

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1166 of 2015

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1. Ramesh Rai, Son of Sabha Rai, resident of Village - Dudhiya,
P.S. - Akilpur, Danapur, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar,
Patna.
2. The Home Secretary Home Department, Govt. of Bihar, Patna.
3. The D.G.P., Govt. of Bihar, Patna.
4. The I.G. (Prison) Home Department, Govt. of Bihar, Patna.
5. The Assistant I.G. (Prison), Home Department, Govt. of Bihar,
Patna.
6. The Jail Superintendent, Central Jail, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Mishra, Advocate

For the Respondent/s : Mr. Prabhu Narayan Sharma, (AC to AG)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

C.A.V. JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

Date: 08-03-2016

The present application has been filed, under
Articles 226 and 227 of the Constitution of India, seeking



issuance of writ, in the nature of writ *habeas corpus*, for release of the father of the petitioner forthwith, who, after having been sentenced to undergo imprisonment for life for an offence committed under Section 302 read with Section 34 of the Indian Penal Code, has completed 10 years of custody.

2. For the purpose of seeking the aforesaid relief, the petitioner has heavily relied on a notification, dated 10th December, 2002, issued by the Home (Special) Department, Government of Bihar, introducing *amendment* in Rule 529 of the Bihar Prison Manual. The said Rule enlists the category of convict prisoners, whose cases can be considered by State Remission Board for his/her premature release. One of the categories is of such persons, who after having been convicted of and sentenced to undergo imprisonment for life, have suffered 7 years of imprisonment with remission, after completing 65 years of age.

3. It is the case of the petitioner that his father, namely, Sabha Rai, is more than 65 years of age and, accordingly, he is eligible to be considered for his premature release by the State Remission Board.

4. We have heard Mr. Dhananjay Mishra, learned Counsel, appearing on behalf of the petitioner, and

Mr. Prabhu Narayan Sharma, learned Assistant Counsel to learned Advocate General, appearing on behalf of the respondents-State of Bihar.

5. The question of remission, in case a person has been convicted of the offence of murder, punishable under Section 302 of the Indian Penal Code, and sentenced to suffer imprisonment for life with fine, has been extensively dealt with by a Division Bench of this Court in a recent judgment, dated 19.01.2016, passed in Criminal Writ Jurisdiction Case No.1042 of 2015 [**Tarachand Kapari @ Taranand Kapari @ Karo Kapri Vs. The State of Bihar & Ors.**], wherein this Court has held in paragraph-102 as follows:

"102. *The discussions, held hereinbefore, may be summarized as follows;*

a. *The distinction between remission and commutation is that remission is reduction of the quantum of a sentence without changing its character. In the case of a remission, the guilt of the offender is not affected nor does remission alter the sentence of the court except in the sense that the convicted person does not suffer incarceration for the entire period of the sentence, but is relieved from serving out a part of*

the sentence. On the other hand, commutation of sentence is conversion or alteration of the sentence into another form of sentence, such as, a sentence of death into a sentence of imprisonment for life as prescribed by the Indian Penal Code or conversion or alteration of a sentence of imprisonment for life into a sentence of imprisonment for any other term.

b. *Section 433-A of the Code of Criminal Procedure puts a restriction on the power of the appropriate Government to commute a sentence of imprisonment for life by laying down that commutation of sentence of imprisonment for life to a sentence of imprisonment for a term cannot be for a period of less than fourteen years. This apart, the restriction, which Section 433-A of the Code of Criminal Procedure imposes on the power of the commutation, operates only after the power of commutation under Section 433 of the Code of Criminal Procedure is exercised meaning thereby that if the sentence of imprisonment for life is commuted to a sentence of imprisonment for a term, or for fine, the convict cannot be released until he*

undergoes the minimum prescribed period of 14 years of imprisonment. However, if the imprisonment for life is not commuted, the imprisonment continues till the end of natural life.

*c. In view of the decision in **Bhagirath's** case (supra), and the proviso to Section 428 of the Code of Criminal Procedure, set off is, now, available (and shall be deemed to have been always available) to those convicts, who may have been sentenced to imprisonment for life, or to one, whose sentence of death has been commuted to sentence of imprisonment for life. In other words, while computing the period of 14 years or 20 years, as the case may be, a life convict is entitled to the benevolent provisions of set off. On completion of the minimum period of fourteen years of actual imprisonment, a life convict does not acquire any indefeasible right to be released by granting him benefit of remission. Consequently, no writ of mandamus can be issued directing release of a person, who may have completed the minimum period of imprisonment.*

d. Ordinarily, imprisonment for life would mean the convict person"s

natural life unless his sentence of imprisonment for life is either commuted or remitted by the appropriate Government on completion of a period of 14 years of actual imprisonment.

(emphasis supplied)

e. The punishment of imprisonment for life, handed down by a Court, means a sentence of imprisonment for the rest of the convict's life and Section 57 of the Indian Penal Code does not, in any way, limit the punishment of imprisonment for life to a term of twenty years inasmuch as Section 57 of the Indian Penal Code is only for calculating fractions of the terms of punishment and provides that imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years and that such an object and purpose of Section 57 will be clear by simply referring to Sections 65, 116, 119, 129 and 511 of the Penal Code.

*f. In view of the law laid down in **Swami Shraddanand** (supra) and affirmed by the Constitution Bench, in **Sriharan's case** (supra), it becomes clear that instead of imposition of death penalty, it is permissible for a court, while awarding sentence of life*



imprisonment, to order that the sentence, so imposed, shall amount to imprisonment for the whole span of the life of the convicted person without any application of statutory provisions of remission and/or that the convicted person shall undergo imprisonment for life without statutory provisions of remission being applicable thereto.

g. *The imprisonment, in default of payment of fine, which is a penalty, would be consecutive and not concurrent, i.e., it would be calculated after the convict serves out the substantive term of punishment and, in case of life imprisonment, where no default sentence for fine is given owing to the principle "life means the rest of convict" s life", the fine is payable and recoverable in terms of Section 421 of the Code of Criminal Procedure."*

6. In our considered view thus, there is a bar, under Section 433-A of the Code of Criminal Procedure, 1973, against release of a person from prison, in case sentence of imprisonment for life has been imposed upon such person on his conviction for an offence (in the present

case under Section 302 of the Indian Penal Code) for which death is one of the punishments, provided under the law; unless such person had served at least 14 years of actual imprisonment.

7. We, therefore, do not find any merit in this application. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ. : I Agree

(I. A. Ansari, ACJ.)

Praveen-II/-
A.F.R.

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