

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 4728 of 2025
With
CRIMINAL MISC.APPLICATION (PAROLE LEAVE) NO. 1 of 2025
In R/SPECIAL CRIMINAL APPLICATION NO. 4728 of 2025

=====

HARIHAR SARJU MAHONTO
Versus
STATE OF GUJARAT & ORS.

=====

Appearance:
MS KD PARMAR(589) for the Applicant(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2,3,4
MR KANVA ANTANI, APP for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 11/09/2025

ORAL ORDER

1. RULE returnable forthwith. Learned APP waives service of notice of Rule for and on behalf of respondent No.1 – State of Gujarat.
2. With the consent of learned counsel appearing for respective parties, present petition is taken up for final hearing today.
3. By way of present petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C"), the petitioner has prayed to release him from jail as he has undergone more than 21 years.
4. At the outset, learned Addl. Public Prosecutor upon instructions states that the petitioner is in jail since 21 years and his jail conduct is good. Proposal is sent on 02.09.2025. he has fairly submitted that as per the directions issued by this Court, order/s of remission or refusal of remission have been passed following the directions given by this Court and time to time directions issued by the Hon'ble Supreme Court and therefore, without entering into merit of the matters, the State Authority once again is ready and willing to reconsider the matters on merit, as expeditiously as possible.

5. Herein, as discussed above, the report of Jail Advisory Board is ambiguous and there is nothing in the said report which clearly indicate about the conduct and relevant criteria to consider the applications for remission.
6. Same time, as this Court is unable to sit in appeal or review the decision of the respondent Authority including the calculation of days and hence, the impugned order/s passed by the Authority deserve to be quashed and set aside and the matters are required to be remitted back to the respondent Authority to decide afresh, in light of prevailing government policy and Resolutions extending benefit of remission as well as the criteria laid down by the Hon'ble Supreme Court in the case of **Nawas @ Mulanavas Vs. State of Kerala, reported in 2024 INSC 215;**

(a) the number of deceased who are victims of that crime and their age and gender;

(b) the nature of injuries including sexual assault if any;

(c) the motive for which the offence was committed;

(d) whether the offence was committed when the convict was on bail in another case;

(e) the premeditated nature of the offence;

(f) the relationship between the offender and the victim;

(g) the abuse of trust if any; (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society.

Some of the positive factors have been, (1) age of the convict; (2) the probability of reformation of convict; (3) the convict not being a professional killer; (4) the socio-economic condition of the accused; (5) the composition of the family of the accused and (6) conduct expressing remorse."

7. In view of the aforesaid discussion, the petition is remitted to the concerned authority for fresh consideration, which shall be completed within a period of **eight weeks** from the date of receipt of this order, without being influenced by any of the observations made herein.
8. Meanwhile, the petitioner is hereby released on **parole leave** for a period of **four (4) weeks** on usual terms and conditions including furnishing a **bail bond of Rs.5,000/-** to the satisfaction of the concerned jail authority, pending re-consideration of their applications by the concerned authority. The petitioners shall surrender before the jail authority without fail, in the event of any adverse decision by the said authority.
9. With the above observations and directions, present petition along with connected application stand disposed of. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

(HASMUKH D. SUTHAR,J)

SUCHIT