

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No. 722 of 2023**

Arising Out of PS. Case No.-301 Year-2003 Thana- KOTWALI District- Patna

Munna Singh @ Ajay Sharma son of Chandrika Singh, R/o-village- Simra, P.S.-  
Janipur, District- Patna

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The State Sentence Remission Board through the Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Joint Secretary-cum-Director (Administration), Home Department (Prison), Bihar, Patna.
4. The Secretary, Law Department, Government of Bihar, Patna.
5. The Additional Director General of Police, Criminal Investigation Department, Bihar, Patna.
6. The Assistant Inspector General, Jail and Reforms Services, Bihar, Patna.
7. The Jail Superintendent, Model Central Jail, Beur, Patna

... .. Respondents

**Appearance :**

For the Petitioner/s	:	Mr. Ratnakar Pandey, Advocate Mr. Rajesh Ranjan, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AG III

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**CAV JUDGMENT**

**Date : 24-11-2023**

This writ petition questions the legality and validity of the decision taken by the State Sentence Remission Board (hereinafter referred to as the 'Board') on 09.09.2022 in respect of the petitioner. By the said decision (hereinafter referred to as the 'impugned order/decision'), the Board has rejected the proposal for premature release of the petitioner on the ground that the case of the petitioner would be covered under Clause (iv) (क) of the Notification No. 3106



dated 10.12.2002 issued by the Home (Special) Department, Government of Bihar.

2. Upon setting aside of the impugned order/decision, the petitioner prays for commanding the respondents to consider the case of the petitioner afresh for premature release.

3. It is not in dispute that the petitioner has been convicted by the learned Additional Sessions Judge-III, Patna on 17.09.2008 in Sessions Trial No. 816 of 2015 for the offence under Sections 364A/34 and 120B of the Indian Penal Code (in short 'IPC') and has been ordered to undergo life imprisonment and to pay a sum of Rs. 50,000/- as fine. The petitioner has also been convicted and sentenced under Section 365 IPC and he has been ordered to undergo rigorous imprisonment for seven years. Both the sentences are to run concurrently.

4. A perusal of the pleadings would show that the petitioner has suffered physical incarceration for about 16 years and with remission he has completed more than 21 years.

#### **Case of the Petitioner**

5. The case of the petitioner is that even though the Notification No. 3106 was issued on 10.12.2002 and published in the Gazette on 28.12.2002, the same was not implemented, it was not workable and the respondent authorities kept on following the 1984 Policy. It has been pleaded that in the case of **Ram Chander V. State**



**of Chhattisgarh** reported in **2022 SCC Online SC 500** the Hon'ble Supreme Court has held that "the prerogative of the executive is subject to the rule of law and fairness in State action embodied in Article 14 of the Constitution".... the power of remission cannot be exercised arbitrarily. The decision to grant remission should be informed, fair and reasonable".

6. Learned counsel for the petitioner submits that the petitioner had earlier submitted an application before the competent authority for considering his case for premature release. The Probationary Officer *vide* Letter No. 261 dated 30.08.2021 also recommended for premature release of the petitioner on the basis that there is full possibility of rehabilitation of the petitioner with the help of villagers and relatives.

7. It is submitted that the Superintendent of Police, Patna as well as the Presiding Judge of the trial court recommended the case of the petitioner for premature release. After obtaining necessary recommendations from the prescribed authorities, the Jail Superintendent, Model Central Jail, Beur, Patna sent the proposal to the Board for consideration of the case of the petitioner for his premature release in connection with Session Trial No. 816 of 2002.

8. Learned counsel submits that for argument sake, the Clause (iv) (क) of the Notification No. 3106 dated 10.12.2002 even if applied, the case of the petitioner would not be covered thereunder.



The said Clause has been considered by this Court in the case of **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava vs. The State of Bihar and Ors.** reported in **2022 (1) PLJR 217**. This would also be covered by a recent judgment of this Court in the case of **Ajit Kumar Mishra Vs. The State of Bihar & Ors.** reported in **2023 (5) BLJ 783**.

9. Learned counsel submits that the Notification No. 3106 in its Clause (iv) (क) read with (ख) created an exception by listing the categories of convicts who would not be eligible to be considered for premature release. The categories of convicts covered under Section 433A of the Code of Criminal Procedure (in short 'Cr.P.C.') have been substituted vide Amendment Notification No. 3194 dated 26.05.2016 which has brought about certain changes in the exception list. The Board has not at all looked into Rule 481 of the Bihar Prison Manual, 2012 (hereinafter referred to as the 'Prison Manual') as amended vide Notification No. 3194 dated 26.05.2016. A bare perusal of the same would show that the case of the petitioner would not be covered thereunder in the exception list. The Board has not followed the mandate of Rule 478 of the Prison Manual which inter-alia provides that 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. This Rule also mandates the Board to keep in view the general principles of remission of sentences, as laid



down by the State Government or by the courts, as also the precedents. In the present case, the Board has not at all applied its independent mind and the judicial pronouncements which were available to the Board at the time of taking the impugned decision.

10. Learned counsel for the petitioner relies upon yet another judgment of this Court in the case of **Surendra Mahto Vs. The State of Bihar & Ors.** reported in **2021 (4) PLJR 393** and an order dated 22.12.2022 in Cr.WJC No. 190 of 2022 (**Sunny @Sunni @ Sunny Deol @ Sunny Dewal Vs. State of Bihar & Ors** reported in 2023 (1) BBCJ 140).

11. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in the case of **Rajo @ Rajwa @ Rajendra Mandal Vs. The State of Bihar and others** reported as **2023 INSC 771 (Writ Petition (Criminal) No(s). 252/2023)** wherein the Hon'ble Apex Court has while referring to the **State of Haryana and Others Vs. Jagdish** reported in **(2010) 4 SCC 216** noted that in the said case it has been held that the earlier policy prevailing on the date of conviction would be applicable but the said judgment also recognizes that if a more liberal policy exists on the date of consideration, the benefits thereunder would be provided. The submission is that by virtue of the amended Rule 481 there is no scope at all for the Board to bring the present case within the ambit of Clause (iv) (क) of the Notification dated 10.12.2002.



**Stand of the State**

12. The State respondents have contested the writ application. A stand has been taken that the offence of kidnapping for ransom is as heinous as the offence of rape, dacoity, terrorist crime and for this reason, the Board has rejected the proposal for premature release of the petitioner. It is submitted that a learned coordinate Bench of this court has vide order dated 05.08.2022 passed in Cr.WJC No. 1330 of 2021 upheld the rejection of the case of the co-convict Chitranjan Kumar @ Babloo who had also been convicted for the offences under Sections 365/364A/34 and 120B of the IPC in the same Session Trial No. 816 of 2005 arising out of Kotwali P.S. Case No. 301 of 2003. In his case the Remission Board has *vide* its order dated 19.11.2021 taken similar view and took it as an offence described in Clause (iv) (क) of the Notification dated 10.12.2002.

13. It is submitted that the date of conviction of the petitioner is 17.09.2008, therefore his case would come within the purview of Notification No. 3106 dated 10.12.2002.

**Consideration**

14. Having heard learned counsel for the parties and on perusal of the records, this Court finds that the petitioner has been convicted for the offence under Sections 365/364A/34 and 120B of the IPC. The date of conviction is 17.09.2008 and from the judicial



pronouncements which are available on the record, it is settled position that prior to 25.09.2007, the life convicts were being released by following the 1984 Policy. The Hon'ble Division Bench of this Court in **Cr.W.J.C. No. 748 of 2017 (Chandra Kant Kumar Vs. The State of Bihar & Ors.)** has taken note of the fact that even after publication of the Notification No. 3106 dated 10.12.2002, the State kept on releasing the life convicts by following the 1984 Policy. In fact, the Hon'ble Division Bench directed the respondents to consider the case of the father of the petitioner in the said case on the ground that there cannot be any discrimination in the case of the father of the petitioner and he has to be given the same benefit which has been given to others. This Court has followed the said judgment in the case of **Surendra Mahto (supra)**. The State Government has accepted the said judgment and released the petitioner. On similar lines, this Court has allowed the case of Sikander Mahto Vs. The State of Bihar & Ors. (Cr.W.J.C. No. 1615 of 2019) and **Md. Allauddin Ansari & Ors. Vs. The State of Bihar & Ors.** (Cr.W.J.C. No. 861 of 2021) reported in **2023 (1) PLJR 385**. Earlier when this Court was informed in course of hearing of Cr.W.J.C. No. 861 of 2021 that the Board has been passing orders in complete disobedience and disregard to the earlier order of this Court passed on 19.02.2021 in Cr.W.J.C. No. 1615 of 2019 (Sikander Mahto), this Court took a prima-facie view that it is a case of contempt so vide



order dated 20.12.2022 passed in Cr.W.J.C. No. 861 of 2021 this Court instituted a suomoto contempt. This order dated 20.12.2022 was challenged by State in **Special Leave to Appeal (Crl.) No. 1510 of 2023** which was dismissed on 10.02.2023. Two other Special Leave Petitions being **Special Leave Petition (Criminal) Diary No (s). 33736/2023) (The State of Bihar & Ors. Vs. Sikendra Mahto @ Sikandar Mahto & Anr.)** and **Special Leave to Appeal (Crl.) No(s) 11909-11910/2023 (The State of Bihar & Ors. Vs. Chandra Kant Kumar** were dismissed on the ground of limitation keeping the question of law open.

15. To this court, it appears that line of cases in which benefits were granted to the petitioners on the ground that they cannot be discriminated against may not help the petitioner because the date of conviction of this petitioner is 17.09.2008 which is much after 25.09.2007.

16. In this circumstance, this court would proceed to consider the case of the petitioner by applying the Notification No. 3106 dated 10.12.2002. The relevant part of the same are being extracted hereunder for ready reference:-

“(iv) 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 तस्करी कार्य में अंतर्लिप्त रहते हुए हत्या करता हो अथवाकर्तव्य पर रहने वाले लोक सेवकों की हत्या का दोषी हो।”

17. The aforementioned notification containing the exception list came to be considered by this court in the case of **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava (supra)**. In the said case petitioner was convicted under Sections 364A and 379/34 of the IPC and he had been sentenced to undergo rigorous imprisonment for life with fine. This Court noticed uncontroverted submission in paragraph ‘14’ of the said writ application that one Moti Lal Yadav and Prem Prakash Yadav who were convicted and sentenced for life imprisonment under Section 364 IPC were released from prison after departmental Letter No. 3874 dated 01.06.2018. Further one Vijay Yadav was released in the same manner by the decision of the concerned department by Letter No. 2716 dated 24.04.2020.

18. This Court while considering Clause (iv) (क) and (ख) of Notification No. 3106 held in paragraph ‘10’ and ‘11’ of its judgment as under:-

“10. It is evident from a reading of Annexure ‘A’ th the category of cases as enumerated under sub-clause (kha) are those cases in which the policy with regard to the premature release does not permit any consideration. An offence committed under Section 364A of the IPC is not specifically provided under paragraph (iv) (ka) has to be read ‘*Ejusdem generis*’ i.e. the birds of the same feather



flock together and by applying that rule of principle of interpretation and word 'आदि' may only be taken to mean and understand the offences of the similar category such as rape, dacoity and terrorist acts. Perhaps it is for this reason that the cases of Vijay Yadav and others as mentioned in paragraph '14' of the writ application would have been considered. It appears to this Court that the Remission Board while considering the case of the petitioner has not acted with objectivity and has simply rejected his prayer for premature release by referring to the Notification dated 10<sup>th</sup> December, 2002 and paragraph (iv) (ka)."

"11. it is pertinent to mention here that the sub-clause (kha) has to be read together with sub-clause (ka) and only then the Remission Board may arrive on a proper conclusion as to in which cases the benefit of premature release may be granted in terms of the policy. In fact having sensed this position that the State has not denied the specific statements made in paragraph '14' of the writ application, at one stage learned AC to AAG-3 also submitted that the case may be remanded to the State Remission Board for fresh consideration."

**19.** It is crystal clear from paragraph '11' of the judgment in the case of **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava (supra)** that in fact learned A.C. to learned AAG-III had also at one stage sensed the difficulty as the State was not denying the specific statement made in paragraph '14' of the said writ application and he had submitted for remanding the case to the State Remission Board for fresh consideration. **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava** judgment has attained finality.



20. This Court finds that the State has relied upon a learned coordinate Bench judgment of this Court rendered on 05.08.2022 in Cr.WJC No. 1330 of 2021 (**Chitranjan Kumar @ Babloo Vs. The State of Bihar & Ors.**). On going through the whole judgment, this Court finds that the prior judgment of this court rendered in the case of **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava (supra)** on 05.09.2021 had not been followed by the Board while taking a decision on 19.11.2021 and then when case of **Chitranjan Kumar @ Babloo** was being argued before the learned coordinate Bench, the judgment of this Court which was already reported and was well known to the Board was not brought to the notice of the learned coordinate Bench of this Court.

21. Further this Court finds that the Rule 481 of the Jail Manual stood amended vide Notification dated 26.05.2016 and by virtue of the changes brought about by the Notification No. 3194 dated 26.05.2016, under Rule 481 (i)(a) there is nothing like 'etc.' or 'आदि' which was present in Clause (iv)(क) of Notification No. 3106 dated 10.12.2002. Thus, on the date of consideration of the case of the petitioner on 09.09.2022, there was no scope for the 'Board' to bring any other offence within the ambit of Rule 481 of the Prison Manual or Clause (iv)(क) of Notification No. 3106. In view of the judgment of the Hon'ble Apex Court in the case of **Rajo @ Rajwa @ Rajendra Mandal (supra)**, a liberal policy if in existence on the



date of consideration of a proposal for premature release, is to be given effect to and the benefit of the same shall go to the convict.

**22.** This Court would also briefly notice that Rule 478 of the Prison Manual categorically directs the Board to keep in view the general principles of remission of sentences as laid down by the State Government or by the Courts, as also the precedents in the matter, in this case also this Court finds that the Board has not at all followed the precedents and this petitioner seems to have fallen victim to the discriminatory approach on the part of the Board. Rule 478 and 481 of the Prison Manual are being extracted hereunder for ready reference:-

“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 433A 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:]

<sup>1</sup>[(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, <sup>2</sup>[xxx]]

(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.

<sup>3</sup>[(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.]

<sup>3</sup>[(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.]”

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1. Ins. by Amdt. Notifn. No. 3194, dated 25.06.2016.

2. Subs. By *ibid*

3. Ins. by Amdt. Notifn. No. 3194 dated 26.5.2016



**23.** In the aforementioned background of the legal position and judicial pronouncements, this Court would in order to complete the records make it clear that rejection of the proposal for premature release of the petitioner on the face of the judgment of this Court in the case of **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava (*supra*)** is not only illegal and arbitrary but is also prima-facie contemptuous. The conduct of the State respondents is disturbing and not a healthy sign of State's action in litigating the matter before a Court of law. Once this Court interpreted Clause (iv) (क) and (ख) of the Notification dated 10.12.2002, the only option left for the State was to either get the said judgment set aside by the Hon'ble Supreme Court, else the judgment was required to be followed in its terms and spirits. The State respondents did not do that. The Board rejected the proposal for premature release of the petitioner vide impugned decision in the following terms:-

“1. फिरोती के 01 व्यक्ति का अपहरण किया गया ।

2. गृह (विशेष ) विभाग, बिहार की अधिसूचना संख्या 3108 दिनांक 10.12. 2002 की कंडिका-(iv) (क) में प्रावधानिक है कि बलात्कार डकैती, आतंकवादी अपराधों, आदि जैसे अपराधों को सिद्धदोष बंदी समय पूर्व रिहाई के लिए विचार योग्य नहीं हो सकेंगे ।

3. विचारोपरांत असमय कारा का प्रस्ताव अस्वीकृत करने का अनुशंसा किया जाता है ।”



24. Not only the judgment of this Court in the case of **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava** (*supra*) was kept aside without challenging the same before the Hon'ble Supreme Court and was not followed while considering the case of the petitioner, the State did not place the said judgment before the learned coordinate Bench as a result whereof the views expressed by this Court could not be taken note of.

**Principles of *per incuriam***

25. The present situation, reminds this Court the principles of law laid down by the Hon'ble Apex Court as regards the judgment which may be *per incuriam*. In case of **State of Bihar v. Kalika Kuer reported in (2003) 5 SCC 448**, the Hon'ble Supreme Court took note of the observations of **Lord Godard, C.J. in *Huddersfield Police Authorities case* [Young v. Bristol Aeroplane Co. Ltd., 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300** which is as under:-

“where a case or statute had not been brought to the Court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in *per incuriam*”.

26. In a decision rendered by the Hon'ble Supreme Court in the case of **Govt. of A.P. v. B. Satyanarayana Rao** reported in **(2000) 4 SCC 262** their Lordships held as under:-



“The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue.....”

In **Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.** reported in **(2001) 6 SCC 356** the Hon’ble Supreme Court observed as under:-

“A prior decision of the Supreme Court on identical facts and law binds the Court on the same points of law in a later case. In exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment ‘per incuriam’. It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of per incuriam.”

**27.** In the case of **Kalika Kuer**, after going through the catena of judgments on this issue the Hon’ble Supreme Court held that “an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not





correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits.....”

28. To this Court, it is crystal clear that the learned co-ordinate Bench has taken a different view on the issue of applicability of Clause (iv) (ख) of the notification No.3106 dated 10.12.2002 which runs counter to the earlier judgement of this Court but instead of reiterating this Court’s earlier view as contained in **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava (supra)**, in order to maintain a judicial discipline and to resolve the issue rather than to leave two conflicting judgments to operate creating uncertainties, it would be only appropriate to get the issue decided by a larger Bench.

29. Let the records be placed before Hon’ble the Chief Justice for appropriate direction.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
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