

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 6748/2024

[Arising out of impugned final judgment and order dated 19-03-2024 in CRMWP No. 4083/2023 passed by the High Court of Judicature at Allahabad, Lucknow Bench]

OM PRAKASH SRIVASTAVA @ BABLOO

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 08-01-2025 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA

HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s)

Mr. Syed Ahmed Saud, Adv.
Mr. Mohd. Parvez Dabas, Adv.
Mr. Uzmi Jameel Husain, Adv.
Mr. Daanish Ahmed Syed, Adv.
Mr. Aqib Baig, Adv.
For M/S. Shakil Ahmad Syed, AOR

For Respondent(s)

Ms. Garima Prasad, Sr. A.A.G.
Mr. Pradeep Misra, AOR
Mr. Daleep Dhyani, Adv.
Mr. Suraj Singh, Adv.

Mr. Jagdish Chandra Solanki, Adv.
Mr. Ishaan Sharma, Adv.
Mr. Mukesh Kumar Maroria, AOR
Ms. Chitrangda Rastarava, Adv.
Ms. Shreya Jain, Adv.
Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard the learned counsel appearing for the parties.

The petitioner who has been convicted for the offence punishable under Sections 120-B read with 302 of the Indian Penal Code, 1860 applied for grant of relief under Section 2 of the United Provinces Prisoners' Release on Probation Act, 1938 (for short, "the 1938 Act"). By communication dated 17th January, 2023, the said application made in Form-A has been rejected. Though the petitioner filed a Writ Petition challenging the said order before the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, notwithstanding the earlier orders of this Court, the High Court was unable to dispose of the petition. Therefore, we have heard the learned counsel appearing for the petitioner on merits.

On perusal of Section 2 of the 1938 Act, we find that the provisions are more stringent than Section 432 of the Code of Criminal Procedure, 1973 (for short, "the CRPC") or Section 473 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, "the BNSS"). Unless the State Government records a finding that it is satisfied from antecedents of a convict or his conduct in prison that he or she is likely to abstain from crime and lead a peaceful life if he is released from prison, the relief of release on licence cannot be granted. As far as the denial of relief under Section 2 of the 1938 Act is concerned, we cannot find fault with the order passed by the State Government. The scope of Section 473 of the

BNSS is completely different from Section 2 of the 1938 Act.

We, therefore, direct the State Government to consider the case of the petitioner for grant of remission under sub-section (1) of Section 473 of the BNSS as expeditiously as possible. As the petitioner has undergone the actual sentence for more than 28 years, the case of the petitioner shall be considered and appropriate order shall be passed within a maximum period of two months from today. The order be communicated to the petitioner.

In the facts of the case, since the petitioner has undergone actual sentence for more than 28 years, we request the concerned Court which is required to give its opinion in terms of sub-section (2) of Section 473 of the BNSS to forward its opinion within a period of 15 days from the date of receipt of the request made by the State Government. We direct the State Government to immediately forward the case of the petitioner seeking concurrence or otherwise of the Central Government within a period of 10 days from today. The concerned authority of the Central Government shall take a decision on the same within four weeks.

The proposal shall be immediately forwarded to the concerned Court as well the concerned authority of the Central Government along with a copy of this order.

We make it clear that the case of the petitioner shall be considered under Section 473 of the BSSS without being influenced by the reasons recorded in the order dated 17th January, 2023.

The Special Leave Petition is disposed of in the above terms.

Pending application, if any, also stands disposed of.

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER