the Government as provided under Section 432 Cr.PC, is inherently discretionary in nature and it has to be exercised fairly, reasonably and non-arbitrarily. The same view has been expressed by Hon’ble Apex Court in **State of Haryana Vs. Jagdish** as reported in **(2010) 4 SCC 216**.

18. In Union of India Vs. V Sriharan as reported in **2016 7 SCC 1**, **Hon’ble Apex Court** has acknowledged that it lies within the executive’s domain to grant or refuse premature release. But, such power would have to be guided and the discretion informed by reason stemming from appropriate rules. Here, Hon’ble Court has also underlined the need to balance



societal interest with rights of convict.

19. In Satish alias Sabbe Vs. State of Uttar Pradesh as reported in **(2021) 14 SCC 580**, **Hon'ble Supreme Court** has held that where the authorities are found to have failed to discharge their statutory obligation despite judicial directions, it would then not be inappropriate for a constitutional court, while exercising its powers of judicial review, to resume such task onto itself and direct compliance through a writ of mandamus. The relevant part of the judgment reads as follows:

“17. It is no doubt trite law that no convict can claim remission as a matter of right. However, in the present case, the circumstances are different. What had been sought and directed by this Court through repeated orders was not premature release itself, but due application of mind and a reasoned decision by executive authorities in terms of existing provisions regarding premature release. Clearly, once a law has been made by the appropriate legislature, then it is not open for the executive authorities to surreptitiously subvert its mandate. Where the authorities are found to have failed to discharge their statutory obligations despite judicial directions, it would then not be inappropriate for a constitutional court while exercising its powers of judicial review to assume such task onto itself and direct compliance through a writ of mandamus.”

(Emphasis Supplied)

20. The same view has been reiterated by Hon'ble Apex Court in Sukhdev Yadav @ Pahalwan Vs. State of (NCT of Delhi) and Others as reported in **2025 SCC OnLine SC 1671**. by referring to **Satish case** (supra).



21. In Satish case (supra), Hon'ble Supreme Court has also held that length of sentence or the gravity of the original crime cannot be the sole basis for refusing premature release. It was also held that in remission regarding predilection to commit a crime upon release must be based on antecedents as well as conduct of the prisoner while in jail and not merely on his age or apprehension of the victims and witness. Here it was also held that the statutory mandate on premature release cannot be completely overlooked by the Government while deciding the grant of remission of the person. The relevant part of the judgment reads as follows:

"18. A perusal of the government orders displays that the statutory mandate on premature release has been completely overlooked. The three-factor evaluation of : (i) antecedents, (ii) conduct during incarceration, and (iii) likelihood to abstain from crime, under Section 2 of the U.P. Prisoners Release on Probation Act, 1938, have been given a complete go-by. These refusals are not based on facts or evidence, and are vague, cursory, and merely unsubstantiated opinions of the State authorities.

19. It would be gainsaid that length of the sentence or the gravity of the original crime cannot be the sole basis for refusing premature release. Any assessment regarding predilection to commit crime upon release must be based on antecedents as well as conduct of the prisoner while in jail, and not merely on his age or apprehensions of the victims and witnesses. As per the State's own affidavit, the conduct of both the petitioners has been more than satisfactory. They have no material criminal antecedents, and have served almost 16 years in jail (22 years including remission). Although being about 54 and 43 years old, they still have substantial years of life remaining, but that does not prove that they retain a propensity for committing offences. The respondent State's repeated and



circuitous reliance on age does nothing but defeat the purpose of remission and probation, despite the petitioners having met all statutory requirements for premature release.”

(Emphasis Supplied)

22. As such, it emerges from **Satish case** (supra) and **Sukhdev case** (supra) that the State Sentence Remission Review Board can overlook neither the statutory provision nor judicial precedents, nor can it take decision in unfair and arbitrary manner and if the Review Board is directed by the Constitutional Court for reconsideration of its decision after setting aside the previous decision of the Board, the Board is duty bound to recommend remission for the prisoner, failing which the Constitutional Court can resume such task onto itself and direct compliance through a writ of mandamus. In other words, if the Constitutional Court send the matter to the Review Board for reconsideration after setting aside its previous decision, the Board is duty bound to reverse its decision in favour of the prisoner, but if the Board fails and the prisoner moves Constitutional Court again against such order declining to recommend his/her remission, the Constitutional Court has duty as a writ court to direct the Government to grant remission.

23. In **Maru Ram Vs. Union of India and Others** as reported in **(1981) 1 SCC 107**, **Hon'ble Supreme Court** has



also held that remission schemes offer healthy motivation for better behaviour, inner improvement and development of social fibre. Here, Churchil was also quoted, who had said, “The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country”, and it was observed that the mood and temper of our Constitution certify that arbitrary cruelty to the prisoner and negative attitude to reformation of the individual are obnoxious. Here, Hon’ble Apex Court also observed that even the ruling of **Bachan Singh** on the vires of death penalty upheld this high stance.

24. Hon’ble Supreme Court in Maru Ram Case

(supra) has also held that the length of imprisonment is not regenerative of the goodness within and may be proof of the reverse- a calamity which may be averted by exercise of power under Article 161 especially when the circumstances show good behaviour, industrious conduct, social responsibility and humane responses which are usually reflected in the marks accumulated in the shape of remission. In short, the rules of remission may be effective guide-lines of a recommendatory nature, helpful to government to release the prisoner by remitting the remaining term.



25. It has been also held in **Maru Ram case** (supra) that the failure of imprisonment as a crime control tool and the search for non-institutional alternatives in a free milieu, gain poignant pertinence while considering the mechanical exclusion of individualised punishment by Section 433-A, conjuring up the cruel magic of 14 years behind bars — where “each day is like a year, a year whose days are long” — as a solvent of the psychic crisis which is crimeogenic factor, blinking at the blunt fact that at least after a spell the penitentiary remedy aggravates the recidivist malady.

26. Hon’ble Supreme Court in Maru Ram case (supra) has also held that if crime claims a victim criminology must include victimology as a major component of its concerns. It further observed that indeed, when a murder or other grievous offence is committed, the dependants or other aggrieved persons must receive reparation and the social responsibility of the criminal to restore the loss or heal the injury is part of the punitive exercise. But the length of the prison term is no reparation to the crippled or bereaved and is futility compounded with cruelty.

27. In State of Haryana Vs. Jagdish as reported in (2010) 4 SCC 216, **Hon’ble Supreme Court** has held in para



44 that liberty is one of the most precious and cherished possessions of a human being and he would resist forcefully any attempt to diminish it. Similarly, rehabilitation and social reconstruction of a life convict, as objective of punishment become of paramount importance in a welfare State. “Society without crime is a utopian theory.” The State has to achieve the goal of protecting the society from the convict and also to rehabilitate the offender. There is a very real risk of revenge attack upon the convict from others. Punishment enables the convict to expiate his crime and assist his rehabilitation. The remission policy manifests a process of reshaping a person who, under certain circumstances, has indulged in criminal activity and is required to be rehabilitated. Objectives of the punishment are wholly or predominantly reformatory and preventive.

28. In para 45 of the **Jagdish case (supra)**, it was further observed that the basic principle of punishment that “guilty must pay for his crime” should not be extended to the extent that punishment becomes brutal. The matter is required to be examined keeping in view modern reformatory concept of punishment. The concept of “savage justice” is not to be applied at all. The sentence softening schemes have to be viewed from a more human and social science oriented approach. Punishment



should not be regarded as the end but as only the means to an end. The object of punishment must not be to wreak vengeance but to reform and rehabilitate the criminal. More so, relevancy of the circumstances of the offence and the state of mind of the convict, when the offence was committed, are the factors, to be taken note of.

29. Here, it was also observed in para 47 of the **Jagdish case (supra)** that considerations of public policy and humanitarian impulses—supports the concept of executive power of clemency. If clemency power is exercised and sentence is remitted, it does not erase the fact that an individual was convicted of a crime. It merely gives an opportunity to the convict to reintegrate into the society. The modern penology with its correctional and rehabilitative basis emphasises that exercise of such power be made as a means of infusing mercy into the justice system. Power of clemency is required to be pressed in service in an appropriate case. Exceptional circumstances e.g. suffering of a convict from an incurable disease at the last stage, may warrant his release even at a much early stage.

30. In **Lakshman Naskar Vs. Union of India and Others.** as reported in **2000 2 SCC 595**, Hon'ble Supreme



Court had laid down the following factors to be considered at the time of decision for premature release of life convicts:

- “(i) Whether the offence is an individual act of crime without affecting the society at large.
- (ii) Whether there is any chance of future recurrence of committing crime.
- (iii) Whether the convict has lost his potentiality in committing crime.
- (iv) Whether there is any fruitful purpose of confining this convict any more.
- (v) Socio-economic condition of the convict's family.”

31. All these factors have been reiterated by Hon’ble Supreme Court in **Jagdish case** (supra) in the paragraph no. 46 of the judgment holding that at the time of considering the case of premature release of a life convict, the authorities are required to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances.

32. In **Rajo case** (supra), **Hon’ble Supreme Court** has held that the overemphasis on the opinion of the Trial Court



and complete disregard of comments of other authorities while arriving at its conclusion for remission would render the Appropriate Government's decision unsustainable.

33. Here **Hon'ble Apex Court** has also held that the report of the Trial Court cannot carry predominance if it focuses on the crime with little or no attention to the criminal. Here, Hon'ble Apex Court has also directed the Appropriate Government to take a holistic view of all the opinions received including the judicial view of the Trial Court keeping in mind the purpose and objective of the remission. The relevant part of the judgment reads as follows:

“ **18.** The record clearly indicates that the reason for rejection of the petitioner's application, is the adverse report submitted by the presiding judge in the first round, which was perfunctorily relied upon and reiterated in the report submitted by the then presiding judge in the second round as well. Both the reports submitted by the presiding judges (at the relevant time), demonstrate a casual opinion, based solely on the judicial record which presumably consisted of the finding of guilt, by the trial court and High Court. This offers only a dated insight on the petitioner, one that has limited opportunity to consider the progress the convict has made in the course of serving his sentence. Yet, the Remission Board has privileged the presiding judge's opinion over the other authorities - like the Probation Officer, and Jail authorities, who are in a far better position to comment on his post-conviction reformation - offering a cautionary tale.

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.

21. The views of the presiding judge, are based on the record, which exists, containing all facts resulting in conviction, including the nature of the crime, its seriousness, the accused's role, and the material available *at that stage* regarding their antecedents. However, post-conviction conduct, particularly, resulting in the prisoner's earned remissions, their age and health, work done, length of actual incarceration, etc., rarely fall within the said judge's domain. Another factor to bear in mind, is that the presiding judge would not be the same presiding judge who had occasion to observe the convict (at a much earlier point in time) and thus form an opinion. The presiding judge, at this stage, would only look into the record leading to conviction. This judicial involvement in executive decision making is therefore, largely limited to the input it provides *regarding the nature of the crime, its seriousness, etc.* Undoubtedly, even at the stage of sentencing, the judge *ideally* is to exercise discretion after looking at a wide range of factors relating to the *criminal* and not just the *crime*; but as noticed in numerous precedents that have dealt with sentencing in the commission of heinous crimes, this is unfortunately, often not the reality. Guidance has been offered by this court on how to mitigate this in recent years, but in this court's considered view, it is pragmatic to acknowledge that it will require time for our criminal



justice system to incorporate, and uniformly reach such standards. In fact, earlier cases of conviction (such as the present one - in 2001), have an even lesser probability of a judicial record which reflects consideration of such multi-dimensional factors at the sentencing stage; the lack of which should not serve as an obstacle to the convict seeking release (*after* serving almost two decades, or more), erasing the reformatory journey they may have undertaken as a result of their long incarceration.

.....

24. Apart from the other considerations (on the nature of the crime, whether it affected the society at large, the chance of its recurrence, etc.), the appropriate government should while considering the potential of the convict to commit crimes in the future, whether there remains any fruitful purpose of continued incarceration, and the socio-economic conditions, review : the convict's age, state of health, familial relationships and possibility of reintegration, extent of earned remission, and the post-conviction conduct including, but not limited to - whether the convict has attained any educational qualification whilst in custody, volunteer services offered, job/work done, jail conduct, whether they were engaged in any socially aimed or productive activity, and the overall development as a human being. The Board thus should not entirely rely either on the presiding judge, or the report prepared by the police. In this court's considered view, it would also serve the ends of justice if the appropriate government had the benefit of a report contemporaneously prepared by a qualified psychologist after interacting/interviewing the convict that has applied for premature release. The Bihar Prison Manual, 2012 enables a convict to earn remissions, which are limited to one third of the total sentence imposed. Special remission for good conduct, in addition, is granted by the rules. If a stereotypical approach in denying the benefit of remission, which ultimately results in premature release, is repeatedly adopted, the entire idea of limiting incarceration for long periods (sometimes spanning a third or more of a convict's lifetime and in others, result in an indefinite sentence), would be defeated. This could result in a sense of despair and frustration among inmates, who might consider themselves reformed-but continue to be condemned in prison."

(Emphasis Supplied)

34. In **Rajo Case (supra)**, in regard to the report of



the Superintendent of Police, Hon'ble Supreme Court has cautioned the Appropriate Government that it should be cognizant of the latent (not always) prejudices of the crime that the police as well as the investigating agency may be citing, especially in a case where the slain victims were police personnel themselves. The relevant part of the judgment reads as follows:

“**23.** Another aspect of note in this case, is the report submitted by the Superintendent of Police in the second round (which is diametrically different from that which was submitted in the first round), was adverse. Without casting aspersions on the veracity of it, or questioning it on merits, it is appropriate to flag another concern in such a context. In each case, the appropriate government has to be cognizant of the latent (not always) prejudices of the crime, that the police as well as the investigating agency, may be citing - especially in a case such as the present one, where the slain victims were police personnel themselves, i.e., members of the police force. These biases may inform the report, and cannot be given determinative value. Doing so will potentially deflect the appropriate government from the facts relevant for consideration for premature release, and instead, focus almost entirely upon facts which evoke a retributive response.”

(Emphasis Supplied)

35. Regarding applicability of the remission policy, it is settled principle of law that the remission policy prevailing at the time of conviction is applicable for grant of benefit of remission. However, in case a more liberal policy exists at the time of consideration, the benefit should be provided to the convict according to the liberal policy prevailing at the time of



the consideration.

36. In Jagdish Case (supra) Hon'ble Supreme Court has held as follows:

“54. The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a “lifer” for premature release, he should be given benefit thereof.”

(Emphasis Supplied)

37. In State of Haryana v. Raj Kumar, (2021) 9 SCC 292, Hon'ble Supreme Court has held as follows:

“16. Still further, it is the consistent view of this Court that the policy prevalent at the time of conviction shall be taken into consideration for considering the premature release of a prisoner.....”

(Emphasis Supplied)

38. In Rajo Case (supra) Hon'ble Supreme Court has held as follows:

“27. This court, on earlier occasion, had grappled with the situation of different remission policies/rules prevailing at different points of the convict's sentence - i.e., when the policy on the date of conviction, and on the date of consideration for premature release, are different. It has been held that the policy prevailing on the date of the conviction (State of Haryana v. Raj Kumar, (2021) 9 SCC 292), would be applicable. However, in Jagdish (supra) it was also recognised that if a more liberal policy exists on the date of consideration, the benefit should be provided:”

(Emphasis Supplied)



Present Case

39. Coming to the case on hand, I find that the petitioner/Md. Sultan has been found guilty of offence punishable under Section 364A read with Sections 149 and 120B of the Indian Penal Code and the petitioner/Tabassum Ara has been found guilty under Section 368 read with Sections 149 and 120B of the Indian Penal Code. Both the petitioners have been sentenced to rigorous imprisonment for life and they have been in custody for about 23 years, 3 months and 19 days serving the sentence. Their application for remission has been rejected by the State Sentence Remission Review Board vide Resolution dated 05.03.2020.

40. As per the resolution of the State Sentence Remission Review Board dated 05.03.2020, it transpires that in case of the petitioner/ Md. Sultan, the Jail Authority has recommended his remission in view of his reformed conduct, whereas other authorities like concerned Superintendent of Police, Probation Officer and the Presiding Officer of the Trial Court have given their opinion against grant of any remission to him in view of heinous nature of the offence he has committed. The Superintendent of Police has opined that release of the petitioner will have ill effect of the society. It may also create



problem of law and order and it may lead to increase in the crime. The Probation Officer has reported that release of the petitioner may lead to unrest in the society and his neighbours are not ready to accept in their society. The Presiding Officer of the Trial Court has also opined that the petitioner does not deserve any leniency in view of the nature of the offence.

41. The State Sentence Remission Review Board has rejected the application of the petitioner/ Md. Sultan for remission in view of adverse opinion of the Superintendent of Police, Presiding Officer of the Trial Court and Probation Officer. The application has been also rejected in view of Clause- (iv) (k) of Notification bearing No. 3106 dated 10.12.2002 issued by Home Department, Government of Bihar, wherein it has been provided that prisoners who are convict of rape, dacoity, terrorist crime etc. are not eligible for premature release.

42. It further transpires that the actual custody of the petitioner was 16 years, 10 months and 8 days, whereas with remission his period of custody was 21 years and 9 months.

43. As far as petitioner/Tabassum Ara is concerned, it transpires from the resolution of the State Sentence Remission Review Board that Jail Authority has recommended remission



for the petitioner in view of the reformed conduct and even the Superintendent of Police has not given any adverse opinion against her premature release stating that at the time of the crime, there was outrage against the petitioner but now there is no such outrage and hence, her release will have no any adverse effect on the society. However, the Probation Officer has opined against the premature of the petitioner stating that the neighbours are still not ready to accept her in their society. The Presiding Officer of the Trial Court has also given adverse opinion against the remission for the petitioner in view of heinous nature of the crime she has committed. Hence, the State Sentence Remission Review Board has rejected her application in view of the adverse opinion of the Probation Officer as well as presiding Officer of the Trial Court and in the light of the Notification bearing No. 3106 dated 10.12.2002.

44. As such, it transpires that the State Sentence Remission Board has rejected the applications of the petitioners for remission in view of Clause- (iv) (ka) of Notification bearing No. 3106 dated 10.12.2002 issued by Home Department, Government of Bihar, wherein it has been provided that prisoners who are convicts of rape, dacoity, terrorist crime etc. are not eligible for premature release. The applications of the



petitioners have been rejected also in view of the adverse opinions of the Probation Officer and the trial Court.

45. Here it would be pertinent to point out that Notification bearing no. 3106 dated 10.12.2002 was issued by Home Department, Government of Bihar, under Section 59 of Prisons Act, 1894 and by this Notification, Bihar Government has substituted Rule 529 of prevailing Bihar Prison Manual, 1929. However, under Section 59 of the Prisons Act, 1894, the Bihar Government has framed new jail manual-“Bihar Prison Manual, 2012” suppressing Bihar Jail Manual, 1925 and this manual came into effect on 12.12.2012 vide notification No. 5350 dated 12.12.2012. As such, Notification bearing No. 3106 dated 10.12.2002 issued by Bihar Government is no longer in operation, and hence, it has no longer any statutory force.

46. Now, it is Rule 481 of Bihar Prison Manual, 2012 which provides for the categories of the prisoners who are eligible or not eligible for premature release. Rule 481(a) was amended in 2023 vide notification No. 14/2022 dated 10.04.2023 issued by Home Department, Government of Bihar, to delete the offence of “murder of public servant on duty” as disqualification for benefit of remission policy. From perusal of Rule 481, it clearly transpires that offence punishable under



Section 364 A or 368 of Indian Penal Code are not covered under the category of the offences for which remission is prohibited.

47. Hence, the rejection of applications of the petitioners by the State Sentence Remission Board, in view of the Notification bearing no. 3106 dated 10.12.2002, is absolutely arbitrary and illegal.

48. Here, it is also relevant to point out that unlike in Rule 529 of the previous prison manual as it stood after amendment *vide* the notification No. 3106 dated 10.12.2002, there is no word like “etc” in Rule 481 of the New Manual. In Rule 529 of the previous manual the word “etc.” was used along with the offences for which remission was prohibited and this word - “etc” was applied by the Remission Board to deny remission to the convicts of the offences of similar nature for which remission was prohibited.

49. It is also pertinent to point out that this Court in various previous judgments has dealt with the effect of the notification No. 3106 dated 10.12.2002 at length and has held that after New Bihar Prison Manual, 2012, it is Rule 481 which categorizes the prisoners for grant of remission. It has been also held that the Notification No. 3106 dated 10.12.2002 was not



implemented prior to 25.09.2007, as is evident from **Ajit Kumar Mishra vs State of Bihar [2023 SCC OnLine Pat 4285, (2023) 4 PLJR 782, (2023) 5 BLJ 783 (PHC)]** wherein a Coordinate Bench of this Court, after referring to previous judicial precedents, has held as follows:

“26. In the aforementioned background, when the Rule 529 of the first Jail Manual came to be substituted w.e.f. 28.12.2002 which is the date of publication of the notification, the amended provision provided for certain exceptional categories of convict prisoners who would be debarred from getting a premature release. The relevant part of the notification/Remission Notification dated 10.12.2002 are quoted hereunder:—

“(vi) समय— पूर्व रिहाई के लिए अयोग्यता

निम्नलिखित 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 अपराधों, आदि जैसे अपराधों के सिद्धदोष बंदी।

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

(ग) वैसे पेशेवर हत्यारे, जिन्हें भाड़े पर हत्या कराने का दोषी पाया गया हो।

(घ) वैसे सिद्धदोष बंदी जो तत्कालीन कार्य में अंतर्लिप्त रहते हुए हत्या करता हो अथवा कर्तव्य पर रहने वाले लोक सेवकों की हत्या का दोषी हो।”

27. Earlier, there had been a controversy as to the date on which the amended Remission Notification amending Rule 529 of the Jail Manual actually came to be implemented. On the basis of the pleadings on the record, this Court considered this issue in the case of *Surendra Mahto v. The State of Bihar*, (2021) 4 PLJR 393 and after going through the earlier Hon'ble Division Judgment of this Court, it has been held that the notification dated 10.12.2002 was not implemented prior to 25.09.2007, in fact the affidavit of the then Principal Secretary, Department of Home, Government of Bihar filed in Cr.WJC No. 2530 of 2017 (*Naresh Sahani v. the State of Bihar*) which has been placed before this Court and forms part of the records of the said case admits this position and refers the period between 28.12.2002 and 24.09.2007 as



the period during which life convicts were released by the Jail Superintendents themselves after calculating 14 years of actual custody and 20 years with remission. It is specific stand in the said affidavit that from 25.09.2007 and onwards the life convicts were released by the State after recommendation of the Board.”

(Emphasis supplied)

50. As such, at the time of the conviction on 07.09.2005, the Notification No. 3106 dated 10.12.2002 was not in operation. Moreover, at the time of consideration of the applications of the petitioners for remission on 05.03.2020, a liberal remission policy as provided in Bihar Prison Manual, 2012 was in operation and hence, the Notification No. 3106 dated 10.12.2002 was not applicable in the case of the petitioners.

51. Hence, the denial of remission to the petitioners in the light of the Notification No. 3106 dated 10.12.2002 is absolutely arbitrary and illegal.

52. The rejection of the applications of the petitioners even in view of the adverse opinions of some authorities like Presiding officer of the Trial Court and Probation Officer and even the Superintendent of Police is not sustainable. The report of the Presiding Officer of the Trial Court is nothing but reiteration of the facts and circumstances leading to conviction and sentence of the petitioners. Learned Trial Court has not reported on the relevant points which is required to be



considered by the State Sentence Remission Board at the time of the consideration of the applications for remission. As per the judicial precedents, the following factors are required to be considered by the Board for recommending remission for the prisoners:

- (i) Whether the offence is an individual act of crime without affecting the society at large.
- (ii) Whether there is any chance of future recurrence of committing crime.
- (iii) Whether the convict has lost his potentiality in committing crime.
- (iv) Whether there is any fruitful purpose of confining this convict any more.
- (v) Socio-economic condition of the convict's family.”

53. As per Rule 478 of Bihar Prison Manual, 2012, the paramount consideration before the Board is welfare of the society at large. The Board is also required to take into account the circumstances in which the offence was committed, whether he/she has propensity to commit similar or other offences, socio-economic conditions of the prisoner 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.

54. As such, the report of the Trial Court was not helpful for taking decision on the applications of the petitioners for remission.



55. Even report of the Probation Officer was hardly useful for the sake of decision of the State Sentence Remission Board because the Probation Officer has also ignored to report on the relevant points.

56. Moreover, the opinion of the jail authority has not been taken into consideration by the State Sentence Remission Board. It is the jail authority which is aware of day-to-day change/reform in the conduct and personality of the prisoners. If the jail authority has opined that there is reformation in the conduct of the prisoner and he is fit for grant of remission, it should not have been ignored.

57. From perusal of the resolution of the State Sentence Remission Board, it transpires that the Board is oblivious of the fact that grant of remission to the prisoner is a facet of reformatory aspect of our criminal justice system and the prisons are correctional and reformatory centres for adults convicts, as there are Observation Homes for juveniles in conflict with law. Remission is premature release of the convicts prior to completion of their term or life sentence if there is positive change in the conduct and attitude of the prisoners. The idea behind such release is to allow reformed prisoners to join mainstream of the society as a productive member. Remission



schemes offer healthy motivation for better behaviour, inner improvement and development of social fibres.

58. As such, I find that State Sentence Remission Review Board has neither taken care of the Prison Law, nor of judicial precedents binding upon the Government, nor object of the remission policy. As such, welfare of the society and the individual is casualty.

59. Moreover, the petitioners have been in custody for over 23 years with remission at the time of consideration by the State Sentence Remission Board. Even their actual custody in the prison was more than 16 years without remission. The petitioners are also at the fag end of their life. There is also no cogent material disclosed in the reports of the concerned authorities that there is any chance of future recurrence of committing crime by the petitioners. Moreover, in view of the reformed conduct and the age, they have already lost their potentiality to commit crimes and needless to say that no fruitful purpose would be served by confining the convicts anymore. There is nothing on record to show propensity of the petitioner to commit similar other offences. It would be in the interest of the society to allow the petitioners to join the mainstream of the society as productive members and lead a normal life.



Imprisonment is not meant for taking revenge against the convicts but to make correction or reformation in their conduct by putting them in prison which are centre for correctional and reformatory measures.

60. Hence, the resolution dated 05.03.2020 passed by the State Sentence Remission Board, Bihar, in regard to the petitioners is totally arbitrary and illegal and hence, it is not sustainable.

61. Accordingly, the resolution dated 05.03.2020 passed by the State Sentence Remission Board, Bihar, is set aside and the State Sentence Remission Board is directed to reconsider the petitions of the petitioners for remission and pass appropriate orders as per law by 15th day of May, 2026.

62. The present writ petition stands disposed of, accordingly.

(Jitendra Kumar, J.)

S.Ali/ravi
shankar/Shoaib

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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