

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.816 of 2017

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Harishchandra Prasad, Son of Ragho Mahto, Resident of Village- Meyar,
P.S.-Chabilapur, District- Nalanda.

... .. Petitioner

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 , Aadarsh Kendrya Kara, Beur, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Ratnakar Pandey, Advocate
For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 17-08-2017

Heard learned counsel for the petitioner and the State.

The petitioner has approached this Court for a direction to the respondent authorities for premature release of his son, namely, Ajit Kumar @ Ajit Prasad in terms of sentencing policy of the State Government. The son of the petitioner was convicted in Sessions Trial No.545/2001 arising out of Silao (Chabilapur) P.S. Case No.88 of 2001 and was sentenced to undergo life imprisonment vide judgment and order dated 26.02.2005 and 4.03.2005 respectively. Thereafter, he was also convicted in



Sessions Trial No.499/2001 arising out of Bihar P.S. Case No.118 of 2001 and was sentenced to undergo life imprisonment vide judgment and order dated 16.04.2007 and 23.04.2007 respectively.

It has been urged on behalf of the petitioner that his son has completed 14 years of actual conviction and more than 20 years with remission in both the cases and, hence, he should be directed to be released prematurely as per the Bihar State Sentence Remission Policy.

A counter affidavit has been filed on behalf of the State. The stand of the State authorities, so far as conviction in Sessions Trial No.545/2001 is concerned, is that he has completed 14 years of actual imprisonment and 20 years of imprisonment with remission and, thus, he is entitled for his premature release but only after consideration of the opinion of the Presiding Officer as per the requirement under Section 432 of the Code of Criminal Procedure which is still awaited. In paragraph 9 of the counter affidavit, it has been undertaken that no sooner the opinion of the Presiding Officer is received, the proposal for premature release of son of the petitioner would be placed for consideration before the Sentence Remission Board.

However, so far as the second case is concerned, the stand of the State authorities in its supplementary counter affidavit is that



the petitioner's son has completed merely 13 years 05 months and 22 days of actual imprisonment as on 4.07.2017 and 17 years 02 months and 02 days of imprisonment along with earned remission and, thus, the aforesaid period is much less than the mandatory actual custody of 14 years without remission and 20 years with remission. So, his case, so far as the aforesaid Sessions Trial No.499/2001 is concerned, cannot be considered.

However, learned counsel for the petitioner, placing reliance upon the decision of the Supreme Court rendered in **State of Maharashtra and another Vs. Najakat Alia Mubarak Ali [(2001) 6 Supreme Court Cases 311]**, has submitted that so far as the second case is concerned the period from the date of conviction in the first case till his conviction in the second case should be counted as under-trial prisoner also with respect to the second case (Sessions Trial No.499/01).

However, learned counsel for the State has placed reliance upon a subsequent judgment of the Supreme Court rendered in **Atul Manubhai Parekh Vs. Central Bureau of Investigation [2010 AIR SCW 399]** to impress upon this Court that once he was convicted in the earlier case, thereafter, he cannot be considered as under-trial prisoner in any case as he started serving his sentence



as a convict in the concerned case and, thus, that period cannot be treated for counting the set off in the subsequent case.

We find force in the submission made on behalf of the State. The Division Bench of this Court in *Butan Sah Vs. The State of Bihar and Ors. Rendered in 2015 94) PLJR 396* has already considered this aspect of the matter and considering all the decisions of the Apex Court, the Division Bench has stated in paragraph nos. 39, 43 and 44 of the said judgment which is extracted and reproduced as under for better appreciation :

39. Clearly, therefore, the period, which a person spent, while serving a sentence of imprisonment as a convict in one case, would not be taken into account, and be treated, as a remand period or as a period undergone by him as an under-trial prisoner in the other case, wherein he comes to be subsequently convicted.

43. As far as the provision of set off, embodied in Section 428 Code of Criminal Procedure, are concerned, these provisions apply only to the period, which a convict might have undergone during investigation, enquiry or trial of the case in which he comes to be subsequently convicted. Thus, the period, spent by a person as an under-trial prisoner, i.e., during investigation, enquiry or trial in one case, would not be available to him for set off against the sentence of imprisonment, which may be subsequently passed against him in another case.

44. More-over, the period of sentence, which a person spends as a convict, would not be available to him, for the purpose of set off against the period of imprisonment to which he may be sentenced following his subsequent conviction in a different case. The period of imprisonment, which a person spends as an under-trial prisoner is entirely different from the



period, which a person suffer, while serving out sentence of imprisonment as a convict.

In view of the aforesaid decisions as well as decision of the Division Bench, this Court is also of the opinion that the period between conviction in one case and conviction in another sentencing for life cannot be treated as under-trial prisoner in the second case for the purpose of set off and, as such, the petitioner's son would have to wait for his premature release in the second case in which he has been convicted for life.

As a result, this writ application stands dismissed so far as the second case is concerned.

Since he cannot be prematurely released in the second case, there would be no question of his release from custody in the first case also even after such decision is taken by the Remission Board.

However, authority would be at liberty to take a decision in that regard in accordance with law.

Before parting with the matter, since a stand has been taken by the State that the concerned Presiding Officer has not given its opinion in the first case, i.e., Sessions Trial No.545/2001 as yet, we direct the concerned Presiding Officer to send its opinion to the concerned Jail Superintendent within a period of four weeks from the date of receipt/production of a copy of this order.



Let a copy of this order be communicated to the concerned District and Sessions Judge on his official E-mail so that it could be communicated immediately to the concerned Presiding Officer for necessary compliance.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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