

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No 272 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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Ravi Pratap Mishra, son of late Ishwardhari Mishra, Resident of Village – Barwat Lachhu, PS – Bettiah Mufassil, District – West Champaran

.... Petitioner/s

Versus

- 1 The State of Bihar Through The 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 Assistant Inspector General, Jail and Reforms Services, Bihar, Patna
- 8 The Jail Superintendent, Khudi Ram Bose Central Jail, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Vijay Kr Singh & Santosh Kr, Advocates

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

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 02-03-2017

Heard learned counsel for the petitioner and learned counsel for the State.

2 A counter affidavit has been filed on behalf of the State. There is no need for reply.

3 The facts are not in dispute. The petitioner was tried in Sessions Trial No 168 of 1999 and, by judgment and order dated 15.02.2001, was sentenced to imprisonment for life by the then



Additional Sessions Judge III, West Champaran at Bettiah for an offence under Sections 302, 307/34 of Indian Penal Code for having murdered one Nitya Nand Mishra due to land dispute. He was about 30 years of age at that time. Having served more than 15 years of physical incarceration as on 11.09.2014 and, with remission, over 21 years, he sought premature release in terms of Section 432 of the Code of Criminal Procedure (for brevity, *Cr P C*). It is not in dispute that he was entitled to be released subject to favourable reports from the Jail Superintendent, the Superintendent of Police, the Probationary Officer and the views of the trial Court. When the matter was taken up by the State Sentence Remission Board (for brevity, *the Board*), views and opinions from all the aforesaid authorities were solicited. The Jail Superintendent clearly indicated that there would be no objection to his release. The concerned Superintendent of Police also communicated that there would be no objection to his release. The Probationary Officer also reported that there would be no objection to his release but when it came to the trial Court, several reminders had to be sent to it to respond. Ultimately, after much persuasion by the Board, the learned Additional Sessions Judge III, West Champaran at Bettiah vide his letter No 49 dated 24.01.2017 (Annexure B to the counter affidavit of the State), sent his opinion as was supposedly required under Section 432 (2) of *Cr P C*. It would be better to quote



the comments of the communication as a whole:

“1 That, first of all, opinion of the Court was sought regarding remission of punishment of named convicts vide letters No 3812, 3813 and 3814 dated 04.06.2016 and the same was sent vide letters No 531 to 533 dated 07.06.2016.

2 That again, vide letter No 5769 dated 01.09.2016, opinion was sought for and the same was answered vide letter No 971 dated 10.11.2016 that in view of para – 143 of the judgment passed by the Hon’ble Supreme Court in Writ Petition (Criminal) No 48 of 2014 i e Union of India –Versus- V Sriharan @ Murugan & Others, opinion was given by this Court vide letter No 531 to 533 dated 07.06.2016. That the manner in which the opinion is to be rendered by the Presiding Officer can always be regulated and settled by the Hon’ble High Court by stipulating the required procedure to be followed as and when such application is forwarded by the Government and there was no such regulation and procedure before this Court.

3 That in this regard up till now, no such regulation or direction has been received from the Hon’ble Court that what procedure is to be adopted by the Court while giving any opinion regarding the remission. But considering the repeated letters in this regard, this Court has no option but to give its opinion on the basis of material available on the record.

4 That from perusal of the record, it transpires that it is a case of murder in which one Nitya Nand Mishra was killed due to land dispute. The murder was brutal nature of crime and was heinous.

5 That considering the circumstances in which the deceased Nitya Nand Mishra was murdered, I do not think it just and proper to show any sympathy to the convicts Ravi



Pratap Mishra, Ramesh Mishra and Krishna Mohan Mishra and, as such, in my opinion, they do not deserve remission of punishment.

The report is submitted for information and needful at once.”

4 Based upon this and, in particular, what is stated in paragraphs 4 and 5 thereof, the Board rejected the claim of the petitioner in its meeting dated 17.02.2017 vide Item No 17. It may be noted that his brother Krishna Mohan Mishra's case, which was identical and in respect of the same trial, was also at Item No 18. The Board appears to have been bound by the opinion of the Judicial Officer and consequently rejected the petitioner's application of premature release. It is the correctness of the opinion of the Judicial Officer and the consequential decision of the Board that is in question.

5 We have heard the parties and considered the matter and, in our view, both the designated authorities have failed to act in accordance with law. A reference to paragraphs 4 and 5 of the opinion of the learned Additional Sessions Judge III would show that all he says is that the petitioner had been convicted for a heinous offence and, as such, does not deserve sympathy. This is clearly putting the cart before the horse and is self-defeating. Section 432 of Cr P C itself comes into play only when a person has been convicted and has served substantial part of the sentence for having committed a heinous offence. Where he is not so convicted, the provision of



Section 432 of Cr P C itself does not come into play. It is only when a person is so convicted for such an offence that the question of premature release arises. If the view taken by the learned Additional Sessions Judge is to be accepted then Section 432 of Cr P C becomes nugatory and serves no purpose. In our view, what is to be seen is whether considering the past conduct of the person leading to commission of the offence, his release is likely to prejudicially affect society? Without being exhaustive, by way of illustration, we may point out, that if there is a serial killer or a psychopathic killer or a person who has repeatedly committed heinous offences, they may be cases where his future conduct cannot be guaranteed and he would be a menace to society upon release. Such would be cases where adverse opinion of the trial Judge can be given because, undisputedly the trial Judge, as we call him, is surely not the Judge who tried the case for the case was concluded more than 15 years ago by another Judge. The trial Judge now has to look into the records and, accordingly, advise the Board but, merely because he was convicted in a heinous offence, is no ground to deny this privilege which the legislature has conferred on a convict of Section 432 of Cr P C. We would just quote the relevant part of paragraph 6 from the judgment of the Apex Court in the case of Shri Mandir Sita Ramji –Versus- Lt Governor of Delhi & Others, (1975) 4 Supreme Court Cases 298:

“... ..When a procedure is



prescribed by the Legislature, it is not for the Court to substitute a different one according to its notion of justice. When the Legislature has spoken, the Judges cannot afford to be wiser.”

6 Thus, the learned Sessions Judge was clearly wrong in his opinion. We may also add that paragraphs 2 and 3 of his communication also show his ignorance. Section 432 of Cr P C does not talk of any guidelines to be laid out by the High Court. The desirability of guideline was merely indicated by the Apex Court in the judgment referred to therein but that does not mean that in absence of guideline laid by the High Court, the learned Additional Sessions Judge is precluded from applying his mind. He is a Judicial Officer trained for such eventuality. It was expected of him to apply himself to the law and the legal requirements. Thus clearly, this is not an opinion which could be taken to be adverse to the petitioner sufficient to deny him the statutory relief under Section 432, Cr P C.

7 Now we may come to the function of the Board. From what has been noted above, it appears that the Board felt bound by the opinion of the Judicial Officer, however irrelevant it may be. Is this stand of the Board correct? In our view, it is not. Board consists of very high level officials. It consists of the Law Secretary, the Home Secretary, the Inspector General of Prison, the District and Sessions Judge, Patna amongst other officials. It is an independent statutory body which has to exercise its independent wisdom in accordance



with law. It is not bound by the opinion of any other person. The opinions of the Jail Superintendent, the Superintendent of Police, the Probationary Officer, the trial Judge are guiding factors to enable the Board to come to an independent opinion. It is not bound by what is said in any one or all of the opinions. We will not try and illustrate this inasmuch as the Board having been constituted by senior responsible officers, they would exercise the power keeping in view the legislative policy as enacted in Section 432 of Cr P C in respect of a convict of a heinous offence and who has served the sentence substantially. It is only such person who are to be considered for release. The object of the Section is not to condemn such persons but to ensure that having spent a substantial period of their sentence, they be permitted to come back into society. It is only when there is serious apprehension about their future conduct, serious and inevitable apprehension about their future conduct upon their release which is bona fide born out from the records that the Board would be legitimately justified in refusing to release the convict otherwise it is not bound by the opinion of the authorities though, as noted above, they are guiding factors to be taken into account. From this meeting itself, we would note that in Item 32, one of the trial Judges made an absurd recommendation. The absurdity is writ large which is quoted hereunder:

“... ..There is no such type of



provision in criminal law after passing the judgment and sentence and the said judgment was confirmed by the Hon'ble Supreme Court. This Court has no right to give any finding regarding the release of said accused. You do as per law i e in accordance with law."

8 The learned trial Judge, who is an officer of the Superior Judicial Service of the rank of Additional Sessions Judge, did not even bother to look for the provision under which his opinion has been sought but notwithstanding this, the Board did recommend the release of the person concerned probably because of the last line written by the trial Judge, that is, you do as per law i e in accordance with law conferring the discretion on the Board. This discretion is always on the Board whether there is a favourable report or not. Board is not bound by the reports for justifiable grounds. It can take a different view of the matter notwithstanding favourable recommendations by all authorities. The Board may still disallow the same which may be valid subject to judicial review. On the other hand, notwithstanding adverse recommendations, the Board may, for justifiable reason, as in this case noted just above, take a different view of the matter and release. Board is constituted of higher officials with a heavy responsibility in this matter. It has to exercise its discretion in a manner compatible to the facts of this case and the law in these regards and the objects with which the Section has been enacted.



9 All this is of course subject to the provisions in these regards as are to be found in the Jail Manual and Prisoners Act as applicable to the facts of individual cases.

10 Thus, considering the whole aspects of the matter, we find that so far as the petitioner is concerned, there is no adverse report and the facts are not such that his release would be prejudicial to the interest of society.

11 We would, accordingly, set aside the decision of the Board with respect to the petitioner and recommend his release forthwith.

12 This writ petition is, accordingly, allowed.

13 Before concluding, we may note that in the said Sessions Trial, two brothers of the petitioner were also similarly convicted. One of them appears at Item No 18 in this meeting itself, namely, Krishna Mohan Mishra. The other is Ramesh Mishra. They are all sons of Ishwardhari Mishra. Other facts being same, we expect the Board to take similar views in those matters as well forthwith.

(Navaniti Prasad Singh, J)

M.E.H./-AFR

(Vikash Jain, J)

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