IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.620 of 2024

Arising Out of P.S. Case No.-310 Year-2009 Thana- Bahadurpur District- Darbhanga

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Jagarnath Thakur

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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Appearance:

For the Appellant/s : Mr. Manish Kumar No. 13

For the Respondent/s : Mr. Ajay Mishra

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

21 13-05-2026 When the matter was taken up on 04.05.2026, after considering the affidavits filed by Rajiv Kumar, A.I.G. (R) Prisons and Correctional Services, Bihar, Patna as well as the submission of the learned Advocate General who placed relevant provisions of Rules 481, 482 and 483 of Bihar Prison Manual, 2012 (*hereinafter* '2012 Manual'), and further noting that the Bihar State Sentence Remission Board has observed that the premature release of the appellant would be considered only after completion of twenty years period with remission which would be on 28.10.2029, even if he had spent actual

custodial period of 15 years, 7 months and 28 days as on 17.06.2025 and the further submission of the learned Advocate General that the case of the appellant does not fall within any of the exceptions mentioned in sub-clauses (a), (b) or (c) of clause (i) of Rule 481 of the 2012 Manual, we sought for a detailed affidavit as to why the case of the appellant was not considered despite his actual custody exceeding 15 years and the specific grounds for deferring consideration until 28.10.2029.

2. In pursuance of such order, Rajiv Kumar, A.I.G. (R) Prisons and Correctional Services, Bihar, Patna, has filed a counter affidavit dated 12.05.2026, wherein, it is stated as follows:-

> *"5. That as submitted in earlier supplementary counter affidavit filed through oath no. 13061 dated 30.04.2026, since petitioner has not completed 20 years of incarceration with remission which is a condition precedent for considering a proposal for premature release therefore his proposal was not considered for premature release.*
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> *Condition of completion of 20 years of incarceration with remission in cases of life imprisonment finds legal justification from section 57 of IPC (section 6 of BNS) which reads as; "In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years unless otherwise provided.*
>
> *The humble attention of this Hon'ble*

> *court is required to be drawn towards the fact that in general the prisoners completing 14 years of actual incarceration simultaneously complete 6 years of remission based on their good behavior/conduct and the good behavior/conduct is the most important factor guarantying/certifying reintegration of a person languishing in jail for years together and therefore completion of 20 years with remission has been necessitated vide letter no. 550 dated 21.01.1984."*

3. After going through the affidavit, we are of the humble view that the explanation furnished in paragraph 5 justifying the refusal to consider the appellant's premature release despite his completion of over 15 years of actual custody is entirely unacceptable. Reliance has been placed on Letter No. 550 dated 21.01.1984, which has been annexed as Annexure-R/A to the counter affidavit. In view of the enactment of the 2012 Manual, the authority concerned should not have considered such a letter of the year 1984 to be a ground for either rejecting the case of the appellant, or in taking a decision to consider his case only after 28.10.2029.

The Hon'ble Supreme Court in the case of ***State of Haryana and Ors. -Vrs.- Jagdish reported in (2010) 4 Supreme Court Cases 216*** has observed that:-

> *"44. 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 reformative and preventive.

45. 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 reformative 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.

46. At the time of considering the case of premature release of a life convict, the authorities may require 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."*

Furthermore, the reliance placed on section 6 of Bharatiya Nyaya Sanhita, 2023, which corresponds to section 57 of the Indian Penal Code (*hereinafter*, I.P.C.) is wholly irrelevant to the issue involved in the case at hand in as much as the Hon'ble Supreme Court in the case of ***Swamy Shraddananda -Vrs.- State of Karnataka reported in (2008) 13 Supreme Court Cases 767*** has been pleased to observe as follows:-

> *"76. It is equally well settled that Section 57 of the Penal Code does not in any way limit the punishment of imprisonment for life to a term of twenty years. Section 57 is only for calculating fractions of terms of punishment and provides that imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. (See Gopal Vinayak Godse [AIR 1961 SC 600 : (1961) 3 SCR 440] and Ashok Kumar [(1991) 3 SCC 498 : 1991 SCC (Cri) 845] .) The object and purpose of Section 57 will be clear by simply referring to Sections 65, 116, 119, 129 and 511 of the Penal Code."*

The interpretation of section 57 of I.P.C. gets

strengthened if reference is made to sections 65, 116, 119, 120 and 511 of the I.P.C. which fixes the term of imprisonment thereunder as a fraction of the maximum fixed for the principal offence. It is for the purpose of working out this fraction that it became necessary to provide that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. If such a provision had not been made, it would have been impossible to work out the fraction of an indefinite term. In order to work out the fraction of terms of punishment mentioned in the aforesaid sections of I.P.C., it was imperative to lay down the equivalent term for life imprisonment. ***(Ref: Ashok Kumar -Vrs.- Union of India and Others: (1991) 3 Supreme Court Cases 498***)

Thus the grounds taken for considering the case of appellant for premature release on completion of 20 years of incarceration is unjustified.

4. After going through the relevant provisions of sections 432, 433 and 433A of the Code of Criminal Procedure, 1973 (*hereinafter,* 'Cr.P.C.'), which corresponds to sections 473, 474 and 475 respectively, of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter,* 'BNSS'), we find that so far as section 433A of the Cr.P.C. is concerned, which corresponds to section 475 of BNSS, there is no change in it, hence, there

remains no legal embargo at all for considering the case of a convict for premature release who has been sentenced to life imprisonment after serving the actual period of 14 years of imprisonment if his case does not fall under any of the exceptions as mentioned in sub-clauses (a), (b) or (c) of clause (i) of Rule 481 of the 2012 Manual.

Section 433A of the Cr.P.C. has been interpreted by the Hon'ble Supreme Court in the case of ***Sukhdev Yadav alias Pehalwan -Vrs.- State of (NCT of Delhi) and Ors. reported in 2025 Supreme Court Cases OnLine SC 1671,*** wherein it is stated as follows:-

> *"14.5.4. Interpreting Section 433-A, it was observed that it was a savings clause in which there are three components. Firstly, CrPC generally governs matters covered by it. Secondly, if a special or local law exists covering the same area, the latter law will be saved and will prevail, such as short sentencing measures and remission schemes promulgated by various States. The third component is that if there is a specific provision to the contrary, then it would override the special or local law. It was held that Section 433-A of the CrPC picks out of a mass of imprisonment cases, a specific class of life imprisonment cases and subjects it explicitly to a particularised treatment. Therefore, Section 433-A of the CrPC applies in preference to any special or local law…."*

Section 433A of the Cr.P.C. (section 475 of BNSS) is

further clarified by the decision of the Hon'ble Supreme Court in the case of ***State of Haryana -Vrs.- Raj Kumar @ Bittu reported in (2021) 9 Supreme Court Cases 292,*** wherein it has been held as follows:-

> *"15. Thus, a prisoner has to undergo a minimum period of imprisonment of 14 years without remission in the case of an offence, the conviction of which carries death sentence, to take benefit of policy of remission framed by an appropriate government under Section 432 of the Code in view of the overriding provision of Section 433-A of the Code. However, the power of the Hon'ble Governor to commute sentence or to pardon is independent of any such restriction or limitation. ...*
>
> *xxxx xxxx xxxx*
>
> *23. ... The power of remission is to be exercised by the State Government, as an appropriate Government, if the prisoner has undergone 14 years of actual imprisonment in the cases falling within the scope of Section 433-A of the Code and in case the imprisonment is less than 14 years, the power of premature release can be exercised by the Hon'ble Governor though on the aid and advice of the State Government."*

In fact, Rule 481 of the 2012 Manual, explicitly mandates that every convicted prisoner whether male or female, undergoing sentence of life imprisonment and covered by the provisions of section 433A of the Cr.P.C. (section 475 of BNSS), shall be eligible to be considered for premature release

from prison immediately after serving out the sentence of 14 years of actual imprisonment i.e. without the remissions.

The Hon'ble Supreme Court in the case of ***Satish alias Sabbe -Vrs.- State of U.P., reported in (2021) 14 Supreme Court Cases 580,*** observed that:-

> *"17. .....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."*

5. Needless to say, and to reiterate in the case at hand that the appellant had already spent the actual custody period of more than 15 years. As rightly submitted by the learned Advocate General on 04.05.2026 that the case of the appellant did not fall under any of the exceptions mentioned in sub-clauses (a), (b) or (c) of clause (i) of Rule 481 of the 2012 Manual. Therefore, we are of the view that rejection of the application of the premature release of the appellant and taking

a decision that his case would be considered only after 28.10.2029, cannot be sustained in the eyes of law.

Premature release application can be considered even if the convict is on bail as the eligibility depends on the total sentence served, not on the amount of physical incarceration. Time spent on bail can be a factor for consideration of overall sentence. In other words, being on bail does not disqualify a convict from having his premature release application considered by the Government.

Accordingly, we direct the Remission Board to consider the case of appellant afresh for premature release in accordance with law.

6. In the previous order dated 04.05.2026, we found that 143 cases of premature release applications sponsored by the Superintendents of Prisons, are pending before the Bihar State Sentence Remission Board and the data furnished indicated significant backlog, i.e., 01 application is of the year 2019, 05 applications are of the year 2021, 03 applications are of the year 2022, 06 applications are of the year 2023, 16 applications are of the year 2024, 76 applications are of the year 2025 and 13 applications are of the year 2026, and 23 other applications in which the years have not been mentioned, are

pending before the Board for consideration.

We quoted the ratio laid down by the Hon'ble Supreme Court in the case of ***Rashidul Jafar -Vrs.- State of U.P., reported in (2024) 6 Supreme Court Cases 561; Policy Strategy for Grant of Bail, In re, 2025 Supreme Court Cases OnLine SC 349; and Special Leave to Appeal Crl. No. 855/2026 (Mahesh Kumar Dhisalal Jangid -Vrs.- State of Gujarat),*** in which the Hon'ble Supreme Court observed that the applications for premature release of the convicts must be processed and disposed of at the earliest opportunity and the power to grant premature release must be exercised in a reasonable and fair manner.

7. Accordingly, we directed the Home Secretary, Government of Bihar, Patna, to file an affidavit detailing the decisions taken by the Board during its meeting scheduled to be held on 11.05.2026 regarding the pending cases of 143 applicants for premature release.

In terms of such order, an affidavit has been filed by the A.I.G. (R) Prisons and Correctional Services, Bihar, Patna, wherein, it is stated as follows:-

> *"6. That as to submission made earlier regarding pendency of 143 proposals, it is humbly submitted that after a close scrutiny it was found that out of 143 cases 27 cases*

> *were found pre-mature out of which 19 cases are such where prisoners have not completed 20 years of incarceration, in 3 cases certain required reports are awaited and 5 cases had been repeated in earlier list. Thus the pendency remains to 116 out of which 85 cases were placed before the Bihar State Sentence Remission Board in its meeting dated 11.05.2026, out of these, 40 cases could be taken up and appropriately recommended for approval of the Competent Authority, by the Bihar State Sentence Remission Board in this meeting."*

8. While perusing the said paragraph, we find that cases of 19 prisoners were not considered because they had not completed 20 years of incarceration under the purported provisions of the 2012 Manual. In light of the observations which we made today, we expect that, in respect of those applicants whose cases do not fall under the exceptions mentioned in sub-clauses (a), (b), or (c) of clause (i) of Rule 481 of the 2012 Manual, and have completed 14 years of actual imprisonment i.e., without the remissions, shall be duly considered for premature release in accordance with the law.

9. In the order dated 04.05.2026, we referred to Rule 482(vi) of the 2012 Manual, regarding obtaining the opinion of the Presiding Judge of the Court before or by which the conviction was had or confirmed for consideration of an application for remission of a convict. We observed that, due to

the passage of time, it was not expected that the very same Presiding Judge who passed the order of conviction against the convict would be available in the very station when such opinion would be sought for by the Superintendent. Similarly, when another Judge, who has not conducted the trial is presiding in the said Court, then how far it would be relevant seeking his opinion for the purpose of allowing or rejecting the application for remission.

10. In the affidavit filed by Rajiv Kumar, A.I.G. (R) Prisons and Correctional Services, Bihar, Patna, the ratio laid down in the case of ***Union of India -Vrs.- V. Sriharan, reported in (2016) 7 Supreme Court Cases 1,*** and ***Laxman Naskar -Vrs.- Union of India, reported in (2000) 2 Supreme Court Cases 595*****,** has been quoted wherein it is stated that the opinion of the Presiding Judge is only a relevant factor which does not have any determinative effect on the application for remission and that the appropriate Government should not mechanically follow the opinion of the Presiding Judge, if the Judge does not consider the relevant factors governing the grant of remission.

11. We made a query to Mr. Rajnish Kumar Singh (I.G. Prisons), Prisons and Correctional Services, Bihar, Patna as to what are the documents which are forwarded to the

Presiding Judge of the Court at the time of seeking the opinion for consideration of the application for premature release of a convict and directed him to file a copy of such letter along with the details of the documents sent. He seeks some time in that respect to file an affidavit along with the copy of the relevant letter so also the documents furnished to the Presiding Judge.

12. List this matter on **22.06.2026.** On the next date, Mr. Rajnish Kumar Singh (I.G. Prisons), Prisons and Correctional Services, Bihar, Patna, shall appear through virtual mode and an affidavit shall be filed detailing the status of the application for premature release of the appellant after fresh consideration.

13. We direct the Remission Board that the cases of 19 prisoners, who were previously excluded on the erroneous ground of not completing twenty years of incarceration, shall be considered afresh if they have completed 14 years of actual imprisonment without remissions and their cases do not fall under the exceptions under sub-clauses (a), (b) or (c) of clause (i) of Rule 481 of 2012 Manual, in accordance with law.

It is made clear that we have not expressed any opinion on the merits of the premature release application of the appellant. The Remission Board is required to reconsider the

application in accordance with law expeditiously.

(Sangam Kumar Sahoo, CJ)

(Harish Kumar, J)

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