IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.748 of 2017

==========

Chandra Kant Kumar son of Sri Tribhuwan Sharma Resident of Village - Ahiyapur, Police Station - Arwal, District - Arwal (Bihar).

.... Petitioner.

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Home, Govt. of Bihar, Patna.
3. The State Sentence Remission Board through its Chairman, Govt. of Bihar, Patna.
4. The Law Secretary-cum-Legal Remembrance Department of Law, Govt. of Bihar, Patna.
5. The Director General of Police, Govt. of Bihar, Patna.
6. The Director, Probation Services, Govt. of Bihar, Patna.
7. The Inspector General (Prison) & Jail Reforms, Govt. of Bihar, Patna.
8. The Additional Director General of Police, Criminal Investigation Department, Govt. of Bihar, Patna.
9. The Superintendent, Gaya Central Jail, Gaya.

.... Respondents

==========

Appearance :

For the Petitioner : Mr. Kamla Nayan Choubey, Sr. Adv.
: Mr. Binod Kumar Jha, Adv.
: Mr. Bhairaw Nand Sharma, Adv.

For the State : Mr. Prabhu Naryan Sharma, Adv.

==========

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 20-06-2017

Heard parties.

Through this writ application, the petitioner seeks

WEB COPY

quashing of the decision contained in Annexure-4 so far it concerns the father of the petitioner whose case has been considered at sl.no.19 thereof by which, though recommended for his premature release by the several authorities, the Bihar State Sentence Remission Board (hereinafter referred to as 'the Remission Board') has rejected his claim on the ground that in view of the policy decision of the State as discussed in the Notification No.3106 dated 10.12.2002, the father of the petitioner, who is convict under TADA Act, 1987 along with other provisions of Indian Penal Code including Section 302, would not be entitled for his release in view thereof.

It appears that the Jail Superintendent has recommended for release of the petitioner vide his report dated 12.02.2017. The concerned Superintendent of Police also, in his report dated 14.08.2016, has made a recommendation for his premature release and the Presiding Officer has also observed that the competent authority can take a decision in accordance with law for his release. However, on the aforesaid ground the petitioner's case has been rejected.

The said Notification dated 10.12.2002, as published in the Bihar Gazette (extraordinary) on 28.12.2002, has been appended as Annexure-A to the counter affidavit. Learned counsel

WEB COPY

for the State has drawn attention of this Court towards the eligibility criteria as disclosed in the aforesaid notification. One of the criteria for non-consideration of the premature release is if the prisoner is convicted of heinous offences such as dacoity, rape and terrorist activity etc., which exactly is the reason for rejection in the impugned decision.

However, it is intriguing as to how similar stand would not be taken by the Remission Board with respect to another convict who has been placed at sl. no.24 with respect to whom a decision has been taken for his premature release in the meeting of the Board even though he was convict of rape and murder and his case was rejected on earlier occasion.

It appears that his case was considered once again on the basis of some order passed in Cr. W.J.C. No.237 of 2017 wherein it was observed that co-convicts of petitioner's husband have been released three years back. The Court observed that it is intriguing why the petitioner's husband case has not been referred for being taken up by the Remission Board.

Learned counsel for the State made endeavor to impress upon this Court that since the present petitioner is a convict under TADA, which is a crime against the Nation, his case is distinguishable from the case of rape and murder. Ordinarily this

WEB COPY

sort of argument would appear attractive but on deeper scrutiny the same is to be noted only to be rejected as the notification concerned upon which the State is banking upon being its policy, does not discriminate, for the purpose of rejection of premature release, between a convict of rape and one involved in terrorist activity. There is no other material on record to show that it can be distinguished or any distinction could be made between them for the said purpose.

This is not the first time that the petitioner has approached this Court as he had approached on earlier occasion by filing Cr. W.J.C. No.334 of 2017. It appears that the said case was for issuance of writ of habeas corpus as no decision for release of the petitioner was being taken by the Remission Board. However, during the pendency, it appears, that the Remission Board had rejected the prayer for premature release, as such, the petitioner was permitted to withdraw the application for assailing the order passed by the Division Bench. Hence, this writ application has been filed seeking writ of certiorari for quashing the concerned order.

Mr. Kamal Nayan Choubey, learned senior counsel appearing for the petitioner has drawn attention towards Annexure-9 appended with the supplementary affidavit to impress upon this

WEB COPY

Court that in fact the notification of the State Government as contained in Annexure-A remained dormant as it was not made operational. In fact the Remission Board was constituted first time in the year 2007. There is no denial of this fact from the side of the State.

Now, the question has been raised by the petitioner that if notification was published in the official gazette but the same remained inoperational as the Remission Board was never constituted till the judgment of conviction was passed in the year 2003 in the case of the petitioner whether that would be considered for the purpose of premature release of the petitioner?

So far the first question is concerned, learned counsel for the State has not been able to convince this Court as to under what circumstances such distinction could have been made between the father of the petitioner whose case has been considered at serial no. 19 as well as one of Ajay Kumar Choudhary whose case has been considered at serial no. 24 of Annexure-4. It appears from column 2 that date of his conviction is also 04.08.2003, i.e., after publication of said notification dated 10.12.2002 (Annexure-A), whereas at the same time petitioner's case has been rejected on the ground of the said notification. That apart, the petitioner has clearly stated in paragraph 1 of the writ petition that the said

WEB COPY

notification remained inoperation and was implemented in the year 2007 itself, however, the State authority has not brought any document to show that such notification was made operational immediately and the question would be whether the policy which was made in the year 2003 but was never implemented till the year 2007, can be considered for the case of the convict who was convicted in the year 2003?

However, in view of the fact that the father of the petitioner's case has to succeed on the first issue itself, this Court would restrain itself from deciding the second issue for the present as this is a clear case of discrimination as the same Board in the same meeting has considered the 2002 notification for the purpose of rejection of the case of the father of the petitioner but has allowed the case of convict for rape and murder at serial no. 24 of Anneuxre-4. That apart, learned counsel for the petitioner also points out that a convict who was sentenced with capital punishment vide judgment dated 05.06.2003 in Sessions Trial No. 25 of 2002/206 of 1989 in the case of heinous crime of murder but later on in appeal the sentence was converted to life imprisonment in Cr.App. No. 289 of 2003 and analogous matters, was prematurely released vide the decision taken in the meeting dated 11.09.2012 of the Remission Board (Annexure-14 series to the

WEB COPY

supplementary affidavit). In such a situation, in our opinion, the order passed by the Remission Board with respect to the father of the petitioner is not at all sustainable on the ground of unreasonableness and being discriminatory.

As a result, this writ petition succeeds. The impugned order as contained in Annexure-4, so far it concerns the father of the petitioner, is quashed and set aside.

Let the Remission Board reconsider the matter afresh in accordance with law and also consider the observations made by this Court as above. Fresh decision should be taken in its next meeting or within a period of three months from the date of receipt/production of a copy of this order whichever is earlier.

While dealing with the issue, it would be open for the Board to consider the second issue in accordance with law which has been left open by this Court for the present.

(Dr. Ravi Ranjan, J.)

(S. Kumar, J.)

Vikash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.06.2017
Transmission Date	NA

WEB COPY