

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1316 of 2016

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1. Awadhesh Mandal son of Budhu Mandal
2. Sikander Mahto Son of Manik Mahto,
Both resident of Village Maliniya P.S. Kurshela, District Katihar.

.... Petitioners

Versus

1. The State of Bihar through Principal Secretary, Home Department, Patna, Bihar.
2. The Chief Secretary Bihar, Patna.
3. The Inspector General (Prision) Bihar, Patna.
4. The Jail Superintendent, Mandal Kara, Katihar.

.... Respondents

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Appearance :

For the Petitioners : Mrs. Kumari Sujata Sinha
Mr. Upendra Kumar, Advocates.
For the State : Mr. Partha Sarthy, GA-4
Mr. Utsav Kumar, AC to GA-4

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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: 16-01-2017

The writ petitioners seek a writ of habeas corpus alleging that he has been kept in judicial custody without authority of law. The State was directed to file counter affidavit and the same has been filed. The facts not being in dispute, with consent of parties, we have heard the matter for disposal at this stage itself.

2. Petitioner contended that he was arrested on 17.06.2001 in relation to Kursela P.S. Case No. 31 of 2001 dated 15.06.2001. Having been chargesheeted, he was found guilty of an offence under Section 396 of the Indian Penal Code by the trial court in Sessions



Trial No. 9 of 2002 and was convicted as such on 15.03.2004 and sentenced to death. He preferred an appeal to the High Court, which was heard along with the death reference for confirmation of death sentence but the High Court, by its judgment and order dated 08.03.2007, discharged the death reference and commuted the death sentence to life imprisonment and dismissed the appeal. He has been in custody right from the time he was arrested on 17.06.2001 till date. He, accordingly, submitted that he, having been remained in custody for over 14 years, is entitled to be released and his continued detention would be illegal.

3. A counter affidavit has been filed by the State stating that as per the prevailing Rules and norms as on the date of his conviction on 15.03.2004, a life convict could be released by the State Sentence Remission Board only if he had been in physical imprisonment for a period of over 14 years and along with remission earned, the total period undergone is 20 years. In the case of petitioner, this is not so inasmuch as though he has been in physical custody for slightly over 15 and half years, the total remission earned by him is 3 years 2 months 18 days. Thus, the total period undergone in custody would be about 18 years, 9 months and 7 days, which is undisputedly less than 20 years. His case can thus not be considered for early or premature release.



4. In our view, the stand of the State appears to be correct and legal. Thus, as the petitioner has not completed 20 years of custody with taking into account remissions as well, his custody cannot be said to be illegal as he is not entitled to be released till he completes 20 years of custody in the manner, as explained above.

5. Thus, we find no merit in the writ petition. The same, accordingly, stands dismissed.

(Navaniti Prasad Singh, J)

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

