

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Writ Petition No. 666/2023

1. Asfaq Khan S/o Abdul Aziz, Resident Of Nagori Mohalla, Lalsot Marg, Near Ramkaran Joshi School, Dausa, Rajasthan. (Presently Confined In Central Jail, Jaipur (Raj.) Through His Son Farookh Khan Son Of Shri Asfaq Aged About 27 Years R/o Lalsot Road Opposite Purana Cinema Hall Dausa Dist. Dausa (Raj.)
2. Fazalur Rehman Sufi S/o Abdul Rehman, Resident Of Room No. 42, Hingwala Building, Souter Street, Agripada, Mumbai. (Presently Confined In Central Jail, Jaipur (Raj.)
3. Abre Rehmat Ansari S/o Noor Mohammed Ansari, Resident Of Village Kusoon Khurd, P.o. Gulhariya, Tehsil And P.s. Menhdawal, Dist. Sant Kabir Nagar, Up - 272171. (Presently Confined In Central Jail, Jaipur (Raj.)
4. Mohd. Aejaz Akbar S/o Abdul Majeed, Resident Of H. No. 7-7775/6, Naya Mohalla, Mominpura, Gulbarga- 585104, Karnataka, (Presently Confined In Central Jail, Jaipur (Raj.)

-----Petitioners

Versus

1. The State Of Rajasthan, Through The Secretary Home, Secretariat, Jaipur (Raj.)
2. The Director General Of Prisons, Directorate Prisons, Ghatgate, Jaipur (Raj.)
3. District Magistrate, Jaipur, Office At Collectorate, Jaipur (Raj.)
4. Superintendent Central Jail, Jaipur (Raj.)
5. The Union Of India, Through The Ministry Of Home Affairs, Govt. Of India, Is-Ii, Division/legal Cell-1, 2Nd Floor, Major Dhyan Chand National Stadium, Near India Gate, New Delhi

-----Respondents

Connected With

D.B. Criminal Writ Petition No. 159/2023

Mohammad Amin S/o Mohammad Usman, Aged About 83 Years, R/o 26-A, ZariwalaChowl, Room No. 39, Mohammad Umar Rjjab Road, Madanpura, Mumbai- 400008. (At Present In Central Jail



Jaipur (Raj.)

-----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary Home, Secretariat, Jaipur (Raj.)
2. The Director General Of Prisons, Directorate Prisons, Ghatgate, Jaipur (Raj.)
3. District Magistrate, Jaipur, Office At Collectorate, Jaipur (Raj.)
4. Superintendent Central Jail, Jaipur (Raj.)
5. The Union Of India, Through The Ministry Of Home Affairs, Govt. Of India, Is-II, Division/legal Cell-1, 2nd Floor, Major Dhyan Chand National Stadium, Near India Gate, New Delhi.

-----Respondents

D.B. Criminal Writ Petition No. 818/2023

Mohammed Shamsuddin S/o Late Mohd. Rukumuddin, Aged About 53 Years, R/o No. 6-639, Rangeen Masjid, Mominura, Gulbarga, Karnataka, (Petitioner is Presently Confined In Central Jail, Jaipur (Raj.)

-----Petitioner

Versus

1. The State Of Rajasthan, through the Secretary Home, Secretariat, Jaipur (Raj.).
2. The Director General Of Prisons, Directorate Prisons, Ghatgate, Jaipur (Raj.)
3. District Magistrate, Jaipur, Office at Collectorate, Jaipur (Raj.)
4. Superintendent Central Jail, Jaipur (Raj.)
5. The Union Of India, through The Ministry Of Home Affairs, Govt. Of India, Is-II, Division/Legal Cell-1, 2nd Floor, Major Dhyan Chand National Stadium, Near India Gate, New Delhi

-----Respondents

D.B. Criminal Writ Petition No. 790/2024

Mohammad Afaq S/o Shri Mohammad Maqsood, Aged About 57 Years, R/o House No. 335/164, Mahmood Nagar Chok, Lucknow

(U.P.) Present Address - 401/79, Baradari, Chaupatiya, Police Station Saadat Ganj, District Lucknow (U.P.), (At Present Confined In Central Jail, Jaipur (Raj.) Through His Brother - Mohammad Arshad S/o Shri Mohammad Maqsood, Aged About 53 Years, R/o 401/79, Baradari Chaupatiya, Police Station Saadat Ganj, Lucknow (U.P.)

-----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary Home, Secretariat, Jaipur (Raj.).
2. The Director General Of Prisons, Directorate Prisons, Ghatgate, Jaipur (Raj.)
3. District Magistrate, Jaipur, Office At Collectorate, Jaipur (Raj.)
4. Superintendent Central Jail, Jaipur (Raj.)
5. The Union Of India, Through The Ministry Of Home Affairs, Govt. Of India, IS-II, Division/Legal Cell, 2nd Floor, Major Dhyan Chand National Stadium, Near India Gate, New Delhi.

-----Respondents

For Petitioner(s)	:	Ms. Deeksha Dwivedi through V.C. Mr. Tek Chand Swami
For Respondent(s)	:	Mr. Bharat Vyas Sr. Counsel with Mr. Devesh Yadav Mr. Rajesh Choudhary, GA cum AAG

HON'BLE MR. JUSTICE SUDESH BANSAL
HON'BLE MR. JUSTICE BHUWAN GOYAL
Order

15/12/2025

1. Heard learned counsel for respective counsels appearing for and on behalf of both the parties and perused the material available on record.
2. Prayer of all the writ petitioners, in this batch of writ petitions, is for their premature release and the orders dated

26.12.2022 so also order dated 20.03.2024 passed by Government of India, Ministry of Home Affairs, dismissing their representations and denying their premature release, have also been questioned.

3. From the record, it is apparent that writ petitioners were accused in serial train Bomb Blast cases of December, 1993 and after full dressed criminal trial, have been convicted and sentenced to undergo life imprisonment by the designated Court vide judgment dated 28.02.2004 holding them guilty for commission of offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short, 'TADA'). Their conviction and sentences have been affirmed by the Hon'ble Supreme Court vide judgment dated 11.05.2016, reported in 2016(11) SCC 544.

4. Submission of counsel, appearing as pro-bono for and on behalf of all the writ petitioners, is that petitioners have suffered a period of long incarceration substantially beyond the period of 20 years and presumably all petitioners suffer from various ailments. Learned counsel while placing reliance on the letter dated 04.05.2011, issued by the Ministry of Home Affairs, IS-II Division-Legal Cell, Government of India (Annexure-4-appended in Writ Petition No. 666/2023), contends that from this letter it is clear that the Terrorist offences were treated as a distinct category and it was given out therein that a minimum incarceration of 20 years would be mandatory before a case is considered for commutation of sentence. Hence, now case of petitioners have matured for premature release and same is warranted to protect their fundamental rights of life and liberty.

5. Further submission of counsel for petitioners is that petitioners were convicted and sentenced by the designated Court for TADA cases, Ajmer, Rajasthan, vide judgment dated 28.02.2004, hence, denying their premature release by the Ministry of Home Affairs, taking resort to clause 9(5) of the Rajasthan Prisoners (Shortening of Sentences) Rules, 2006 (for short 'the Rules of 2006'), is misconceived, rather the case of petitioners for premature release should have been considered by the respondents as per policy, prevalent at the time of their conviction. It has been prayed that on this count as well, the impugned orders are vulnerable and liable to be quashed. For the prayer for premature release of writ petitioners, counsel has placed reliance on the judgments of Hon'ble Supreme Court, delivered in the case of **Laxman Naskar v. Union of India and Ors; [(2000) 2 SCC 595]** and **Joseph v. The State of Kerala & Ors.** reported in **[[2023] 12 SCR 505]**.

6. Per contra, Additional Solicitor General and GA-cum-AAG, appearing for and on behalf of the respondents, jointly submit that premature release of petitioners would be a serious threat to the nation and the society as much as the petitioners are serving the life term sentence for the offences under TADA and in terms of the Rules, governing the subject matter, their premature release is specifically barred. Their submission is that the earlier Rajasthan Prisoners (Shortening of Sentences) Rules, 1958, (for short 'Rules of 1958') have been repealed and Rules of 2006 have been promulgated, which are the prevailing Rules. But there is no change in the provisions of relevant rule for premature release of prisoners convicted under TADA. Under Rule 9(v) of Rules of 1958

so also under Rule 9(5) of Rules of 2006, there is specific embargo that the prisoners convicted under TADA are not eligible to be considered for premature release by the Advisory Board.

7. Further submission of learned counsel appearing on behalf of the respondents is that even in the guidelines dated 10.06.2022, issued by the Ministry of Home Affairs, Government of India, for grant of special remission to the prisons on the occasion of celebrating '*Aazadi ka Amrit Mahotsava*', the convicts of TADA have not been granted special remission, considering the heinous nature of such offences, which create threat to the national security as also breach of peace in society. Their submission is that the representation of petitioners, for their premature release, have been dismissed vide orders impugned herein, after taking into consideration all the relevant inputs and after consultation with the concerned prosecuting agencies and State Government, in accordance with the due process of law, hence, the impugned orders do not warrant any interference by the High Court in exercise of powers of Judicial review and writ petitions being misconceived, deserve to be dismissed.

8. Heard. Considered.

9. Indisputably, the issue of commutation of sentence and premature release of petitioners was earlier examined by the Department of Personnel and Training, Government of India, in consultation with CBI, Department of Legal Affairs and Ministry of Home Affairs. Copy of letter dated 18.03.2015 (appended as Annexure-6 in D.B. Criminal Writ Petition No.666/2023) is available on record, which goes to show that after having gone into the merits of case of each petitioner, Ministry of Home Affairs

did not find it proper to commute sentences of the convicts under TADA, irrespective of the period of their incarceration.

10. Thereafter, it appears that again a Representation came be submitted on behalf of the writ petitioners for their premature release which has been rejected vide impugned orders dated 26.12.2022 and 20.03.2024. In the impugned orders, apart from taking into consideration the profile of convicts, heinous nature of crime committed by them and the concern of national security, Rule 9(5) of the Rules of 2006 has also been taken into consideration. It has specifically been observed therein that *"terrorist activity is heinous crime and if their premature release is considered, it will be prejudicial to public peace and serious threat to the society and nation, it will also send a wrong message to the criminals. Therefore, premature release of above-mentioned TADA convicts is not recommended"*.

11. We are of the considered opinion that while exercising powers of judicial review and for issuance of writ of certiorari against impugned orders, within ambit and scope of plenary jurisdiction of High Court under Article 226 of the Constitution of India, this Court neither can sit as Appellate Authority nor is expected to re-appreciate the entire factual matrix to draw a different conclusion/inference than taken by the competent authorities. Unless and until, it is found that the decision impugned has been taken by the authorities without application of mind to the relevant factors or the same is founded on the extraneous or irrelevant consideration or is vitiated due to malafides or patent arbitrariness, same does not warrant any interference by the High Court. We find that the impugned orders

have been passed by the authorities having competence and jurisdiction to take a decision on the issue of premature release and the decision has been taken after taking into consideration all the relevant factors and within parameters of law as also taking into consideration the embargo envisaged under Rule 9(5) of the Rule of 2006 or Rule 9(v) of the Rules of 1958.

12. For ready reference, relevant portion of both rules are being reproduced hereunder:

Rule 9(5) of Rules of 2006 provides:

"9. Prisoners not eligible for consideration by the Advisory Board.- Notwithstanding anything in these Rules, the Advisory Board shall not consider the cases of following types of prisoners: -

..
(5). Prisoners convicted under Terrorist and Disruptive Activities (Prevention) Act, 1987 (Central Act 28 of 1987)."

Rule 9(v) of Rules of 1958 reads as under:

"9. Prisoners not eligible for consideration by the Advisory Board.- The Advisory Board shall not consider the cases of following types of prisoners: -

..
(v). Prisoners convicted under TADA [Terrorist and Disruptive Activities (Prevention) Act, 1987]..."

13. Thus, the contention of counsel for the petitioners that the case of petitioners for premature release has not been considered as per the prevalent rules at the time of their conviction, rather has been considered under the Rules of 2006, loses its significance since the similar rule, as available in the Rules of 2006, was incorporated in the erstwhile Rule of 1958.

14. In the judgment delivered by the Hon'ble Supreme Court in the case of **Laxman Naskar (supra)**, on the issue of premature release of prisoner, Hon'ble Supreme Court opined that though prisoner has no right for his premature release but when the Government has framed Rules, Scheme and Guidelines in that

respect, prisoner at least has right to have his case of premature release considered within framework of such Rules, Scheme and Guidelines. On factual matrix of that case, Hon'ble Supreme Court found that the prayer of 'Life Convicts', for premature release, was rejected mainly on the ground of objection by Police and the prayer was not considered by the Government, as per the Rules, hence, the Hon'ble Supreme Court granted indulgence and after setting aside the orders of the State Government, directed the authorities to reconsider the case of petitioners for premature release, as per relevant Rules and Guidelines within a period of one month. But in the writ petition at hand, the case of writ petitioners has already been considered by the respondents, as per the Rules and Guidelines, hence, the judgment does not render any support to the case of petitioners.

15. As far as judgment of Hon'ble Supreme Court, delivered in the case of **Joseph (supra)** is concerned, same deals with the premature release of life convicts for offences under Section 302 and 392 of IPC, whereas in the present case, writ petitioners are life convicts for offence under TADA and Rule prescribes express bar to grant premature release of prisoners convicted under TADA.

16. As a final result, writ petitions are hereby dismissed.

(BHUWAN GOYAL),J

(SUDESH BANSAL),J