

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1021 of 2016

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Surendra Sharma, S/o Madho Sharma, resident of Village- Raoughadha, P.S.-
Awatar Nagar, District- Saran at Chapra.

.... Petitioner

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar, Patna.
2. The Law Secretary, Govt. of Bihar, Patna.
3. The Inspector General of Jail and Reforms Services, Govt. of Bihar, Patna.
4. The Addl. Inspector, General of Police, Crime Investigation Department, Govt. of Bihar, Patna.
5. The Director, Probation Services, Govt. of Bihar, Patna.
6. The Superintendent, Divisional, Jail Chapra.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Suraj Narayan Sinha, Sr. Advocate
Mr. B.P. Pandey, Sr. Advocate
Mr. Pramod Kumar, Advocate

For the Respondent/s : Mr. Parth Sharthi, G.A.-4
Mr. Utsav Kumar, AC to GA-4
Mr. Apurva Kumar, AC to GA-4

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 17-03-2017

We have heard learned counsel for the petitioner and the
State.

Through this writ application, the petitioner seeks
quashing of the letter no. 205 dated 1.07.2016/ 2.07.2016, as
contained in Annexure-2, of the 6th Additional Sessions Judge, Saran
at Chapra to the Jail Superintendent, Divisional Jail, Saran at Chapra
expressing his opinion regarding his premature release. He has opined



that the convict (petitioner) is not entitled to get sympathy for remission of sentence. Subsequently, the petitioner also filed I.A. No.452/2017 seeking amendment in the writ petition by addition of relief for a direction for immediate release of the petitioner from jail who has served the sentence for about 15 years.

It is submitted on behalf of the State that after receipt of the opinion of the trial Judge, the matter is being processed and though there was initially a technical difficulty as there was no application filed by the petitioner, however, the same having now been filed, the matter is being put up before the Remission Board for taking its decision.

However, Mr. Suraj Narayan Sinha, learned senior counsel appearing for the petitioner has pointed out that seeking opinion is mandatory as per the provisions contained in Section 432 (2) of the Code of Criminal Procedure and which was, in fact, sought by the authority concerned but the opinion itself is a cryptic one as it is not a reasoned one and, as such, no authority could come to a just and proper conclusion after perusal of the same. It will serve no purpose and, as such, a fresh opinion should be sought from the trial Judge.

Upon consideration of the rival contention, this Court finds force in the submission raised on behalf of the petitioner. The



opinion of the trial Judge, which has been appended as Annexure-2, in fact discusses only that the petitioner is a convict and, thereafter, only one sentence has been devoted with respect to his own opinion that the convict is not entitled to get sympathy for remission of sentence. In our considered opinion, that would not be sufficient as the Section 432 (2) of the Code of Criminal Procedure requires that he has to record reason whenever an opinion is given for granting or refusing remission of sentence so that it could be considered beneficially by the competent authority. The reasons are absolutely lacking and, as such, in our opinion also, it will serve no purpose.

In support of aforesaid submissions, learned counsel for the petitioner places reliance upon a decision rendered by a Division Bench of this Court in ***CWJC No.1321 of 2016 (Jagat Sah Vs. the State of Bihar through the Principal Secretary, Department of Home, Bihar, Patna and Ors.) dated 23.12.2016***. While considering the identical issue, the Division Bench has opined as under :-

“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”.

Thus, taking the same line, the Annexure-2 is quashed. We are of the view that the competent authority should seek a fresh report from the Presiding Judge and this time, he would be required to give his opinion recording reasons for coming to such conclusion.

However, since much time has already wasted in a proceeding, this Court would direct for expeditious disposal of the matter by the competent authority but not later than three months from the date of receipt/production of a copy of this order.

It is made clear that the Presiding Judge would also be



required to act expeditiously.

This disposes of the writ petition.

(Dr. Ravi Ranjan, J)

(Vikash Jain, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
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