

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1053 of 2016

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Ram Naresh Rai, son of Gangeshwar Rai, Resident of Village- Shahpur
Bharath, P.S. Patori, District- Samastipur.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The State Sentence Remission Board, through the Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Joint Secretary-cum-Director (Administration), Home Department (Prison), Bihar, Patna.
4. The Secretary, Law Department, Government of Bihar, Patna.
5. The Additional Director General of Police, Criminal Investigation Department, Bihar, Patna.
6. The Inspector General, Jail Reforms Services, Bihar, Patna.
7. The Jail Superintendent, Khudi Ram Bose Central Jail, Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Vijay Kumar Singh, Advocate

For the Respondents : Mr. Ram Balak Mahto (APP)

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

5 21-11-2016

By this writ petition the petitioner challenges the continued detention of his father in judicial custody as well as he challenges the State Sentence Remission Board's order dated 08.07.2016.

2. We have heard the learned counsel for the petitioner and the learned counsel for the State on three occasions and with their consent, this writ petition is being disposed of at the admission stage itself.

3. It appears that on or about 30.11.1994 an incident took place within the jurisdiction of Patori P.S. in the district of Samastipur wherein seven persons including a child of 10 years of age were killed. 15 persons were charged and put to trial. Upon trial one Ramprit Rai who has been found guilty of charge under section 302 of the I.P.C. was sentenced to death by the trial Court. The accused Bharat Rai, Medani Rai and Sattu Rai



were found guilty of the offences, inter alia, under section 302 read with section 149 of the I.P.C. and sentenced them to life imprisonment. Petitioner's father Gangeshwar Rai was also convicted under section 302 with the aid of section 149 of the I.P.C. and convicted for imprisonment of life by the judgment and order dated 26.07.2001 by the 1st Additional Session Judge, Samastipur. Ramprit Rai having been sentenced to death. A criminal reference was made to this Court and appeal preferred by all other accused persons including the persons noticed above. All cases were taken up together and this Court while affirming the conviction and the sentence awarded to the accused persons commuted the death penalty in so far as Ramprit Rai is concerned he was convicted for imprisonment of life.

4. All the accused persons have unsuccessfully appealed to the Apex Court without any further change in the sentence. It appears that thereafter Ramprit Rai moved the State Sentence Remission Board for Reemission as he has completed 14 years of physical imprisonment and with remission of 20 years and according to the government policy notification he was entitled to premature release. The State Sentence Remission Board considered the matter in its meeting dated 25.06.2014 and released him. It appears that Bharat Rai, Medani Rai and Sattu Rai had earlier moved the State Sentence Remission Board. Considering that they have served the physical imprisonment of 14 years with remission of 20 years they were released by the State Sentence Remission Board by its order dated 01.08.2013.

5. Now, the case of the father of the writ petitioner was taken up. The trial judge has no objection. The fact was that the petitioner's father had remained in physical custody for over 17 years and with remission his custody would come to 22 years, but when the matter was



placed before the State Sentence Remission Board it took note of the fact that he was convicted for an offence under section 302 with the aid of section 149 of the I.P.C which case related to the murder of seven persons including 10 years old child. It is on this ground that his premature release has been refused.

6. On behalf of the petitioner, three contentions are raised, firstly, in appeal of an accused, his sentence to death which is extreme punishment, was commuted to life but he has been released prematurely. Several other persons in the same trial, who are convicted under section 302 of the I.P.C. with the aid of section 149 of the I.P.C. and sentenced to imprisonment for life were also released much earlier. The case of the petitioner being on similar footing, if not better, for the charges for which Ramprit Rai was released, would amount to hostile discrimination and arbitrary. Secondly, it is submitted that merely because a person is sentenced to imprisonment for life it cannot mean that he cannot get remission and thirdly, once the conditions for premature release as obtaining on the day of conviction are satisfied then the discretion of the Government ceases to be there and the conditions being satisfied, it would be duty of the government to release him.

7. We have considered the argument and we are of the view that the writ petition must succeed and the State Sentence Remission Board has to reconsider the matter.

8. So far as the first contention is concerned, the fact that the person who have been sentenced to death and latter on commuted to life imprisonment, in the same case, granted remission in terms of section 432 of the Code of Criminal Procedure in view of the policy of the government thereunder. Similarly, the persons who in the same trial were found guilty



and sentenced to imprisonment for life for having been held guilty under section 302 with the aid of section 149 I.P.C., were also granted remission. Denying the same to the petitioner's father who was also in the same trial convicted and sentenced to life imprisonment for an offence under section 302 with the aid of section 149 of the I.P.C. would amount to hostile discrimination for the non discrimination clause as envisage in Article 14 of the Constitution would be violated by treating equally, unequals and unequally, equals. Thus, the State Sentence Remission Board ought to have looked into the cases of other accused persons in the same trial and if they were granted remission then, only on valid distinguishable grounds, they could have taken different view. There has to be uniformity even in administrative decisions. The decision not to release the petitioner's father would thus illegal.

9. The second submission of the State was that the petitioner's father having been convicted and sentenced to imprisonment for life, it would not be a case where he would be at all entitled to any remission. Reliance has been placed in the case of "Gopal Vinayak Godse Vs. The State of Maharashtra & Ors." reported in AIR 1961 SC 600. The fact in this case is clearly distinguishable as it was dealing with the case of sentence for life and the Apex Court clearly held that it was premature to decide the issue, inasmuch as, there was no definite period of imprisonment to which remission can be given. The sentence was transportation for life. If we refer to section 432 of the Criminal Procedure, as now exist there is no such restriction. To the contrary, if we see section 433 of the Cr. P.C. and particularly section 433 (b) of the Cr.P.C., it give an authority to the State Government to commute a sentence of imprisonment for life to imprisonment for a term not exceeding 14 years or for fine. Thus, the statute



if read as a whole, i.e. Sections 432 and 433 of the Cr.P.C. it give the State authority even in the cases of imprisonment for life to reduced the sentence. These sections have not been declared invalid or ultra virus or made inoperative. That to say that once a person is sentenced to imprisonment for life there cannot be any commutation for an early release would be a legal fallacy.

10. Lastly, the State has urged that it is the discretion of the State whether to permit early release or to commute or to grant remission and if the State refuses to exercise that discretion, no grievance can be made. It was further submitted on behalf of the State that after the recent judgment of the Constitution Bench of the Apex Court in the Case of Union of India Versus V. Sriharan @ Murugan and others, reported in (2016) 7 SCC page 1, the State Government has revised its circulars for grant of suspension and commutation of sentence in the year 2016 and accordingly it did not find the case of the petitioner's father to be appropriate for early release. From the order of the State Sentence Remission Board, we find that the only reason given is that the petitioner's father was convicted in a case which involved murder of seven persons including a child that shows why discretion for premature release was not exercised.

11. We have considered the argument and we find it unsustainable. In this connection we would first like to note that section 432 or for that matter section 433 of the Code of Criminal Procedure gives authority to the State Government to suspend or to grant remission or to commute the sentences, but there are no guidelines. The guidelines are to be found in the Prisoners Act wherever applicable or the provisions of the Jail Manual or the executive instructions issued laying down the policy. The State does not deny that when the cases of other accused persons of the



same case was considered, they were, notwithstanding that the death sentence had been initially awarded, which was commuted to life imprisonment, they were all released in conformity with the principles and the policy as was then operative. Had the case of the petitioner's father be taken up then, he ought to have been released, but now in 2016 there having been a change in the policy and without change in fact, the premature release of father of the petitioner is being denied. Thus, the question would be, if there is change in the policy what would be the effect on a person seeking remission. In respect of this question, it is well settled by series of decision of this Court including in the case *of Raja Ram Singh Vs. The State of Bihar through its Home Secretary & Others, reported in 2012 (3) PLJR 562*. All those judgments have followed in the judgment of the Apex Court in the case of *State of Haryana Versus Jagdish, reported in 2010 (4) SCC page 216* wherein it was categorically laid down that, firstly, it is the policy as existing on the day when a person is convicted, that would apply. Therefore, if the policy permitted premature release, pursuant where to several co-convicts were released the same policy would apply to the present case.

The second and more important aspect decided in the case of Jagdish (supra) by the Apex Court was that it subsequently the policy changes, which has no effect to the convicts but if the policy gave same benefit or made some relaxation then those relaxation or benefits would ensure to the benefit of the person but if onerous conditions which are subsequently enforced they will not apply. Thus, in nutshell it is the policy on the day of conviction that would apply and if any onerous condition is subsequently laid down that would not take away his right which had accrued on the day of conviction. Thus, 2016 policy and the distinction



being sought to be made on the ground noted above has no application.

12. Lastly, it was urged that it was the discretion of the State whether to grant premature release or not, Section 432 & 433 of the Cr. P.C talks of – Government “May” consider. I am afraid we are not living in a feudalistic Society; we are governed by rule of law. The answer to this is to be found in the case of L. Hirday Narain Vs. Income Tax Officer, Bareilly, reported in AIR 1971 S.C. 33. In that case an application for rectification of mistake in the order passed under the provisions of the Income Tax Act was made. Relevant provision provided “the Income Tax Officer may rectify.....”. The argument that it was the sole discretion of the authority that he may or he may not chose to exercise his discretion to rectify found favour with the Allahabad High Court but on appeal the Supreme Court reversed the decision while doing so the Apex Court held as follows:-

12.....The High Court observed that under Sec. 35 of the Indian Income-tax Act, 1922 the jurisdiction of the Income-tax Officer is discretionary. If thereby it is intended that the Income-tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Sec. 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income-tax Officer may rectify any mistake apparent from the record. If a statue invests a public Officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statue are prima facie enabling, the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right-public or private- of a citizen.

13. In Julius v. Bishop of Oxford, (1880) 5 AC 214 it was observed by Cairns L.C. at pp. 222-223 that the words “it shall



be lawful” conferred a faculty or power, and they did not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so.” Lord Blackburn observed in the same case at pp. 244-245 that the enabling words give a power which prima facie might be exercised or not, but if the object for which the power is conferred is for the purpose of effectuating a right there may be a duty cast upon the donee of the power to exercise it for the benefit of whose who have that right when required on their behalf. Lord Penzance and Lord Selborne made similar observations at pp. 229 and 235. “

Thus, there cannot be a case of absolute unguided discretion. Upon conditions being satisfied it would be the duty of the State to grant necessary relief.

13. In the result, we have to observe that the decision of the State Sentence Remission Board dated 08.07.2016 cannot be sustained. We direct the Board to reconsider the matter in view of the law as we have noticed above and pass appropriate order within fifteen days from today.

This writ petition is thus allowed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Rajiv/abhay
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