

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1503 of 2017

=====

Shyam Choudhary, Son of Lakhi Choudhary, Resident of Village- Bhadasi,
Police Station- Arwal, District- Arwal.

... .. Petitioner/s

Versus

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

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Manish Kumar No-2, Advocate
For the Respondent/s : Mr. P.N. Sharma, AC to AG.

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 06-09-2017

Heard parties.

The petitioner is aggrieved by the rejection of his case for premature release by the Bihar State Sentence Remission Board which has been done vide its decision, as contained in Annexure-5, on the ground that, as per the 2002 Notification, the persons who have been convicted for rape, dacoity or terrorist activities are not



liable to be considered for their premature release even after attaining the qualifying period of incarceration.

It is contended on behalf of the petitioner that several persons were convicted by TADA Court and though the 2002 Notification does not discriminate between a convict of rape with murder or dacoity at one hand and the persons who have been convicted under TADA on the other hand, surprisingly, the Sentence Remission Board has given benefit to first type of convicts, whereas, the petitioner's case has been rejected. It is further urged that this Court in identical case of Tribhuvan Sharma, who was being represented by his son Chandra Kant Kumar in CR.WJC No.748 of 2017, after questioning the issue of discrimination, has remitted back the matter to the Sentence Remission Board to take a fresh decision keeping the question alive as to whether the petitioner's case would be covered by the 2002 Notification or his case would be covered by the earlier notification of 1984. Though this question was kept open to be decided later on, it was noticed in the order that the 2002 notification was published in the Official Gazette of the State of Bihar but it was not implemented as the State Sentence Remission Board, which was required to be constituted for the said purpose, could only be constituted in the year 2007. The petitioner has been convicted in the year 2003.



Thus, the issue would be whether such notification would be applicable at all upon the petitioner or not? However, it appears that this issue was not answered as the writ petition succeeded on the issue of discrimination itself and the matter was remitted back for fresh consideration.

Learned counsel for the State this time has argued that since there are certain provisions in the TADA itself, the petitioner's case cannot be considered for his premature release.

However, adjournments having been granted for that purpose, learned counsel for the State has not been able to show from the statute that actually there are some provision. The Court has not expressed its view that the TADA convict has to be given benefit of premature release by shortening the sentence, however, since the notification itself clearly stipulates that the convicts of rape with murder, dacoity as well as terrorist activities would not be given such benefit, it is startling as to how the remission board would choose to grant such benefit to the convicts of rape with murder which has been noticed in the said judgment and would not grant such benefit to the TADA convicts. This was the reason for setting aside that part of the decision of the Sentence Remission Board and remitting it back for fresh consideration.



In above view of the matter, in our view, this case is also fit to be allowed in terms of the Annexure-6.

Accordingly, the impugned order as contained in Annexure-5 so far as it concerns the petitioner is quashed and set aside. The matter is remitted back to the Bihar State Sentence Remission Board to consider the matter afresh in accordance with law.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	12.09.2017
Transmission Date	N.A.

