

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No 1321 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

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Jagat Sah, son of late Tilak Sah, resident of Village – Bashghat, PS – Chakiya,
District – East Champaran (Bihar)

.... Petitioner/s

Versus

- 1 The State of Bihar through the Principal Secretary, Department of Home, Bihar, Patna
- 2 The Director General of Police, Bihar, Patna
- 3 The Inspector General of Police, Bihar, Patna
- 4 The Assistant Inspector General, Prison, Bihar, Patna
- 5 The State Sentence Remission Board through I G, Prison, Bihar, Patna
- 6 The District Magistrate, East Champaran at Motihari
- 7 The Jail Superintendent, Central Jail, Motihari, District – East Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Pranav Kr & Rajeev Ranjan No II, Advocates

For the S t a t e : Mr Prabhu Narayan Sharma, AC to AG

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE SANJAY PRIYA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 23-12-2016

The petitioner was convicted for an offence under Sections 302/34 of Indian Penal Code and sentenced to imprisonment for life. This sentence was not interfered in appeals. He has filed this writ petition for his early release on the ground that he had served more than 14 years of physical imprisonment and, with remission, more than 20 years and, as such, under the policy of the State as per the Jail Manual enacted with reference to Section 59 of the Prisons Act, 1894, he was entitled to early release. His further case is that his



case was put up before the State Sentence Remission Board (for brevity, *the Board*). There was no adverse report of the Probationary Officer, Jail Superintendent yet he has not been released. He has annexed the communication of the Board. He, thus, submits that denial of his release is violation of his rights.

Shri Prabhu Narayan Mishra, Assistant Counsel to Advocate General draws attention of this Court to the report of the trial Court and points out that the report, not being in accordance with the requirements of Section 432 (2) of the Criminal Procedure Code (for brevity, *Cr P C*), the Board rightly asked for the report afresh. The report is Annexure 3 to the writ petition. All we can say is it is an apology for a report of the kind that is required under Section 432 (2) of *Cr P C*.

To appreciate the requirements of the said Section, here we are quoting Section 432 (2) of *Cr P C*:

“432. Power to suspend or remit sentences.-(1)

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.”



A reference to the said statutory provision would show what the requirement is and what is the purpose for which the report is sought for. The expression used therein is “whether the application should be granted or refused, together with his reasons for such opinion”. It is no doubt true that such an occasion to seek remission, commutation or suspension arises only upon conviction for an offence. That, the accused has committed an offence and has been found guilty and punished, is a matter of fact and that by itself cannot be a ground for refusal to recommend his release.

Thus seen, the statutory requirement is that the trial Court must examine the materials and then recommend whether relief can be granted to the convict or not. Annexure 3 to this case, as we have already recorded, is an apology for such a report. All it says is the trial Court is leaving to the judicial discretion of the State Government whether the convict had to be released or not. Probably, the trial Court has not even looked to the provisions of Section 432 (2) of Cr P C for if it had, it would not have recorded such a recommendation. This is no recommendation for the purposes of Section 432 (2) of Cr P C. It is abdicating the responsibility statutorily fixed on the Judicial Officers.

In view of such a report, we are of the view that the Board rightly postponed the consideration awaiting fresh report. The



petitioner can make no grievance in that regard.

Thus, we are constraint to hold that even petitioner is not at fault, for fault of the Judicial Officer, his detention continues. The result is that we cannot hold that the detention of the petitioner is not in accordance with law. The Board has rightly called for a fresh report and it is hoped that the report will now be submitted in accordance with law and expeditiously where after the Board could be required to pass fresh orders.

Henceforth, the Board should require the trial Court to submit a fresh report in accordance with law and it is expected that each time, the Board seeks the views of the trial Court in terms of Section 432 (2) of Cr P C, it would specifically refer to the provisions so that the trial Courts may acquaint themselves with their responsibility.

In that view of the matter, with the directions aforesaid, this writ application stands disposed of.

(Navaniti Prasad Singh, J)

M.E.H./-

(Sanjay Priya, J)

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