

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No 953 of 2016

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

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Nagina Rai S/o Late Harakh Rai, Resident of Village- Chiraiya, P.S.-
Bakhtiyarpur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Home, Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The inspector General, Prison, Bihar, Patna.
5. The Assistant Inspector General, Prison, Bihar, Patna.
6. The State Sentence Remission Board, through I.G. Prison, Bihar, Patna.
7. The Jail Superintendent, Adarsh Central Jail, Beur, Patna.
8. The Union of India through Home Secretary, New Delhi

.... Respondent/s

WITH

Criminal Writ Jurisdiction Case No 1160 of 2016

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

- =====
1. Nageshwar Yadav, Son of Late Dev Nandan Yadav, Resident of Village- Panchrattan, P.S- Basopatti, District- Madhubani.
 2. Birj Kant Jha, Son of Sukh Lal Jha, Resident of Village- Somnaha (Jha Tola), P.S Chak Mehshi, District- Samastipur.
 3. Chhotkan Yadav, Son of Shobhit Yadav, Resident of Village- Panchrattan, P.S- Basopatti, District- Madhubani.
 4. Prabhu Yadav, Son of Yugal Yadav, Resident of Village- Panchrattan, P.S- Basopatti, District- Madhubani.
 5. Arjun Yadav, Son of Deo Nandan Yadav, Resident of Village- Panchrattan, P.S- Basopatti, District- Madhubani.
 6. Kapil Yadav, Son of Batahu Yadav, Resident of Village- Panchrattan, P.S- Basopatti, District- Madhubani.
 7. Punit Rai, Son of Nathuni Rai, Resident of Village- Bishanpur, P.S Parihar, District-Sitamarhi.
 8. Jalandhar Bhagat, Son of Mahesh Bhagat, Resident of Village- Bishanpur, P.S Parihar, District-Sitamarhi.
 9. Feku Mahto, Son of Lakhan Mahto, Resident of Village- Bishanpur, P.S Parihar, District-Sitamarhi.
 10. Krishna Mohan Mishra, Son of Ishwar Dhari Mishra, Resident of Village- Barwat Lachhu, P.S Muffasil, District- Bettiah(West Champaran)
 11. Ramesh Mishra, Son of Ishwar Dhari Mishra, Resident of Village- Barwat Lachhu, P.S Muffasil, District- Bettiah(West Champaran)
 12. Jia Rai, Son of Rijhan Rai, Resident of Village-Madanpur, P.S- Dumra, District- Sitamarhi.
 13. Ram Briksha Yadav, Son of Ramdeo Yadav, Resident of Village- Gosain Tola, P.S- Raj Nagar, District-Madhubani.



- 14. Ramashish Yadav, Son of Fulchandrad Yadav, Resident of Village- Gosain Tola, P.S- Raj Nagar, District-Madhubani.
- 15. Mahendra Yadav, Son of Munne Yadav, Resident of Village- Panchrattan, P.S- Basopatti, District- Madhubani.
- 16. Ram Prasad Yadav, Son of Parmeshwar Yadav, Resident of Village- Panchrattan, P.S- Basopatti, District- Madhubani.
- 17. Shivji Yadav, Son of Sone Yadav, Resident of Village- Panchrattan, P.S- Basopatti, District- Madhubani.
- 18. Bishundeo Yadav, Son of Asharfi Yadav, Resident of Village- Panchrattan, P.S- Basopatti, District- Madhubani.
- 19. Ram Bilash Rai, Son of Ram Sundar Rai, Resident of Village- Belwa Parari, P.S. Majorganj, District-Sitamarhi.
- 20. Nand Kishor Yadav @ Nand Kishore Rai, Son of Ram Swaroop Rai, Resident of Village- Satar, P.S- Nanpur, District-Sitamarhi.
- 21. Duniya Lal Mahro, Son of Anup Lal Mahto, Resident of Village- Singiya Bunurg, P.S Bibhutipur, District- Samastipur.
- 22. Akhilesh Giri, Son of Pawan Giri, Resident of Village- Angar Ghat, P.S Angar Ghat, District- Samastipur.
- 23. Saroj Kumar Chaudhary @ Saroj Chaudhary, Son of Ram Prakash Chaudhary, Resident of Village- Lohagar, P.S- Ujiyarpur, District- Samastipur.
- 24. Ram Bahadur Yadav, Son of Singheshwar Yadav, Resident of Village- Gosain Tola, P.S- Raj Nagar, District-Madhubani.

.... Petitioner/s

Versus

- 1. The State of Bihar through Chief Secretary, Government 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 and Reforms Services, Bihar, Patna.
- 7. The Jail Superintendent, Khudi Ram Bose Central Jail, Muzaffarpur.
- 8. The Union of India through the Home Secretary, New Delhi

.... Respondent/s

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For the Petitioner/s :	M/s Ratnakar Pandey, Vijay Kr Singh & Pankaj Kr Singh, Advocates
For the S t a t e :	Mr P N Sharma, AC to AG Mr Sheo Shankar Pd, SC VIII
For Union of India :	Mr S D Sanjay, ASG Mr Rajesh Kr Verma, CGC Ms Nivedita Nirvikar, 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: 22-12-2016

A common question of law has arisen in both these cases.

2 We have heard learned counsels for the writ petitioners, learned counsels for the State and learned Additional Solicitor General for Union of India who was added as a party pursuant to order of this Court in view of the nature of controversy involved.

3 Chapter XXXII of the Code of Criminal Procedure, 1973 (for brevity, *Cr P C*) deals with execution, suspension, remission and commutation of sentences, Part E thereof deals with suspension, remission and commutation of sentences. Section 432, *Cr P C* thereof, inter alia, provides that “appropriate Government” may, at any time, with or without conditions, suspend the execution of sentence or remit the whole or any part of the sentence to which a convict is visited with.

4 Firstly, a question arose as to the meaning and extent of the expression “may” as used therein whether it was the absolute discretion of the State Government to grant the benefit under Section



432 of Cr P C aforesaid or not? In several earlier decisions of this Court in the cases of *Ram Naresh Rai –Versus- State of Bihar & Others (Cr W J C No 1053 of 2016)*, *Ramadhar Singh –Versus- State of Bihar & Others (Cr W J C No 1245 of 2016)* & *Most Sudama Devi –Versus- State of Bihar & Others (Cr W J C No 1180 of 2016)*, we have held that “may” does not confer any discretion on the State Government. It has to be read as “shall” as it is a duty coupled with responsibility and if conditions are satisfied, the Government would have to release a person. The conditions, which are the guidelines for exercise of power or the so-called discretion under Section 432 of Cr P C, are either laid down by executive instructions or by virtue of Jail Manual enacted with reference to Section 59 of the Prisons Act, 1894. In absence of such guideline for exercise of the so-called discretion, it would have been difficult for any person to claim the benefit thereunder. This position having been settled in earlier decisions, mentioned above, the next controversy that had arisen was where Rules under the Jail Manual or executive directions/guidelines are amended, what would be the effect? Again, this Court has repeatedly held, after noticing the judgment of the Apex Court, that the position, as emanating on the day when conviction is recorded, would be the reckoning day to reckon the conditions as specified then for the grant of remission or commutation. Subsequent amendments to the



detriment of the interests of the convict cannot affect the right of the convict but any relaxation subsequently would inure to his benefit. This position has also now been settled.

5 As noted above, Section 432 of Cr P C talks of the power being exercised by the “appropriate Government”. Sub-section (7) of Section 432 of Cr P C defines “appropriate Government”. Section 432 (1) and (7) are quoted hereunder:

“432. Power to suspend or remit sentences.-*(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.*

... ..

(7) In this section and in section 433, the expression “appropriate Government” means,-

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.”

6 It may be noted that sub-section (7) of Section 432 has been in the Statute Book right from its inception that is when the Cr P C was enacted and enforced. There has been no change. Recently,



Constitution Bench of the Apex Court in the case of *Union of India – Versus- V Sriharan @ Murugan & Others* since reported in (2016) 7 *Supreme Court Cases 1* has, inter alia, held, reiterating the said provision, that the cases have to be considered by the “appropriate Government”, as defined under the Act. There was no change by any introduction in the meaning of the expressions used therein, yet upon pronouncement of the judgment of the Constitution Bench, in this State, suddenly the State Sentence Remission Board (for brevity, *the Board*) thought that the Apex Court has said something new at variance with either the Statute or the previous position, none of which everyone knew, was correct. They got an excuse that even though they recommended for premature release, they started sending all the matters to the Central Government on the spacious plea that the offences in respect of which conviction was rejected was an offence under the Indian Penal Code which was a Statute under the domain of the Union Government and, thus, the “appropriate Government” would be the Union of India or the Central Government. When this matter was taken up by this Court, counsel for the petitioners submitted at the Bar that even the Central Government had referred the cases to the State Government for decision to the State Government. It was also submitted that the Section being what it is, the judgment of the Apex Court lays down nothing different but the



past practice being that only in cases in which the Central Government was the prosecuting agency, the matters were referred to or left to the Central Government to decide. In all other matters, State of Bihar, being the prosecuting agency, they were dealt with by the State of Bihar. We then formulated this question to be decided and adjourned the matter for the stand of the Central Government and the State Government in this regard to resolve this dispute.

7 Today, a supplementary counter affidavit has been filed by the State wherein proceedings of the Board dated 19.12.2016 has been appended as Annexure A. Learned counsel for the State now fairly concedes that indeed Union of India returned the case for consideration of the State and the Board has realized the correct position. It has also taken note of Section 435 of Cr P C and they reddecided the cases of the petitioners except for three petitioners in so far as the second writ petition is concerned, the rest have already been now recommended for release. The stand of the State now is that in so far as matters that are prosecuted by the State, the State would exclusively consider the matter but where the prosecution is either at the instance of the Central Government or by the Central Government, the Union of India would consider exercising powers under Section 432 of Cr P C. In our view, that is the correct procedure in view of the provisions of Section 432 (7) of Cr P C. In view of the aforesaid,



no further controversy remains except in regard to the three petitioners in the second writ petition being petitioners No 10, 11 and 20.

8 While ordering release of the rest of the petitioners, the Board has called for fresh report from the trial Court in view of these three petitioners. So far as petitioner No 20 is concerned, they have rejected his claim on the ground that he was convicted in a case of multiple murders.

9 We would first take up the case of petitioner No 20. As apparent from the proceedings of the Board, the only factum which has disqualified petitioner No 20 from release is that he was found guilty in a case of multiple murders. Reference to the amendment in the Jail Manual, as made on 26th of May, 2016, such a disability was not there earlier much less on the day when conviction was recorded. As we have indicated earlier in this judgment itself, this position has been settled by several judgments, as mentioned above. Subsequent amendment to the Jail Manual to the detriment of the convict will not affect his right. His case had to be considered on basis of the law or the guidelines as prevailing at the time when he was convicted. It is not disputed that such a disability did not figure earlier. It was introduced for the first time in the year, 2016. This petitioner was convicted more than a decade and a half back when such a disability was not there. Thus, following the earlier judgments,



mentioned above, we have no option but to direct the Board to reconsider the matter in the light of what we have observed and pass orders again in accordance with law in respect of petitioner No 20 Nand Kishore Yadav @ Nand Kishore Rai. Needless to say that the Board would consider the matter expeditiously.

10 So far as petitioners No 10 and 11 are concerned, we find the position curious. On the earlier occasion when their cases were considered, they were allowed remission. The opinion of the trial Court was there and has been found satisfactory. The only difficulty was that the State, shirking its responsibility, had decided to refer all those matters for concurrence and/or approval of the Central Government. Now that the State realized its mistake, instead of passing orders for release, as in other cases, the earlier report of the trial Court with which they never found fault earlier, suddenly they find it deficient. The result is they have remitted the matter back to the trial Court for a proper report or a proper rereport in this matter. We are unable to understand this conduct. It is the same report which they considered on the earlier occasion and found no fault with it. Now, upon reconsideration of the same report, they consider it inadequate for passing orders. In the counter affidavit, apart from saying that the Board did not find the report to be adequate enough, nothing more is said. In absence of any concrete fact being



mentioned, we can only call it a whimsical stand of the State which is not expected from such a senior and responsible body. However, as the Statutory Body, the Board has taken a decision to call for a fresh report, we would not direct the release of these two petitioners that is petitioners No 10 and 11, namely, Krishna Mohan Mishra and Ramesh Mishra forthwith but hope that the compliance of sending the report would be without any undue delay and so also its consideration by the Board which consideration has to be objective.

11 With the aforesaid observations and directions, both these writ petitions stand disposed of.

(Navaniti Prasad Singh, J)

M.E.H./-

(Sanjay Priya, J)

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