

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No 1245 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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Ramadhar Singh son of Late Hari Kishun Singh resident of village - Moldiar Tola,
Mokama, Police Station - Mokama, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Ministry of Home, Government of Bihar, Patna.
2. Inspector General (Prison), Home Department, Government of Bihar, Patna.
3. The State Sentence Remission Board through its Chairman, Department of Home, Patna.
4. The Jail Superintendent, Adarsh Central Jail, Beur, Patna.
5. Union of India, through the Home Secretary, Government of India, New Delhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Manish Kr No 2 & G K Singh, Advocates
For the S t a t e : Mr Prabhu Narayan Sharma, AC to AG
For Union of India : Mr Manoj Kr Singh, CGC

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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: 15-12-2016

By this writ petition, the petitioner has sought a writ of
habeas corpus for his release from custody.

2 A counter affidavit was called for and in that, it is
disclosed that the State Remission Board (for brevity, *the Board*), in
its meeting dated 28.11.2016, considered the case of petitioner but
only on the ground that the petitioner was convicted in a case of
multiple murders, he was refused to be released in view of Rule 481



(i) (ka) of the Bihar Prison Manual, 2012 as was amended with effect from 26.05.2016 which, inter alia, provided certain categories of convicts who are not liable to be given benefit of remission and shortening of sentence. Petitioner challenges this stand of the State Government. It is, inter alia, submitted on behalf of petitioner that this condition was introduced only recently in absence whereof there was no other ground for denying the benefit to the petitioner. Learned counsel for the State does not contest this position. It is submitted on behalf of petitioner that the conditions for premature release and grant of remission, as has been held by the Apex Court as also by this Court in several judgments, is the law that obtains on the day when a person is first convicted. That being the situation and position in law, State cannot refer to a subsequent amendment to deny the benefit which had accrued to a convict on the date of his conviction.

3 Having heard learned counsel for the petitioner and learned counsel for the State at length, in our view, the position of law has repeatedly been dealt with by this Court and the last being the detailed judgment in the case of *Ram Naresh Rai –Versus- State of Bihar & Others* being *Cr W J C No 1053 of 2016* which was disposed of on 21.11.2016.

4 The petitioner and 13 others were convicted by the Additional Sessions Judge X, Patna in Sessions Trial No 92 of 1983



by judgment and order dated 26.03.1987 for murder of two persons. Petitioner was convicted, inter alia, under Section 302 read with the aid of Section 149 of Indian Penal Code. The convicted persons were all sentenced to life imprisonment. It was not interfered with in appeal either by the High Court or by the Apex Court. The petitioner has been in custody since then. It is not in dispute that the total period of physical incarceration of the petitioner is about 16 and half years and if remissions earned during the period are taken into account, the total period would be about 22 years. It is also not in dispute that as per law prevailing in the year, 1987 when the petitioner was first convicted, he would be entitled to a premature release upon completing 14 years of physical custody and 20 years with remission, both of which conditions are satisfied. But, he is being denied the relief only on the ground that recently on 26th of May 2016, the State Government amended various provisions of the Bihar Prison Manual, 2012 and one of the Rules, as noted above which was amended now, provided that no person, who has been convicted in a case for multiple murders, would get the benefit of premature release. Learned counsel for the State again submits that in view of this provision, as introduced, the Board acted rightly in rejecting to grant benefit of premature release to the petitioner. Learned counsel for the State further submits that whether to release a person or not is the discretion



of the Board. That being the position, the discretionary exercise could not be challenged and further the discretion having been exercised in accordance with the Rules, as amended, this writ petition was not maintainable. He further submitted that there is a distinction between remission and power to suspend the sentence. Remission is a matter of discretion for good conduct or other consideration whereas suspending sentence is altogether different.

5 In our view, it is unnecessary to go into all these questions all over again for these questions have been dealt in detail in recent judgment of this Court in the case of *Ram Naresh Rai (supra)*. It has been noticed that the Apex Court in the case of *State of Haryana –Versus- Jagdish* since reported in (2010) 4 Supreme Court Cases 216 has clearly held that it is the law that obtains on the day when conviction order is first passed. That would guide the rights of the party to get remission or suspension of sentence. The judgment was further to hold that any subsequent change to the prejudice of the convict will not affect him but any benefit or relaxation that is given subsequently would inure to his benefit. This would answer the main submission of the State. The provisions of the Bihar Prison Manual, as amended on 26th of May 2016, would, thus, not be applicable to the petitioner in so far as it creates a new disability to premature release. In the said judgment of *Ram Naresh Rai (supra)*, this Court also



considered the aspect of discretionary power. We may add that discretion has always to be guided by sound and legal principle. Discretion does not mean arbitrary discretion or unguided discretion for in those situations, it would be conferring unguided power which would render the delegation ultra vires Article 14 of the Constitution. This Court in the said judgment has also noticed in this regard the judgment of the Apex Court in *L Hirday Narain –Versus- Income Tax Officer, Bareilly* since reported in *AIR 1971 Supreme Court 33*.

6 There is one another reason why this would be so. The Bihar Prison Manual, 2012 is purported to have been made as a piece of delegated legislation under the rule making power of Section 59 of the Prisons Act, 1894. It is elementary principle that no Rule can have retrospective effect. It cannot take away the vested right. It will act only prospectively. If that be so then the amendment to the Rule cannot be effective retrospectively and cannot take away rights which had already been conferred on a person.

7 Thus, on the grounds aforesaid, the order of the Board not ordering the release of the petitioner who has already completed over 16 and half years of physical incarceration cannot be sustained. It is, thus, liable to be set aside and is set aside. There being no other disability, with which the petitioner suffers, the petitioner would be liable to be released. The Board will, accordingly, take a decision



expeditiously.

8 This writ petition is, accordingly, allowed.

(Navaniti Prasad Singh, J)

M.E.H./-

(Sanjay Priya, J)

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