



2026:AHC:166278-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 17372 of 2025

Ram Pratap Singh

.....Petitioner(s)

Versus

State of U.P. and others

.....Respondent(s)

Counsel for Petitioner(s)	: Syed Mohammed Jafer Husain, Syed Wajid Ali
Counsel for Respondent(s)	: G.A.

RESERVED

Court No. - 2

HON'BLE J.J. MUNIR, J.

HON'BLE TARUN SAXENA, J.

(Delivered by : J.J. Munir, J.)

1. The petitioner Ram Pratap Singh challenges the decision of the Hon'ble the Governor of U.P., in exercise of powers under Article 161 of the Constitution, refusing to remit his sentence-a decision communicated to him *vide* order dated 26.6.2025 by a Joint Secretary to the Government in the Department of the Uttar Pradesh Prisons Administration and Reform Services, Lucknow.

2. The petitioner prays that a *mandamus* be issued to release the petitioner from jail forthwith, giving him benefit of sub-Rule (iii) of Rule 4 of the Uttar Pradesh Prisoners' Release on Probation Rules, 1938 and the relevant policy adopted by the State Government.

3. The petitioner along with non-petitioner Anant Man Singh stood their trial for an offence punishable under Section 307/34 IPC before the Additional Sessions Judge, Court No. 2, Fatehpur *vide* S.T. No. 569 of 1996, arising out of Crime No. 91 of 1996, under Section 307/34 IPC, P.S. Hussainganj, District Fatehpur. He was convicted of the said offence by the learned Additional Sessions Judge *vide* judgment and order dated 26.11.2002 and sentenced to rigorous imprisonment of seven years and ordered to pay a fine of Rs. 2,000. In default, an additional term of one

month simple imprisonment was ordered.

4. The petitioner preferred Criminal Appeal No. 5185 of 2002 against the said judgment and order to this Court, which came to be dismissed *vide* judgment and order dated 05.03.2019. The petitioner sought Special Leave to Appeal from the judgment and order of this Court dated 05.03.2019, dismissing his appeal, before the Supreme Court *vide* Petition for Special Leave to Appeal (Criminal) No. 6467 of 2019. The said petition was dismissed by the Supreme Court *vide* order dated 29.07.2019.

5. It is the petitioner's case that a proposal with regard to his premature release was sent on 03.09.2022 by the Jail Authorities to the District Magistrate, Fatehpur. It was also sent to the prison headquarters *vide* letter dated 13.10.2022 by the District Probation Officer, Fatehpur. The proposal was kept pending. An application/reminder dated 22.02.2025 was then addressed on behalf of the petitioner to the Jail Superintendent, District Jail Fatehpur. The Jail Superintendent, District Jail Fatehpur sent a letter dated 23.02.2025 to the Director General of Police/Inspector General, Prisons Administration and Reform Services, Lucknow. In the application dated 22.02.2025, it is stated by the petitioner that he is aged about 64 years and suffering from high blood pressure, diabetes, kidney and prostate diseases, and further that he has served more than half of the sentence awarded to him. It was requested that an appropriate decision be taken on the proposal for his premature release.

6. The Jail report in the prescribed proforma and a copy of the petitioner's application addressed to the Director General of Police/Inspector General, Prisons Administration and Reform Services, Lucknow dated 22.02.2025 and medical reports from the District Male Hospital, Fatehpur, where three renal cyst have been noticed along with difficulty in urination, are all on record. It is emphasized that according to the Jail report submitted by the Superintendent, District Jail, Fatehpur dated 23.02.2025, the petitioner has served 4 years 6 months and 6 days without remission and 5 years and 4 months with remission as against the total term of seven years. The conduct of the petitioner, according to the Jail report, is satisfactory.

7. The impugned order dated 26.06.2025 shows that the petitioner's case for premature release has been rejected on the ground that the petitioner is

aged 61 years and has served 2 years and 6 days without remission and 2 years 1 month and 27 days with remission and further that the District Magistrate, Fatehpur, and the Superintendent of Police, Fatehpur have not recommended his case for premature release. The decision to refuse remission has been taken by the Hon'ble The Governor in exercise of the powers under Article 161 of the Constitution.

8. Aggrieved, this writ petition has been instituted.

9. Heard Mr. Syed Mohammad Jafer Husain, learned counsel for the petitioner and Mr. Ghanshyam Kumar, learned A.G.A.-I on behalf of the State.

10. A counter affidavit has been filed on behalf of respondent nos. 1 and 2 and a rejoinder by the petitioner.

11. It is argued by the learned counsel for the petitioner that the impugned order has been passed ignoring from consideration particulars about the period of detention mentioned in the jail report, which shows the period of sentence undergone without remission as 4 years 6 months 6 days and with remission 5 years. The impugned order ignores this report and records committing an error apparent that the petitioner has served a total period of 2 years 6 days without remission and 2 years 1 month 27 days with remission. It is further submitted that the impugned order does not disclose, even by as much as a hint, any material adverse to the petitioner on the basis of which the impugned order denies him benefit of premature release.

12. It is next submitted that the petitioner is eligible for premature release under sub-Rule (iii) of Rule 4 of the Rules of 1938, which provides that in cases other than those covered by sub-Rule (i) and (ii) of Rule 4, if the convict has served 1/3rd of the term without remission, he is eligible. The impugned order also does not take into account the likelihood of the petitioner repeating the offence or the part of the jail report, where his conduct has been certified to be satisfactory. It is also submitted that the age of the petitioner has been considered as 61 years, whereas the jail report clearly shows that his age is 63 years 8 months and 5 days.

13. In the counter affidavit, nothing is said for a reason to justify or explain

the case of non-consideration or the error apparent. All that is said in paragraph 10 of the counter affidavit is that according to the Jail Superintendent's letter dated 03.09.2022, whereby the proposal for premature release was made, the conduct of the petitioner is certified as normal with punishments being zero, and again through a letter dated 23.02.2025 forwarded to the Jail Headquarters, the petitioner's conduct is certified as satisfactory with five hard warnings. Nothing else worth the name has been said in the rejoinder.

14. Upon hearing learned counsel for the parties, we are of opinion that the impugned order refusing premature release suffers from an error apparent on the face of record inasmuch as under sub-Rule (iii) of Rule 4 of the Rules of 1938, a person is eligible for premature release after having served 1/3rd of the sentence without remission in cases not covered by sub-Rule (i) and (ii) of Rule 4. Here, the petitioner has served for more than half of the sentences, the total period of incarceration without remission certified in the jail report being 4 years 6 months 6 days, as against a total term of 7 years awarded. The impugned order records committing an error apparent that the total period of sentence undergone by the petitioner is a period of 2 years and 6 days without remission. There is absolutely no basis to this finding, except that it is borne of on an error apparent and also betrays a case of non-application of mind to the record.

15. No doubt, the power to grant premature release vests in the Hon'ble the Governor under Article 161 of the Constitution and is a sovereign executive power, but it cannot be exercised arbitrarily. It is regulated by the Rules and the remission policy as well. Even if that is set apart considering that power under Article 161 is a constitutional power, as distinguished from the statutory power of the State Government under Section 432 Cr. P.C., the decision cannot be arbitrary or borne on an error apparent, as important as the period of incarceration suffered by the convict. This is all more relevant since under sub-Rule (iii) of Rule 4 of the Rules of 1938, the eligibility for consideration of a convict's case, in case of a term sentence, is serving 1/3rd of the total term of imprisonment to which the convict is sentenced. In this case, by misreading the period of incarceration as 2 years and 6 days without remission, instead of 4 years 6 months and 6 days without remission, a manifest illegality has been committed. If the correct period of detention had

informed the mind of the respondents, the conclusion would possibly have been otherwise. We also notice that the impugned order takes note of the reports of the Superintendent of Police, Fatehpur and District Magistrate Fatehpur, not recommending the petitioner's case for premature release. There is no mention of the contents of the report, either in the order or the return filed by the State. If recommendations of the District Magistrate and the Superintendent of Police are without reasons and *ipse dixit* of the officers, fresh comments would have to be secured immediately from these officers. Therefore, in our considered opinion, the impugned order cannot be sustained.

16. In the result, the writ petition **succeeds and is allowed**. The impugned order dated 26.06.2025 passed by the State Government is hereby **quashed**. The matter stands remitted to the Government for decision afresh on the petitioner's plea for premature release, which the State Government will decide within a period of one month from the date of receipt of a copy of this order.

17. Let this order be communicated to the Principal Secretary, Uttar Pradesh Prisons Administration and Reform Services, Lucknow through the learned Chief Judicial Magistrate, Lucknow by the Registrar (Compliance).

(Tarun Saxena, J.) (J.J. Munir, J.)

August 10, 2026
Deepak