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**ORISSA HIGH COURT : CUTTACK**

**WPCRL No.81 of 2025**

In the matter of an Application under Articles 226 & 227 of the Constitution of India, 1950

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Nadu Pangi,
Aged about 58 years
Son of Late Timuru Pangi,
Village: Kandhaguda,
P.O./P.S.: Mudulipada,
District: Malkangiri. ... Petitioner

*-VERSUS-*

***1.*** State of Odisha,
Represented through its Secretary
Home Department, Lok Seva Bhawan,
Lok Seva Marg, Unit-5,
Bhubaneswar,
Odisha.

***2.*** Joint Secretary to Government,
Law Department,
Government of Odisha
Lok Seva Bhawan
Sachivalaya Marg
Bhubaneswar, Odisha.

***3.*** The Directorate of Prisons and
Correctional Services, Odisha
At: Heads of the Departments Building,
3rd Floor, Southern Wing, Unit-V

Bhubaneswar
District: Khordha.

***4.*** The Superintendent
Circle Jail, Koraput
At/P.O./P.S./
District: Koraput. ... Opposite Parties.

***Counsel appeared for the Parties:***

For the Petitioner : Mr. Satya Narayan Mishra-4, Advocate

For the Opposite Parties : Mr. Debasish Tripathy, Additional Government Advocate

*P R E S E N T:*

**HONOURABLE CHIEF JUSTICE**
**MR. HARISH TANDON**

**AND**

**HONOURABLE JUSTICE**
**MR. MURAHARI SRI RAMAN**

**Date of Hearing : 14.08.2025 :: Date of Judgment : 26 .08.2025**

## JUDGMENT

Beseeching premature release after having served twenty years of sentence in terms of Judgment dated 15.12.2005 of the learned *Ad hoc* Additional District and Sessions Judge, Fast Track Court, Malkangiri in Criminal Trial No.5 of 2005, as confirmed by Judgment dated 25.04.2015 of this Court in JCRLA No.37 of 2006, the petitioner-convict has approached this Court by way

of filing this writ petition under the provisions of Articles 226 and 227 of the Constitution of India, with the following prayer(s):

*"The petitioner therefore prays that this Hon'ble Court may graciously be pleased to issue Rule NISI calling upon the opposite parties to show cause as to why a writ of habeas corpus or any other appropriate writ/writs shall not be issued thereby the opposite parties No.1 to 4;*

*i) to quash the order dated 02.06.2023 under Annexure-1 in respect of the petitioner;*

*ii) to direct the opposite parties to release the petitioner from jail custody as premature release case being similarly standing with those who have been release prematurely vide order dated 11.04.2025.*

*AND*

*If the opposite parties fail to show cause or insufficiently show cause, the Rule may please be made absolute;*

*AND*

*Pass any other order/orders as this Hon'ble Court may deem fit and proper.*

*AND*

*For this act of your kindness, the petitioner as in duty bound shall ever pray."*

***Facts:***

***2.*** The petitioner has been lodged in the Circle Jail, Koraput for undergoing imprisonment for life by virtue of

Judgment and Order dated 15.12.2005 being convicted and sentenced by the learned *Ad hoc* Additional District and Sessions Judge, Fast Track Court, Malkangiri in Criminal Trial No.5 of 2005 (arising out of Mudulipada Police Station Case No.2, dated 18.01.2025 corresponding to G.R. Case No.25 of 2005 in the files of the learned Sub-Divisional Judicial Magistrate, Malkangiri), having stood trial for commission of offence under Section 302 of the Indian Penal Code, 1860 (for short, "the IPC").

*2.1.* As is stated by the petitioner, having stood trial in C.T. No.51 of 2005 in the aforesaid referred case, after being committed for sessions trial in connection with charge of offence under Section 302 of the IPC on 15.12.2005, upon conclusion of the trial, he was convicted and punished to undergo sentence of imprisonment for life. An appeal, registered as Jail Criminal Appeal (JCRLA) No.37 of 2006, before this Court got dismissed *vide* Judgment and Order dated 25.04.2015, as a result of which the Judgment and Order of the learned trial Court is confirmed.

*2.2.* Having served the sentence for twenty years, the petitioner was released on furlough in the year 2021 and surrendered himself as directed by this Court.

*2.3.* The proposal for premature release of the petitioner has been rejected by the State Sentence Review Board (SSRB) on 02.06.2023. Questioning the propriety and sanctity of such decision of rejecting the proposal for premature release by the SSRB, this instant petition is filed craving indulgence of this Court.

***Hearing:***

***3.*** Heard Sri Satya Narayan Mishra-4, learned Advocate for the petitioner and Sri Debasish Tripathy, learned Additional Government Advocate for the opposite parties.

***Submissions:***

***4.*** Sri Satya Narayan Mishra, learned Advocate submitted the decision taken in the Meeting held on 02.06.2023 by the SSRB as communicated *vide* Letter No.J/PR-46/2022— 12091, dated 19.07.2023 that "the convict committed double murder and therefore as per Para-6(1)(a) of Odisha Gazette Notification No.1174, dated 19.04.2022"[1], being bereft of reason and outcome of non-application of mind, warrants intervention of this Court.

*4.1.* Laying emphasis on the enquiry report submitted by the Inspector In-Charge of Mudulipada Police Station *vide* Letter dated 23.04.2024 addressed to the

[1] *"Guidelines for Premature Release, 2022", vide Government of Odisha in Law Department Resolution No.IV-J-12/2021/4375/L, dated 19th April, 2022.*

Superintendent of Police, Malkangiri that the petitioner-convict having attained the age of 62 years lost potential to commit offence and while on furlough he stayed with his children in his house at village Kandhaguda and got himself engaged in cultivation work, the learned counsel submitted that the Additional District Magistrate (Judicial Section), Malkangiri has been apprised of such fact by the Superintendent of Police by communicating such enquiry report enclosed to Letter dated 26.04.2024. It is important to note the fact stated in the said enquiry report that neither the family members nor the family members of in-laws or the villagers raised any objection for the release of the petitioner. It is also stated in the enquiry report that "he was released on furlough, but there was no incident during that period". Taking all these aspects, the Collector, Malkangiri, in Letter dated 30.05.2024 addressed to the Senior Superintendent of Circle Jail, Koraput, recommended the case of the petitioner-"life convict No.6160/A, Nadu Pangi, son of Late Timuru Pangi of Village Kandhaguda, Mudulipada Police Station under Malkangiri District" for consideration favourably for premature release.

*4.2.* Referring to illustrative cases where similarly circumstanced life convicts have been allowed to be released prematurely invoking provisions of Section 432 of the Code of Criminal Procedure, 1973/Section 473 of

the Bharatiya Nagarik Suraksha Sanhita, 2023, Sri Satya Narayan Mishra, learned Advocate urged that the case of the petitioner is liable to be considered afresh as at the time of holding 43rd Meeting by SSRB there was no occasion for the Board to consider the subsequent developments.

***5.*** Sri Debasish Tripathy, learned Additional Government Advocate would submit that the reasoning stated while rejecting the proposal for premature release of the petitioner cannot be faulted with as the SSRB has adhered to the terms of Para-6(1)(a) of Odisha Gazette Notification No.1174, dated 19.04.2022. The petitioner-convict having committed offence of double murder under Section 302 of the IPC and undergoing the sentence of life imprisonment has been considered aptly by the SSRB.

***Discussions:***

***6.*** Having diligently considered the arguments advanced by the counsel for the respective parties, on perusal of the record it is manifest that the enquiry report of the Inspector In-Charge of Mudulipada Police Station has been submitted to the Superintendent of Police on 23.04.2024, which was in turn forwarded to the Additional District Magistrate (Judicial Section), Collectorate, Malkangiri by the Superintendent of Police

on 26.04.2024 and subsequently transmission of the same was made by the Collector and District Magistrate, Malkangiri to the Senior Superintendent of Circle Jail on 30.05.2024 with recommendation for favourable consideration of premature release of the petitioner.

*6.1.* The enquiry report dated 23.04.2024 submitted by the Inspector In-Charge of Mudulipada Police Station reveals as follows:

> "*6. The convict has already been attended the age of 62 years. He was committing murder to his wife and father-in-law due to family dispute. His children's are staying in the house of the convict at village Kandhaguda by doing cultivation work. In the year 2021 the convict was on furlough release and during this period he was staying with his children in his house at village Kandhaguda.*
> ***
>
> *Compliance of guidelines of Para 8V are follows:-*
>
> *1. The crime was committed due to family dispute between the convict with his wife and father-in-law.*
>
> *2. There was less chance of future occurrence of committing the crime.*
>
> *3. The convict is attained the age of 62 years and may lost potentially in any crime.*
>
> *4. No.*

5. *The family members of convict have 04 daughters namely (1). Hiramani Pangi (32), W/O. Bidyadhar Khilla, (Married), (02). Malati Pangi (28), W/O. Jagannath Saunta (Married), (03). Padma Pangi (25), D/O. Nadu Pangi (Unmarried), (04) Gudi Pangi, D/O. Nadu Pangi (Unmarried) and one son namely Bhimal Pangi (22). Two daughter have already been married, rest two daughters and one son are staying in the house of convict at village Kandhaguda. They all are maintaining their lively hood by doing cultivation work.*

*Further, during my enquiry it came to light that any of the villagers or his family members are not protesting on the release of the convict Nadu Pangi. As per the enquiry and statement of the villagers along with the family members of the deceased, after his release, he will stay in his own house with their children at village Kandhaguda. During enquiry there is no objection came to notice on the release of convict Nadu Pangi from any of the villagers and relatives of the deceased."*

*6.2.* The Superintendent of Police *vide* Letter dated 26.04.2024 addressed to the Additional District Magistrate, (Judicial Section), Collectorate, Malkangiri has submitted his views, which reads as under:

"*During enquiry it came to light that any of the villagers or his family members are not protesting on the release of the convict Nadu Pangi. As per the enquiry and statement of the villagers along with the family members of the deceased, after his release, he will stay in his own house*

*with their children at village Kandhaguda. During enquiry there is no objection came to notice on the release of convict-6160/A Nadu Pangi (62) S/O. Late Timuru Pangi or Village: Kandhaguda, P.S.: Mudulipada, District: Malkangiri from any of the villager and relatives of the deceased. A copy of enquiry report is enclosed here with for your kind perusal."*

*6.3.* Stemming on aforesaid documents, the Collector and District Magistrate, Malkangiri recommended the case of the petitioner for premature release *vide* Letter dated 30.05.2024 addressed to the Senior Superintendent of Circle Jail, Koraput.

*6.4.* While undertaking the exercise of considering the proposal for premature release of the petitioner in 43rd Meeting by SSRB held 02.06.2023, it is obvious that such reports and recommendation referred to above were not available on record. The petitioner is, therefore, entitled for reconsideration by the SSRB with reference to reports and recommendations.

***7.*** Having regard to the provisions of Section 473 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "the BNSS, 2023"), there is no ambiguity that appropriate State Government is empowered to remit whole or any part of the punishment to which a person has been sentenced at any time.

*7.1.* It is understood from the tenor of the Letter dated 19.07.2023 (Annexure-1) wherein the decision of SSRB dated 02.06.2023 declining proposal for premature release of the petitioner was communicated that fresh consideration can be taken up by the SSRB after one year from date of rejection. The relevant text of said letter reads as under:

"*In inviting a reference to the above subject, I am directed to enclose herewith a list of convicts vide Annexure-A whose premature release proposals were rejected by the State Sentence Review Board in its 43rd meeting held on 02.06.2023 on the ground as mentioned against each.* ***The rejected cases are required to be placed before the State Sentence Review Board for reconsideration only after expiry of a period one year from the date of last rejection as per para-8(4) of Odisha Gazette Notification No.1174, dated 19.04.2022***.

*You are therefore requested to submit necessary proposal with fresh opinion of the District Authorities, Comprehensive note as well as calculation sheet well in advance to this Directorate for reconsideration."*

*7.2.* The counsel for the petitioner has brought to notice of this Court that the Rule 836 of the Odisha Model Jail Manual, 2020 laying down the guidelines for premature release of life convicts that:

*"836. Premature Release of Prisoners.—*

(1) *The primary objective underlying premature release is reformation of offenders and their rehabilitation and integration into the society, while at the same time ensuring the protection of society from criminal activities and these two aspects are closely interlinked and are incidental to the same is the conduct, behaviour and performance of prisoners while in prison.*

(2) *These have a bearing on their rehabilitative potential and the possibility of their being released by virtue of remission earned by them, or by an order granting them premature release.*

(3) *The most important consideration for pre-mature release of prisoners is that they have become harmless and useful member of a civilized society and for the purpose of recommending the pre-mature release of prisoners in state a Sentence Review Board should be set up to advise the Government.*

(4) *The Government of Odisha in Law Department in his Resolution No.4817/IVJ.7/08 (pt), dated 05.05.2010 (Appendix-7) has issued guidelines to constitute State Sentence Review Board in the State of Odisha to review sentences awarded to the Prisoner and to recommend pre-mature release by the Board and this resolution shall remain in force unless and until the Government of Odisha made its amendment.*

(5) *Premature release of prisoners can be classified into four types.—*

(a) *By way of commutation of sentence of life convict and other convict under Section 433 of the Code of Criminal Procedure, 1973 by the State Government.*

(b) *By way of remitting term sentence of a prisoner under Section 432 of the Code of Criminal Procedure, 1973 by the State Government.*

(c) *By order of the Governor of the State passed exercising power under Article 72 or Article 161 of the Constitution of India, as the case may be, the State shall constitute a committee for recommending appropriate case before His Excellency the Governor for release on mercy. (See Appendix-8)*

(d) *Premature release under any special law enacted by the State or Central Government providing for release on probation of good conduct prisoners after they have served a part of the sentence.*

(6) *No guidelines need to be prescribed here for premature release of convicts falling under clause (b) to (d) of sub-rule (5) of Rule 836, because the relevant provisions of the Code of Criminal Procedure 1973, the Constitution of India and the special legislation of the State or Center are to be followed and for premature release of convicts falling under clause (a) Sub-rule (5) of Rule 836, guidelines or policies for premature release of life convicts as prescribed in this chapter may be followed.*"

*7.3.* Learned counsel for the petitioner for considering the case of petitioner referred to Letter No.233/10/97-98(FC), dated 26.09.2003 issued by the National Human Rights Commission (Law Division-IV), which indicates as follows:

"*Eligibility for premature release.—*

*Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A Cr.P.C. 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. It is, however clarified that completion of 14 years in prison by itself would not entitle a convict to automatic release from the prison and the Sentence Review Board shall have the discretion to release a convict, at an appropriate time in all cases considering the circumstances in which the crime was committed and other relevant factors like;*

*a) whether the convict has lost his potential for committing crime considering his overall conduct in jail during the 14 year's incarceration;*

*b) the possibility of reclaiming the convict as a useful member of the society; and*

*(c) Socio-economic condition of the convict's family."*

*7.4.* Reference has been made to the illuminating judgment of the Hon'ble Supreme Court of India rendered in the case of *Sukhdev Yadav @ Pehalwan Vrs. State of (NCT of Delhi) and others, 2025 INSC 969.* In the said case, it has been observed as follows:

"*14. The expression "remission" has been considered in a number of judgments which we can discuss. This is as opposed to the expression "parole and furlough" etc. With reference to the decisions of this Court and on a discussion of the expression "remission", it*

*becomes clear that the said expression is used in two nuances: firstly, when the remission of sentence would mean a reduction in the sentence imposed on a convict without wiping out of the conviction which does not amount to an acquittal. On the other hand, remissions are also granted during the course of undergoing a sentence on the basis of the certain legal considerations. The same can be discussed in detail.*

14.1 *The principles covering grant of remission as distinguished from concepts such as "commutation", "pardon", and "reprieve" can be brought out with reference to a judgment of this Court in State (NCT of Delhi) Vrs. Prem Raj, (2003) 7 SCC 121 ("Prem Raj"). Articles 72 and 161 deal with clemency powers of the President of India and the Governor of a State respectively, and also include the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentences in certain cases. The power under Article 72, inter alia, extends to all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends and in all cases where the sentence is a sentence of death. Article 161 states that the Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. It was observed in the said judgment that the powers under Articles 72 and 161 of the Constitution of India are absolute and cannot be fettered by any*

*statutory provision, such as, Sections 432, 433 or 433-A of the Code of Criminal Procedure, 1973 (hereinafter, "CrPC") or by any prison rules.*

*14.1.1 It was further observed in Prem Raj that a pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It affects both the punishment prescribed for the offence and the guilt of the offender. But pardon has to be distinguished from "amnesty" which is defined as a "general pardon of political prisoners; an act of oblivion". An amnesty would result in the release of the convict but does not affect disqualification incurred, if any. "Reprieve" means a stay of execution of a sentence, a postponement of a capital sentence. "Respite" means awarding a lesser sentence instead of the penalty prescribed in view of the fact that the accused has had no previous conviction. It is tantamount to a release on probation for good conduct under Section 360 of the CrPC. On the other hand, remission is reduction of a sentence without changing its character. In the case of a remission, neither the guilt of the offender is affected nor is the sentence of the court, except in the sense that the person concerned does not suffer incarceration for the entire period of the sentence, but is relieved from serving out a part of it. Commutation is change of a sentence to a lighter sentence of a different kind. Section 432 of the CrPC empowers the appropriate Government to suspend or remit sentences.*

14.2 *Further, a remission of sentence does not mean acquittal and an aggrieved party still has every right to vindicate himself or herself. In this context, reliance could be placed on Sarat Chandra Rabha vs. Khagendranath Nath, AIR 1961 SC 334, wherein a Constitution Bench of this Court, while distinguishing between a pardon and a remission, observed that an order of remission does not wipe out the offence and it also does not wipe out the conviction. All that it does is to have an effect on the execution of the sentence; though ordinarily a convicted person would have to serve out the full sentence imposed by a court, he need not do so with respect to that part of the sentence which has been ordered to be remitted. An order of remission, thus, does not in any way interfere with the order of the court; it affects only the execution of the sentence passed by the court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the court even though the order of conviction and sentence passed by the court still stands as it is. The power to grant remission is an executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court. According to Weater's Constitutional Law, to cut short a sentence by an act of clemency is an exercise of executive power which abridges the enforcement of the judgment but does not alter it qua the judgment. ****

14.3. *Reliance could be placed on State of Haryana vs. Mahender Singh, (2007) 13 SCC 606, to observe that*

*a right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act, 1894 but also from the Rules framed thereunder. Although no convict can be said to have any constitutional right for obtaining remission in his sentence (except under Articles 72 and 161), the policy decision itself must be held to have conferred a right to be considered therefor. Whether by reason of a statutory rule or otherwise, if a policy decision has been laid down, the persons who come within the purview thereof are entitled to be treated equally— vide State of Mysore Vrs. H. Srinivasmurthy, (1976) 1 SCC 817.*

***

*14.5. The following judgments of this Court are apposite to the concept of remission:*

*14.5.1 In Maru Ram, a Constitution Bench considered the validity of Section 433-A of the CrPC. Krishna Iyer, J. speaking for the Bench, observed: (SCC p. 129, para 25)*

> *"25. *** Ordinarily, where a sentence is for a definite term, the calculus of remissions may benefit the prisoner to instant release at the point where the subtraction results in zero."*

*14.5.2 However, when it comes to life imprisonment, where the sentence is indeterminate and of an uncertain duration, the result of subtraction from an uncertain quantity is still an uncertain quantity and release of the prisoner cannot follow except on some*

*fiction of quantification of a sentence of uncertain duration.*

14.5.3 *Referring to Gopal Vinayak Godse, it was observed that the said judgment is an authority for the proposition that a sentence of imprisonment for life is one of "imprisonment for the whole of the remaining period of the convicted person's natural life", unless the said sentence is commuted or remitted by an appropriate authority under the relevant provisions of law. In the aforesaid case, a distinction was drawn between remission in sentence and life sentence. Remission, limited in time, helps computation but does not ipso jure operate as release of the prisoner. But, when the sentence awarded by the Judge is for a fixed term, the effect of remissions may be to scale down the term to be endured and reduce it to nil, while leaving the factum and quantum of sentence intact. However, when the sentence is a life sentence, remissions, quantified in time, cannot reach a point of zero. Since Section 433-A deals only with life sentences, remissions cannot entitle a prisoner to release. It was further observed that remission, in the case of life imprisonment, ripens into a reduction of sentence of the entire balance only when a final release order is made. If this is not done, the prisoner will continue to be in custody. The reason is that life sentence is nothing less than lifelong imprisonment and remission vests no right to release when the sentence is of life imprisonment nor is any vested right to remission cancelled by compulsory fourteen years jail life as a life sentence is a sentence for whole life.*

*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. This is because, Section 5 of the CrPC expressly declares that specific provision, if any, to the contrary will prevail over any special or local law. Therefore, Section 433-A of the CrPC would prevail and escape exclusion of Section 5 thereof. The Constitution Bench concluded that Section 433-A of the CrPC is supreme over the remission rules and short-sentencing statutes made by various States. Section 433-A of the CrPC does not permit parole or other related release within a span of fourteen years.*

*14.5.5 It was further observed that criminology must include victimology as a major component of its concerns. When a murder or other grievous offence is committed, the victims or other aggrieved persons must receive reparation and social responsibility of the criminal to restore the loss or heal the injury is part of the punitive exercise although the length of*

*the prison term is no reparation to the crippled or bereaved.*

*14.5.6 Fazal Ali, J. in his concurring judgment in Maru Ram observed that crime is rightly described as an act of warfare against the community touching new depths of lawlessness. According to him, the object of imposing a deterrent sentence is threefold. While holding that a deterrent form of punishment may not be the most suitable or ideal form of punishment, yet, the fact remains that a deterrent punishment prevents occurrence of offence. He further observed that Section 433-A of the CrPC is actually a piece of social legislation which by one stroke seeks to prevent dangerous criminals from repeating offences and on the other hand, protects the society from harm and distress caused to innocent persons. Therefore, he opined that where Section 433-A applies, no question of reduction of sentence arises at all unless the President of India or the Governor of a State choose to exercise their wide powers under Article 72 or Article 161 of the Constitution respectively, which also have to be exercised according to sound legal principles as any reduction or modification in the deterrent punishment would, far from reforming the criminal, be counterproductive.*

*14.6 State of Haryana Vrs. Mohinder Singh, (2000) 3 SCC 394 is a case which arose under Section 432 of the CrPC on remission of sentence in which the difference between the terms "bail", "furlough" and "parole" having different connotations were discussed. It was observed that furloughs are variously known as temporary leaves, home visits or*

*temporary community release and are usually granted when a convict is suddenly faced with a severe family crisis such as death or grave illness in the immediate family and often the convict/inmate is accompanied by an officer as part of the terms of temporary release of special leave. Parole is the release of a prisoner temporarily for a special purpose or completely before the expiry of the sentence, on promise of good behaviour. Conditional release from imprisonment is to entitle a convict to serve remainder of his term outside the confines of an institution on his satisfactorily complying all terms and conditions provided in the parole order.*

14.7 *In Poonam Lata Vrs. M.L. Wadhawan, (1987) 3 SCC 347, it was observed that parole is a provisional release from confinement but it is deemed to be part of imprisonment. Release on parole is a wing of reformative process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is thus, a grant of partial liberty or lessening of restrictions on a convict prisoner but release on parole does not change the status of the prisoner. When a prisoner is undergoing sentence and confined in jail or is on parole or furlough, his position is not similar to a convict who is on bail. This is because a convict on bail is not entitled to the benefit of the remission system. In other words, a prisoner is not eligible for remission of sentence during the period he is on bail or when his sentence is temporarily suspended. Therefore, such a prisoner who is on bail is not entitled to get remission earned during the period he is on bail."*

7.5. It is provided in Paragraphs 3, 4, 5 and 6 of the "Guidelines for Premature Release, 2022" as follows:

*"3. Procedure to be regulated by the Board.—*

*(1) The Board shall meet at least once in a quarter at Bhubaneswar on date to be notified to all the members at least ten days in advance with complete agenda:*

*Provided that it shall be open to the Chairman of the Board to convene a meeting of the Board more frequently as may be deemed necessary.*

*(2) The quorum to constitute a meeting of the Board shall be four members including the Chairman.*

*(3) The recommendation of the Board shall not be invalid merely by reason of any vacancy in the Board or the inability of any member to attend the Board meeting.*

*4. Powers and function of the Board.—*

*The functions of the Board shall be to review the sentence awarded to a prisoner and to recommend his premature release in appropriate cases.*

*5. Eligibility for Premature Release.—*

*Save as provided in these guidelines, every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) shall be eligible to be considered for premature release from the prison*

*immediately after serving out the sentence of fourteen years of actual imprisonment i.e. without the remissions.*

*Explanation.—*

*For the purpose of this clause, it is clarified that upon completion of fourteen years in prison by itself will not entitle a convict to be released automatically from the prison and the Board shall have the discretion to release a convict at an appropriate time and cases considering the circumstances in which the crime was committed and the other factors, namely—*

*(a) whether the convict has lost his potential for committing crime considering his overall conduct in jail during the fourteen years incarceration:*

*(b) the possibility of reclaiming the convict as a useful member of the society; and*

*(c) Socio-economic condition of the convict's family.*

*6. Categorization of Prisoners for premature release.—*

*(1) Having regard to the provisions contained under Section 433A of Cr.P.C., the National Human Rights Commission (NHRC) opined that a reasonable classification may be made within the category of convicts on the basis of magnitude, brutality and gravity of the offence for which the convict was sentenced to life imprisonment and accordingly certain categories of life convict prisoners other than those mentioned in clauses (a) to (e) below may be eligible for premature release after the completion of*

*twenty (20) years of imprisonment including remission:*

*(a) Convicts who have been imprisoned for life for murder in heinous cases such as murder with rape cases, coming under the categories undergoing imprisonment for life being convicted under Sections 376 A, 376A B, 376 DA and 376 DB of the Indian Penal Code, 1860 (hereinafter referred to as IPC), dacoity with murder, murder involving an offence under the Protection of Civil Rights Act, 1955, murder of a child below 14 years of age, prisoners sentenced to life imprisonment being convicted with the offence of aggravated penetrative sexual assault on a child under section 6(1) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO', Act), multiple murder, murder committed after conviction while inside the jail, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty;*

*(b) Gangsters, contract killers, smugglers, drug traffickers, prisoners those sentenced to life imprisonment being convicted under Section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985, racketeers awarded with life imprisonment for committing murders as also the perpetrators of murder committed with premeditation and with exceptional violence or perversity;*

*(c) Convicts whose death sentence has been commuted to life imprisonment;*

*(d) Convicts undergoing life imprisonment under section 121 of IPC; and*

*(e) Such convicts of like categories as the Board may decide:*

*Provided that the categories of life convicts mentioned in clauses (a) to (e) may be placed for consideration for premature release after completion of twenty five (25) years of incarceration.*

*(2) Female convict sentenced to imprisonment for life including those governed by section 433A of the Code of Criminal Procedure, 1973 aged more than sixty (60) years and have undergone an actual imprisonment of five (5) years including remand period and total imprisonment of six (6) years including remission as on date shall be released except the following, namely—*

*(a) Prisoners convicted and sentenced by Courts situated outside the State of Odisha;*

*(b) Prisoners convicted of offences against laws relating to a matter to which the executive powers of the Union extends;*

*(c) Prisoners involved in and convicted for offences relating to communal incidents;*

*(d) Life convicts who are punished for any prison offence during the last three preceding years and/or those who are punished for any serious prison offence like revolt/organising revolt against the prison administration anytime during their entire period of stay in the prison;*

(e) *Prisoners who are released on parole/furlough and who committed or attempt to commit any of the offences punishable under any law for the time being in force;*

(f) *Life convicts who have escaped from custody during the preceding three years and have not surrendered voluntarily;*

(g) *Prisoners convicted under the Essential Commodities Act, 1955;*

(h) *Prisoners convicted under Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Terrorism Act, 2001 and special Acts enacted for Prevention of Terrorism and Mafia and other organized crimes who had been sentenced to imprisonment for life;*

(i) *Life convicts who have committed offence/offences against children;*

(j) *Life convicts who are convicted for Kidnapping and related offences U/s 363A, 364, 364 A, 366, 366 A, 366 B, 367, 368, 369, 372 and Section 373 of the Indian Penal Code, 1860;*

(k) *Life convicts convicted under sections 304B, 306, 498 A of IPC and offences under the Dowry Prohibition Act, 1961;*

(l) *Prisoners involved and convicted for life in two or more different murder cases;*

(m) *Professional killers who have been guilty of murder being hired;*

*(n) Prisoners convicted under waging or attempting to wage war, or abetting the waging of war against the Government of India;*

*(o) Prisoners convicted of murder of Public Servants while performing official duty;*

*(p) Prisoners sentenced to death sentence, which is later commuted to life sentence;*

*(q) Prisoners convicted for life under sections 379 to 402 IPC;*

*(r) Prisoners who are convicted for life imprisonment in any case with two counts or more;*

*(s) Life convicts who have overstayed on parole/furlough for more than three days in the last preceding three years shall not be released unless they compete ten (10) years of actual sentence with remand period and twelve (12) years with of remission as on date.*

*(3) Male convict sentenced to imprisonment for life including those governed by section 433A of the Code of Criminal Procedure, 1973 aged more than sixty five (65) years and have undergone an actual imprisonment of five (5) years including remand period and total imprisonment of seven (7) years including remission as on date shall be released except the following, namely—*

*(a) Prisoners convicted and sentenced by courts situated outside the State of Odisha;*

(b) *Prisoners convicted of offences against laws relating to a matter to which the executive powers of the Union extends;*

(c) *Prisoners involved in and convicted for offences relating to communal incidents;*

(d) *Life convicts who are punished for any prison offence during the last three (3) preceding years and/or those who are punished for any serious prison offence like revolt/organising revolt against the prison administration anytime during their entire period of stay in the prison;*

(e) *Prisoners who are released on parole/furlough and who committed or attempt to commit any of the offences punishable under any law for the time being in force;*

(f) *Life convicts who have escaped from custody during the preceding three (3) years and have not surrendered voluntarily;*

(g) *Prisoners convicted under the Essential Commodities Act, 1955;*

(h) *Prisoners convicted under Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Terrorism Act, 2001 and special Acts enacted for Prevention of Terrorism and Mafia and other organized crimes who had been sentenced to imprisonment for life;*

(i) *Life convicts who have committed offence/offences against children;*

(j) *Life convicts who are convicted for kidnapping and relating offences U/s. 363A, 364, 364A, 366, 366A, 366B, 367, 368, 369, 372 and Section 373 of the Indian Penal Code, 1860;*

(k) *Life convicts convicted in crimes against women under sections 376, 304B, 306, 498A of IPC and offences under the Dowry Prohibition Act, 1961;*

(l) *Prisoners involved and convicted for life in two or more different murder cases;*

(m) *Professional killers who have been guilty of murder being hired;*

(n) *Prisoners convicted under waging or attempting to wage war, or abetting the waging of war against the Government of India;*

(o) *Prisoners convicted of murder of Public Servants while performing official duty;*

(p) *Prisoners sentenced to death sentence, which is later commuted to life sentence;*

(q) *Prisoners convicted for life under sections 379 to 402 IPC;*

(r) *Prisoners who are convicted for life imprisonment in any case with two counts or more;*

(s) *Life convicts who have overstayed on parole/furlough for more than three days in the last preceding three years shall not be released unless they compete ten (10) years of actual*

*sentence with remand period and twelve (12) years with of remission as on date.*

(4) *All other convicted male prisoners not covered by section 433A of the Cr.P.C. undergoing the sentence of life imprisonment shall be eligible to be considered for premature release after they have served at least fourteen (14) years of imprisonment inclusive of remission but only after completion of ten (10) years of actual imprisonment i.e. without remissions:*

*Provided that in the case of following categories of cases, the convicts who have served at least twelve (12) years of imprisonment may be considered for premature release namely—*

(a) *penetrative sexual assault under Section 4(1) of the POCSO Act, 2012;*

(b) *Penetrative sexual assault on a child below sixteen years of age;*

(c) *Cases of Gang rape on a woman below sixteen years of age punishable under Section 376 DA of the IPC;*

(d) *Cases of Gang rape on a woman by one or more persons constituting a group or acting in furtherance of a common intention;*

(e) *Cases of voluntarily causing grievous hurt by use of acid or acid attack;*

(f) *Cases of "counterfeiting currency-notes or bank-notes" where punishment can extend to imprisonment for life under section 489A of the IPC;*

*(g) Using as genuine, forged or counterfeiting currency-notes or bank-notes where punishment can extend to imprisonment for life under section 489 B of the IPC;*

*(h) Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes where punishment can extend to imprisonment for life under section 489-D of the IPC; and*

*(i) Cases of 'Offence against the State under Chapter VI of the IPC such as under section 121 A, section 122, section 124A (Sedition), section 125, section 128 and section 130 of the IPC wherein the punishment prescribed can extend to imprisonment for life amongst other shorter terms.*

*(5) The female prisoners not covered by section 433A of the Cr.P.C. undergoing the sentence of imprisonment would be entitled to be considered for premature release after they have served at least ten (10) years of imprisonment inclusive of remissions but only after completion of seven (7) years actual imprisonment without remissions.*

*(6) Cases of premature release of prisoner undergoing life imprisonment before completion of fourteen (14) years of actual imprisonment on the ground of terminal illness etc. can be dealt with under the provisions of Article 161 of the Constitution of India."*

*7.6.* For consideration of the premature release of the petitioner, the factors discussed hitherto may require to be kept in view by the SSRB.

***8.*** It may be of significance to discuss with regard to the applicable policy or the Resolution for consideration of premature release of the convict.

*8.1.* The Government of Odisha in Law Department *vide* Resolution dated 26th September, 2000 adopted a policy to streamline the uniform standard and the criteria for determining the eligibility of the prisoners undergoing life sentence for their premature release. The significant feature of the said policy can be seen from the stand of the State Government to constitute a State Sentence Review Board as recommended by the National Human Rights Commission to review the sentence awarded to the prisoners and to recommend his premature release. The said policy contains an exhaustive provision including the eligibility for premature release and ineligibility in this regard in Paragraphs-3 and 4 thereof. The paragraph-4 of the said policy dated 26th September, 2000 broadly engulfed within itself the convicts who are kept outside the purview of the said policy which undeniably includes the convicted prisoners of the offence such as rape, dacoity, the terrorist crime *etc*.

*8.2.* The said policy though not directly under the guidelines of the National Human Rights Commission, but the said Commission while considering the aspect of humanity and the disparity in the policies adopted by the States across the country recommended for modification of

paragraphs-3 and 4 of the Guidelines which in all such policies contained the provision relating to eligibility and ineligibility of a convict for premature release. The Human Rights Commission made recommendation to all the States in its letter dated 26th September, 2003 so that the aforementioned paragraphs can be modified and/or revisited by the respective States. The recommendation is given hereunder:

*"3. Eligibility for premature release*

*3.1. 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. It is, however, clarified that completion of 14 years in prison by itself would not entitle a convict to automatic release from the prison and the Sentence Review Board shall have the discretion to release a convict, at an appropriate time in all cases considering the circumstances in which the crime was committed and other relevant factors like;*

*a) whether the convict has lost his potential for committing crime considering his overall conduct in jail during the 14 year's incarceration;*

*b) the possibility of reclaiming the convict as a useful member of the society; and*

c) *Socio-economic condition of the convict's family.*

*With a view to bring about uniformity, the State/UT Governments are, therefore, advised to prescribe the total period of imprisonment to be undergone including remissions, subject to a minimum of 14 years of actual imprisonment before the convict prisoner is released. The Commission is of the view that total period of incarceration including remissions in such cases should ordinarily not exceed 20 years.*

*Section 433A was enacted to deny premature release before completion of 14 years of actual incarceration to such convicts as stand convicted of a capital offence. The Commission is of the view that within this category a reasonable classification can be made on the basis of the magnitude, brutality and gravity of the offence for which the convict was sentenced to life imprisonment. Certain categories of convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions. The period of incarceration inclusive of remissions even in such cases should not exceed 25 years. Following categories are mentioned in this connection by way of illustration and are not to be taken as an exhaustive list of such categories:*

a) *Convicts who have been imprisoned for life for murder in heinous cases such as murder with rape, murder with dacoity, murder involving an 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 jail, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty.*

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.*

3.2. *All other convicted male prisoners not covered by section 433A Cr.PC undergoing the sentence of life imprisonment would be entitled to 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.*

3.3. *The female prisoners not covered by section 433A Cr.PC undergoing the sentence of life imprisonment would be entitled to 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.*

3.4. *Cases of premature release of persons undergoing life imprisonment before completion of 14 years of actual imprisonment on grounds of terminal illness or old age etc. can be dealt with under the provisions of Art. 161 of the Constitution and old paras 3.4 and 3.5 are therefore redundant and are omitted.*

*4. Inability for Premature Release*

*Deleted in view of new para 3*

*All the States/UTs are requested to review their existing practice and procedure governing premature release of life convicts and bring it in conformity with the guidelines issued by the Commission."*

*8.3.* Pursuant to such recommendation of the National Human Rights Commission, the Law Department of the State in its Resolution dated 25th May, 2005 modified the said policy dated 26th September, 2000 and adopted such recommendation(s).

*8.4.* The effect of the recommendation by the National Human Rights Commission being brought into effect by this State in the policy of 2005, which was in vogue at the time of the conviction of the petitioner, *i.e.,* on 05.12.2005, is suggestive of the notion that the nature of the crime cannot be a determinant factor for the purpose of a premature release provided the convict has undergone specified years of incarceration. However, a further policy was adopted by the State Government as reflected in the Resolution dated 5th May, 2010. It was noticed in said Resolution that there are some confusion between the policy dated 26th September, 2000 and the amended Resolution dated 25th May, 2005. The Guidelines in such Resolution is exhaustive and the rigour of different parameters were lifted including the

year of sentence with an avowed object of adherence to the right to liberty enshrined under Article 21 of the Constitution of India. The cumulative effect of the aforesaid policy is indicative of the intent of the Government that the persons who have undergone a substantial period behind the bar, may be released prematurely and therefore, such welfare scheme or a beneficial piece of the scheme is to be kept in mind at the time of taking a decision by an authority (say, the SSRB) constituted under the said scheme.

*8.5.* There is no dissenting view as of now on the applicability of the policy framed by the Government for premature release to be set in motion. At the time of considering an application for premature release filed by the convict, the policy which was prevalent at the time of conviction shall be the primary guiding factor for consideration of the said application. It also does not admit of any ambiguity that if subsequent policies are more liberal as well as they enure to the benefit of the beneficiaries of the such policies, the same may also be taken into consideration or borne in mind by the SSRB.

*8.6.* In *Joseph Vrs. State of Kerala and others, (2023) 12 SCR 505 = 2023 INSC 843*, on an identical issue raised where the Court was invited to consider the stringent conditions imposed in the policy which kept the convict outside the purview of such benevolent scheme, taking

into consideration the provision contained under Articles 72 and 162 of the Constitution of India relating to the remission, commutation *etc*. the Supreme Court of India held that the person might have committed a crime at one point of time and remained incarcerated for a considerable period of time, but he may not remain the same person nor be tainted to remain so. The moment the reform is perceived, there is no obstacle to consider the prayer for premature release. The observation of the Hon'ble Court runs as follows:

*"19. A reading of the observations of this court in State of Haryana Vrs. Jagdish, (2010) 4 SCC 216 = (2010) 3 SCR 716 [paras 35, 43] which was followed in State of Haryana Vrs. Raj Kumar, (2021) 9 SCC 292 [para 16] makes the position of law clear: the remission policy prevailing on the date of conviction, is to be applied in a given case, and if a more liberal policy exists on the day of consideration, then the latter would apply. This approach was recently followed by this court in Rajo Vrs. State of Bihar, Judgment dated 25.08.2023 in Writ Petition (Crl.) No. 252/2023 [para 23] as well.*

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*33. Classifying— to use a better word, typecasting convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real danger of overlooking the reformative potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed, as a starting*

*point, may be justified. However, the prison laws in India read with Articles 72 and 161— encapsulate a strong underlying reformative purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, based entirely on the nature of crime committed in the distant past, would be to crush the life force out of such individual, altogether. Thus, for instance, a 19 or 20 year old individual convicted for a crime, which finds place in the list which bars premature release, altogether, would mean that such person would never see freedom, and would die within the prison walls. There is a peculiarity of continuing to imprison one who committed a crime years earlier who might well have changed totally since that time. This is the condition of many people serving very long sentences. They may have killed someone (or done something much less serious, such as commit a narcotic drug related offences or be serving a life sentence for other non-violent crimes) as young individuals and remain incarcerated 20 or more years later. Regardless of the morality of continued punishment, one may question its rationality. The question is, what is achieved by continuing to punish a person who recognises the wrongness of what they have done, who no longer identified with it, and who bears little resemblance to the person they were years earlier? It is tempting to say that they are no longer the same person. Yet, the insistence of guidelines, obdurately, to not look beyond the red lines drawn by it and continue in denial to consider the real impact of prison good behavior, and other relevant factors (to ensure that such individual has been rid of the likelihood of*

*causing harm to society) results in violation of Article 14 of the Constitution. Excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies society's resolve to be harsh and unforgiving. The idea of rewarding, a prisoner for good conduct is entirely negated."*

*8.7.* In *Hitesh @ Bavko Shivshankar Dave Vrs. State of Gujarat, (2024) 5 SCC 623*, it has, in unequivocal term, been held that the grant of premature release being an executive function, the policy adopted should be considered in a pragmatic manner and the application should be considered taking into the account the policy prevalent at the time of conviction. It is further held that there is no absolute bar in not taking into consideration the subsequent policy provided such policy is more liberal enuring to the benefit of the convict in the following:

> *"4. Following the law laid down by this Court, in determining the entitlement of a convict for premature release, the policy of the State Government on the date of the conviction would have to be the determinative factor. However, if the policy which was prevalent on the date of the conviction is subsequently liberalised to provide more beneficial terms, those should also be borne in mind."*

*8.8.* The principle of law as enunciated in the above report is restated and reiterated in *Rajkumar Vrs. The State of*

*Uttar Pradesh, (2024) 9 SCC 598* which is to the following effect:

> *"13. The State having formulated Rules and a Standing Policy for deciding cases of premature release, it is bound by its own formulations of law. Since there are legal provisions which hold the field, it is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release. It must strictly abide by the terms of its policies bearing in mind the fundamental principle of law that each case for premature release has to be decided on the basis of the legal position as it stands on the date of the conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination. The provisions of the law must be applied equally to all persons. Moreover, those provisions have to be applied efficiently and transparently so as to obviate the grievance that the policy is being applied unevenly to similarly circumstanced persons. An arbitrary method adopted by the State is liable to grave abuse and is liable to lead to a situation where persons lacking resources, education and awareness suffer the most."*

*8.9.* The law thus enunciated in the above reported cases uniformly laid down that an application for premature release should be considered on the basis of a policy prevalent at the time of the conviction. Subsequent policies may also be borne in mind provided they are more liberal and enure to the benefit of the convict who has undergone a sentence of specified period provided in

the said policies. Since the decision to be taken by the SSRB for premature release is an executive function, such decision should be taken bearing in mind the materials available on record or placed before the Board and must be supported by some reasons. The SSRB has the exclusive authority to decide whether the convict is entitled to premature release or not. However, the such decision must withstand on the test of reasonability, rationality and should be devoid of arbitrariness and untainted with bias or whimsical. Above all, it should ensure the uniformity in the said decision.

***9.*** From bare look at the Letter dated 19.07.2023 it does not emanate that the proposal of the petitioner was rejected with plausible reason. There is nothing placed on record to suggest that the material available on record was considered by the SSRB in its proper perspective. The enquiry report and the recommendations of the Collector and District Magistrate based on view expressed by the Superintendent of Police have come to exist after the rejection of proposal by the SSRB. As is revealed from the record that since 2005, the petitioner has been undergoing the sentence and his proposal for premature retirement was rejected in the meeting of the SSRB held on 02.06.2023. In the meantime more than one year has been elapsed. As stated in the Letter dated 19.07.2023

that the proposal/recommendation for premature release of the petitioner can be reconsidered by the SSRB "after expiry of a period of one year from the date of last rejection as per para-8(4) of the Odisha Gazette Notification No.1174, dated 19.04.2022". Therefore, the case of the petitioner for premature release deserves to be reconsidered by the SSRB.

*9.1.* As a sequel to above material, the writ petition is disposed of with direction that the SSRB shall convene its meeting for the purpose of reconsideration of premature release of the petitioner within a period of two months from the date of the communication of this order and it shall reconsider the matter in the light of the observation made herein *supra*. Needless to observe that the SSRB shall not be swayed away by its earlier decision taken in its 43rd Meeting.

***10.*** In the result, the writ petition is disposed of.

**(HARISH TANDON)**
**CHIEF JUSTICE**

**(MURAHARI SRI RAMAN)**
**JUDGE**

*High Court of Orissa, Cuttack*
*The 26th August, 2025//Bichi/Laxmikant*