

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1113 of 2014

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Mohan Miskar, Son of Late Baldeo Miskar, resident of village - Masumganj,
Police Station - Bhagwan Bazar, District - Saran at Chapra (Bihar)

.... 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 its Chairman, Bihar, Patna
7. The Jail Superintendent, Divisional Jail, Chapra, District - Chapra (Bihar)
8. The Jail Superintendent, Central Jail, Motihari (Bihar)
9. The Jailor, Divisional Jail, Chapra
10. The Superintendent of Police, Chapra

.... Respondents

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Appearance :

For the Petitioner : Mr. Gyan Prakash, Advocate

For the Respondent: Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 06-03-2017

The petitioner has filed this writ petition seeking early release from the jail. He had been convicted by the judgment and order dated 03.03.1998 of an offence under Section 302/34 of the Indian Penal Code along with other accused namely Babulal Miskar, Baldeo Miskar and Raju Miskar, all of them being family members. It was not in dispute that the incident took place owing to land dispute. However, while convicting, the learned 2nd Additional Sessions Judge, Saran at Chapra convicted them and sentenced them to death. Reference was



accordingly made to this Court for confirmation of the death sentence. This Court rejected the reference but upheld the conviction and hence the sentence of life imprisonment to all four with the exception of Baldeo who was acquitted by the High Court. So far as the other three are concerned, upon completion of 14 years of imprisonment and with remission having completed 20 years, they were released way back in the year 2009 itself.

2. The grievance of the petitioner is that even though father co-convict was released way back in the year 2009, mala fide the petitioner had been kept back. The reason is not far to look. While in detention in Divisional Jail, Saran, he was implicated in a case under Narcotic Drugs & Psychotropic Act. Interesting to note that in the trial for N.D.P.S. offence, the petitioner was not only acquitted by the Court but the Court also passed strictures against the then Jail Superintendent for falsely implicating the petitioner and directed for the prosecution of the Jail Superintendent under Section 211 of the Indian Penal Code. This was not a solitary incident because another case was also instituted for an offence under N.D.P.S. Act in which again the petitioner was not only acquitted but again observations were made as against the Jail Superintendent and it was ordered for his prosecution for falsely implicating the petitioner. Having been antagonized by the authorities and having been acquitted in both the cases which were instituted while he was in custody serving out the



sentence, he submits that all authorities are now bent upon ensuring that he does not get the benefit of Section 432 of the Cr. P.C. State does not dispute the fact that while in custody serving out the sentence, the petitioner was implicated in two separate N.D.P.S. cases both of which ended in acquittal and in one case i.e. second case with a direction to prosecute the Jail Superintendent for falsely implicating the petitioner. The malice is thus writ large.

3. Learned counsel for the State has brought on record the deliberation of the State Sentence Remission Board dated 24.01.2017 in which it has noted that in view of the adverse reports of the Probation Officer and the trial Court, fresh views are solicited. State has produced views of the trial Judge (Annexure-C to the counter affidavit) which only says that the manner in which the murder was committed and the suffering caused to the victim as a result of murder was a ground justifying refusal to grant remission. In our view that is not the scope of Section 432(2) of the Code of Criminal Code. A person is sentenced to life imprisonment, *inter alia*, only when he commits murder and every murder has a consequential effect of suffering on someone or the other. If the logic and reason given by the trial Court is accepted then Section 432 Cr. P.C. would be nugatory. It must be remembered that it will apply only to a case where, *inter alia*, a person has committed murder. To say that because the offence is heinous he can not get benefit would be putting the cart before the horse. We may



then refer to the opinion of Probation Officer where in fact he has given an adverse report pointing out that now a third case under N.D.P.S. Act has been instituted on 22.07.2014 against the petitioner and not any other reason.

4. Let it be noted that this writ petition has been pending since 24.11.2014. The petitioner is being implicated in one case or the other. The petitioner has filed five cases against the Jail authorities in which cognizance has been taken for trying to burn him by throwing acid on him. Injury reports from the Jail itself were brought on record before the learned Chief Judicial Magistrate concerned. This clearly shows that it is wholly malicious intention to keep the petitioner behind bars for having protested, that while other co-convicts were being released, he was not being released.

5. We would like to sound a word of caution. State is a welfare State. Section 432 of the Code of Criminal Procedure is an extra-ordinary provision which gives extraordinary power to the State akin to power of pardoning but upon serving out a substantial period of the sentence. When reports are called for from the Jail authorities, it has a purpose. It is only to see as to whether upon release will he mix in the society or not and that he is convicted for a heinous offence is of no consequence. It is only in such a situation Section 432 Cr. P.C. comes into play. We would therefore expect the State to reconsider the matter in correct prospective and the Board to take a proper decision in the



matter in accordance with law. As and when the Board gets the opinion, it would take an independent decision in this matter. In the meantime, the Board would ensure to send a copy of this order to the two authorities from whom fresh opinions have been sought.

6. With these observations and directions, this writ petition stands disposed of.

(Navaniti Prasad Singh, J)

B.T/Ibrar

(Vikash Jain, J)

AFR/NAFR	AFR
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