

Reserved On : 22/07/2026
Pronounced On : 13/08/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 2974 of 2025

With

CRIMINAL MISC.APPLICATION (PAROLE LEAVE) NO. 1 of 2025

In

R/SPECIAL CRIMINAL APPLICATION NO. 2974 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE M. R. MENGDEY

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Approved for Reporting	Yes	No

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MOHAMMAD UMAR MAJID AHMED PATHAN
Versus
STATE OF GUJARAT

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Appearance:
MR. I.H.SYED, SENIOR ADVOCATE with MR. PRITHU PARIMAL(9025) for
the Applicant(s) No. 1
MR. J.K.SHAH, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE M. R. MENGDEY

CAV JUDGMENT

1. By filing the present petition under Article 226 of the Constitution of India, the Petitioner has prayed for the following reliefs:

“(A) This Hon’ble Court be pleased to quash and set aside the impugned order dated 30.10.2024, bearing no. JLK/832024/V.J.328/J, passed by the Dept. of Home, Govt. of Gujarat and further be pleased to remit the sentence of the

Petitioner imposed vide judgment dated 06.02.2007 passed by the Ld. Special TADA Court, Ahmedabad in TADA Case No. 176 of 1993;

(B) Pending admission and final disposal of the present Petition, this Hon'ble Court be pleased stay the further operation and implementation of the impugned order dated 30.10.2024, bearing no. JLK/832024/V.J.328/J, passed by the Dept. of Home, Govt. of Gujarat and further be pleased to enlarge the Petitioner on long parole in connection with the sentence of the Petitioner imposed vide judgment dated 06.02.2007 passed by the Ld. Special TADA Court, Ahmedabad in TADA Case No. 176 of 1993;

(C) This Hon'ble Court be pleased to dispense with the requirement of an affidavit supporting the present petition, since the Petitioner is in judicial custody."

2. The facts leading to the filing of the present petition are such that vide judgment and order dated 6.02.2007, the learned Special TADA Court, Ahmedabad had convicted the Petitioner for offences punishable under Sections 34 and 120B of the Indian Penal Code and he was sentenced to undergo life imprisonment for 20 years. Being aggrieved by the said judgment and order, the Petitioner had preferred Criminal Appeal No. 705 of 2007 before the Supreme Court of India. The Supreme Court dismissed the said Appeal vide order dated 18.11.2009. Thereafter the Petitioner has undergone incarceration for a period of 18 years. The Respondent

authorities had rejected the case of the Petitioner for grant of remission. Being aggrieved by the same, the Petitioner had approached this Court. While allowing the petitions filed by the Petitioner challenging the orders of the Respondent authorities, this court had directed the Respondent authorities to reconsider the case of the Petitioner for remission. Vide order impugned in the petition, the case of the Petitioner for grant of remission was again rejected by the Respondent authorities. Being aggrieved by the same, the Petitioner has approached this court by filing the present Petition.

3. It is pertinent to note that pending the present petition, the Petitioner had approached the Apex Court by filing Writ Petition (Crl.) Diary No. 37107 of 2025. Vide order dated 6.10.2025, the Apex Court had disposed of the petition as being misconceived; however, has requested this court to make an endeavour to expedite the hearing of the present petition.

4. Heard learned Senior Advocate Mr. I.H.Syed appearing for the Petitioner. He submitted that after the conviction of the Petitioner by the learned Trial Court, the Petitioner has undergone incarceration for a period of more than 18 years. The Petitioner has gathered information through Right to Information Act from the jail authorities as regards the remission accrued in favour of the Petitioner, and the information furnished by the concerned authorities under the RTI indicates that remission for the period of 802 days has been accrued in favour of the Petitioner. If the period of remission accrued is added to the period of incarceration

undergone by the Petitioner, it completes the period of 20 years. He further submitted that while convicting the Petitioner for the offence in question, though the learned Trial Court has imposed the punishment of life imprisonment for 20 years, the learned Trial Court has not specified that the Petitioner is not entitled for any remission during the period of 20 years. If, it was the intention on the part of the learned Trial Court to dis-entitle the Petitioner for remission for the period of 20 years, it would have observed so in the in the sentencing order. The absence of any such observation in the sentencing order would mean that the Petitioner has not been debarred from getting remission till the Petitioner completes the sentence of 20 years.

4.1 Relying upon the judgment of the Apex Court in case of Sukhdev Yadav @ Pehalwan v. State of (NCT of Delhi) & Ors., learned Senior Advocate Mr. I.H.Syed has submitted that in view of the observations of the Apex Court in the aforesaid judgment in paragraph 3.4, it was incumbent upon the sentencing court to specifically state whether the prescribed period of imprisonment is to be undergone with or without remission. Referring to paragraph 14, he submitted that the Apex Court has distinguished between the constitutional remission under Article 72 and 161 of the Constitution of India and the Statutory Remission under the Prison Rules. He also submitted that the observations of the Apex Court in paragraph 15.4 and 15.7 of the said judgment would be applicable to the facts of the present case. He therefore submitted to allow the present petition and direct the Respondent authorities to enlarge the petitioner from jail by granting him the benefit of

remission.

5. Learned APP Mr. J.K.Shah appearing on behalf of the Respondent State has opposed the Petition contending that the case of the Petitioner has been considered by the State authorities for grant of remission on several occasions and since he was found unsuitable for the same, he was not granted the said benefit. He submitted that the jail remarks indicate that the petitioner had absconded on several occasions when he was ordered to be enlarged temporarily either on temporary bail or parole or furlough. He further submitted that the Jail Advisory Committee had unanimously recommended against the premature release of the petitioner considering the seriousness of the offence for which he was convicted, the punishment imposed upon the petitioner, the conduct of the Petitioner in jail and his abscondance on several occasions. He submitted that the Petitioner herein is sentenced to undergo imprisonment for life which is quantified at 20 years. The life imprisonment ordinarily means imprisonment for the remainder of the natural life of the convict unless remitted, commuted or pardoned by the competent authority. The Petitioner herein cannot claim the benefit of remission as a matter of right. The Petitioner only has a right of being considered for grant of remission and as contended, earlier the case of the Petitioner has been considered on number of occasions by the Respondent authority and after reconsideration, the benefit of remission was denied to him. So far as the health condition of the Petitioner is concerned, the jail authorities are taking due care of the health of

the Petitioner and all the necessary treatment is being provided to him on timely basis. He further submitted that recently the Petitioner had absconded for a period of 391 days between 10.06.2025 and 6.07.2026. Learned APP has also taken this court through the Affidavit-in-Reply filed by the Respondent authority. He also submitted that the other co-accused Sajidali @ Danny has also approached the Apex Court seeking to be released since he has completed his sentence and the said petition is pending. He therefore submitted to dismiss the present petition. Learned APP has sought to rely upon the following judgments in support of his submissions:

- (i) Gopal Vinayak Godse v. The State of Maharashtra & Ors. - AIR 1961 SC 600 [1961] 3 S.C.R. 440.
- (ii) State of Madhya Pradesh v. Ratan Singh & Ors. - (1976) 3 SCC 470
- (iii) Life Convict Bengal @ Khoka @ Prasanta Sen v. B.K. Srivastava & Ors. - (2013) 3 S.C.R. 392
- (iv) Life Convict Laxman Naskar v. State of West Bengal & Anr. - (2000) Supp. 3 S.C.R 62
- (v) Union of India v. V. Sriharan alias Murugan & Ors. - (2016) 7 SCC 1 / (2015) 14 S.C.R. 613
- (vi) Zahid Hussein & Ors. v. Stae of West Bengal & Ors. - (2001)2 S.C.R. 443
- (vii) Laxman Naskar v. Union of India – (2000) 2 SCC 595
- (viii) Swamy Shraddananda @ Murali Manohar v. State of Karnataka – (2008) 13 SCC 767
- (ix) Union of India v. Sriharan – (2016) 7 SCC 1

6. Heard learned Advocates for the parties. At the outset, the conduct of the Petitioner is required to be taken note of. The present Petition is filed by the Petitioner on 18.02.2025. In paragraph 2.12 of the Petition, the following averments are made:

“That, during the pendency of ScrA No. 9383 of 2023 and thereafter, the Petitioner has been enlarged on parole multiple times by the Hon’ble Supreme Court and this Hon’ble Court. The Petitioner submits that he has always surrendered on time. A copy of each of the orders enlarging the Petitioner on parole, during the pendency of ScrA No. 9383 of 2023 and thereafter, are annexed herewith and marked as ANNEXURE-L.”

7. The perusal of jail remarks in this regard would indicate that the Petitioner was released on parole leave from 7.03.2021 for a period of 40 days. The said parole leave was extended for a further period of 14 days and thereafter he had absconded for a period of 136 days and was apprehended by police. Thereafter again he was released on parole leave on 23.04.2022 for a period of 30 days and had absconded for 11 days. Thereafter again the petitioner was released on parole leave on 4.06.2022 for a period of 60 days which was extended from time to time till 19.04.2024. The Petitioner had absconded for a period from 20.04.2024 to 13.06.2024 for a period of 54 days. Thereafter again he was released on parole leave on 4.10.2024 for a period of 21 days. The said period was extended by 10 days which had expired on 3.11.2024 and from 4.11.2024 to 24.11.2024 he had absconded

for a period of 21 days and was apprehended by police. Thereafter again on 3.06.2025, the Petitioner was released on parole leave for a period of 7 days which had expired on 9.06.2025. From 10.06.2025 to 5.07.2026, the Petitioner had absconded for a period of 391 days.

8. It is pertinent to note that on 29.06.2026, when this matter was heard by this court, it was brought to the notice of the court by the learned APP that the Petitioner was absconding and it was only after this court had informed learned counsel for the petitioner that the court would hear the matter after the Petitioner surrenders to the jail authority, the learned counsel appearing for the Petitioner had made a statement that the Petitioner will surrender within a period of one week and thus the Petitioner had surrendered before the jail authority on 6.07.2026.

8.1 It is equally important to note that pending the present petition, the Petitioner had approached the Apex Court by filing Writ Petition (Crl.) Diary No. 37107/2025. The Apex Court had disposed of the said petition terming it to be a misconceived petition. However, the Apex Court requested this court to expedite the hearing of the present matter since the Petitioner has undergone incarceration for more than 18 years. During the course of hearing of the said petition before the Apex Court, the fact that the petitioner was absconding at the relevant time, was concealed. Thus, this conduct on the part of the petitioner in itself is sufficient to dismiss the petition.

9. It is the case on the part of the Petitioner that the learned Trial Court while convicting the Petitioner vide judgment and order dated 6.02.2009 for the offences mentioned herein above had sentenced him to undergo life imprisonment for a period of 20 years and since the learned Trial Court has not specified in the sentencing order that the Petitioner will not be entitled for any remission till completion of actual incarceration for a period of 20 years, the Petitioner becomes entitle for grant of remission.

10. The statutory provision of Section 433A of Cr.P.C (Section 475 of the BNSS) entitles the convict undergoing life imprisonment for being considered for grant of remission after he completes 14 years of actual imprisonment. Therefore, if it was the intention on the part of the learned Trial Court to make the Petitioner entitle for being considered for grant of remission before he completed 20 years of actual incarceration, there was no reason for the Trial Court to impose the punishment of life imprisonment for 20 years. Merely because the learned Trial Court has not observed in the sentencing order as regards the entitlement of the Petitioner for grant of remission prior to 20 years, it cannot be said that the absence of any such observation by the learned Trial Court would entitle him for grant of such benefit. The fact that the Trial Court had imposed the punishment of life imprisonment for 20 years upon the Petitioner in itself indicates that the learned Trial Court intended the Petitioner to undergo actual imprisonment for 20 years.

11. It is sought to be contended on behalf of the Petitioner that

the jail authority in its reply given to the Petitioner under the RTI has informed him that he is entitled for 802 days of remission. Paragraph 1420 of the Bombay Jail Manual provides for the remissions to be granted to the prisoners. Accordingly, the period of remission is calculated on the basis of the period of incarceration undergone by the respective prisoners. The period of 802 days of remission mentioned in the said reply indicates the fact that the remission for a period of 802 days has accrued in the account of the Petitioner. Mere accrual of the aforesaid period of remission in the account of the Petitioner would not mean that he is to be actually granted the said remission more particularly when he is sentenced to undergo imprisonment for life for a period of 20 years.

12. Learned Senior Advocate appearing for the Petitioner has heavily relied upon the judgment of the Apex Court in case of Sukhdev Yadav @ Pehalwan (supra). The perusal of the said judgment makes it clear that the Apex Court has not held that when the punishment for life imprisonment for 20 years is awarded upon a convict, like in the present case and if it is not specified that the convict would not be entitled for grant of remission during the actual period of incarceration, he is to be granted the benefit of remission. Therefore, this judgment would render no assistance to the Petitioner. The observations of the Apex Court in this judgment in para 14.5.3 are required to be referred to at this stage:

“Referring to Gopal Vinayak Godse, it was observed that the said judgments 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 remission may be to scale down the term to be endured and reduce it to nil, while having the factum and of sentence intact. However, when the sentence is a life sentence, remissions quantified in time, cannot reach a point of zero. Since Section 433A 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."

13. The perusal of the order impugned in the Petition would indicate that the Respondent authorities have taken all the relevant aspects into consideration while dismissing the case of the

Petitioner for grant of remission. Learned Senior Advocate appearing for the Petitioner is not in a position to show any irregularity in the said order.

14. Having regard to these aspects, the Petition is devoid of any merit. Hence, dismissed.

15. Criminal Misc. Application No. 1 of 2025 (for Parole Leave) stands disposed of accordingly.

(M. R. MENGDEY,J)

J.N.W / SB I / 1

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: JAYANTILAL NARAYAN WAGHELA(HC00178), Principal Pvt. Secretary, at High Court of Gujarat on 14/08/2026 14:29:59