

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 30 of 2017

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Meena Devi, wife of Jai Nandan Mishra, resident of village Ghorbanki, P.S.
Basopatti, District Madubani.

.... Petitioner

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 Jail Superintendent, Khudi Ram Bose Central Jail, Muzaffarpur

.... Respondents

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Appearance:

For the Petitioner : Mr. Vijay Kumar Singh, Advocate
Mr. Pankaj Kumar Singh, Advocate
For the State : Mr. P.N. 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: 16-01-2017

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

2. By this writ petition, the petitioner seeks premature
release of her husband from judicial custody where he has been
serving out sentence of life imprisonment being convicted for an
offence under Section 302 of the Indian Penal Code. She submits that
her husband has completed more than 14 years of physical



imprisonment and along with remission the total period would add upto 22 years. In view of the Rules and Regulations thereto, he is, accordingly, entitled to be released having undergone imprisonment for more than 20 years including remission.

3. The State has filed a counter affidavit stating that the State Sentence Remission Board considered the case of the petitioner's husband and even though all other conditions were fulfilled the report of the trial Court not being clear, his case was rejected seeking fresh report from the trial Court.

4. We have had the occasion to see the report of the trial Court and we record that though the trial Court consists of a senior Judicial Officer of the rank of District and Sessions Judge, he did not care to look into the law and his responsibility in the matter. His letter under Memo No. 208/2016 dated 1st June, 2016 is an apology for a letter. What we can do is to quote what was stated by the learned Ist Additional Sessions Judge, Darbhanga :-

"In view of letter under reference and subject noted above, you are hereby, directed that as required by you for finding of this Court regarding release of convicted accused Jai Nandan Mishra related to Sessions Trial No. 125 of 1975, 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."



5. If the learned Ist Additional Sessions Judge had cared to read the provisions under which the convict seeks premature release, he would have known his jurisdiction. This Court in the past also pointed out repeatedly that the Judicial Officers are not reading the statutory provisions and what is contained therein before responding to such queries by the State. Relevant provisions of Section 432(2) of the Code of Criminal Procedure, 1973 is quoted hereunder:-

"432. Power to suspend or remit sentences -

(1).....

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists."

6. If the learned Ist Additional Sessions Judge has cared to open the book and read the provisions, he should not have written such a ridiculous letter which shows nothing but his ignorance.

7. It may be noticed that the petitioner alleges about 15 other persons, who are convicted under the same trial as of the petitioner's husband, had already been released in the year 2014, but the petitioner's husband, being ignorant of his right, has languished in the jail for no fault of him.



8. We would accordingly direct the State to seek a proper report in this regard from the concerned trial Judge and take appropriate action upon receipt thereof with promptitude.

9. With this observation the writ petition is disposed of.

(Navaniti Prasad Singh, J)

(Vikash Jain, J)

Chandran

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