

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19761 of 2016

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In the matter Of Letter Dated 11.08.2016 Of Md. Akramul On Behalf Of
Convicted Prisoner Namely Mirza Khan @ Gulam Rasul Khan.

... .. Petitioner/s

Versus

1. The State of Bihar Through Home Commissioner, Old Secretariat Patna, Bihar.
2. The Inspector General of Jail, Old Secretariat Patna Bihar.
3. The District Magistrate, Purnia, Bihar.
4. The Superintendent of Central Jail, Purnia.
5. The Union of India, Ministry of External Affairs.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.
For the Respondent/s	:	Mr. S.D. Sanjay, Addl.S.G.
For U.O.I.		Mr. Rajesh Kumar Verma, CGC
For the State of Bihar		Mr. P.KI. Verma, AAG-3
		Mr. Saroj Kumar, AC to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-09-2017

On the basis of a letter written by the petitioner, namely, Md. Mirza Khan @ Gulam Rasul Khan, a citizen of Afganistan, who had communicated to the Chief Justice of this Court on 11th of August, 2016, this writ petition was registered and notices were issued to the State of Bihar and the Union of India. It was communicated by the petitioner through the said letter that he had been convicted in Sessions Trial No.992 of 2010 by the 1st Additional Sessions Judge, Purnea in Sadar Police Case No.25 of



2010 for an offence under Section 14 of the Foreigners Act, 1946 and had been sentenced to undergo three years' rigorous imprisonment and a fine of Rs.3000/- . In default of payment of fine, he was to undergo three months' further imprisonment. It was his contention in the aforesaid communication that he has already undergone the sentence of imprisonment including the sentence for non-deposit of fine much before two years of writing of this letter and as he was not released from the custody in spite of having undergone the jail sentence, he made the communication.

Considering the fact he was a foreign citizen and the question of his release has to be decided after consultation with the Government of the country concerned, the Union of India and the State of Bihar were noticed and the matter was kept pending since 19.12.2016, various communications were made and the Government of India was directed to apprise this Court as to what action is required to be taken.

Today, an office memorandum dated 4/9/2017, issued by the Deputy Secretary, in the Ministry of External Affairs, PAI Division, has been brought to our notice by the learned Counsel representing the Union of India and the communication made by the Ministry indicates that the Embassy of Afghanistan has not given certain information and the matter is still pending. The



Government of India, in the Ministry of Home, according to the learned Additional Solicitor General, has also forwarded the guidelines to the State of Bihar laying out the procedure for deportation of a foreigner and it is stated that now the State of Bihar is to take action in the matter.

However, today a supplementary counter affidavit has been filed by the State of Bihar which depicts a totally different picture which has much bearing with regard to the issue in question. From the counter affidavit filed by the State of Bihar, we find that the applicant herein, namely, Md. Mirza Khan @ Gulam Rasul Khan was earlier put to trial in the State of Andhra Pradesh in a Sessions Trial conducted against him for an offence under Section 302 of I.P.C. He was sentenced to life imprisonment and was undergoing the sentence in Central Prison, Kadapa, in the State of Andhra Pradesh. However, the State of Andhra Pradesh, on the occasion of Independence Day in the year 2009, granted him remission and released him on parole and the conditions of the parole were that he would be released after executing a personal bond of Rs.25,000/-. After his release, he would appear before the Probation Officer and the police station concerned once in a three months, for a period of five (5) years from the date of release and in case violation of order is committed while



undergoing the period of probation or parole, he shall be re-arrested, the remission shall be cancelled and he will have to undergo the remaining part of the sentence. From the counter affidavit filed by the State of Bihar and the communication made by the Government of Andhra Pradesh through G.O.Ms. No.29 dated 3.3.2017, it transpires that after the petitioner was released on parole, as indicated hereinabove, because of his involvement in the case under Section 14 of the Foreigners Act, read with Sections 121 and 121A of I.P.C. and Section 12 of the Passport Act, he has been punished and has undergone the punishment for three years in Purnea Jail and because of this there being violation of the terms and conditions on which he was released by the Government of Andhra Pradesh, it is indicated that the Government of Andhra Pradesh has already cancelled the parole granted to him. It is said that now he has to be taken into custody, sent to the State of Andhra Pradesh and is to undergo the remaining part of the sentence for the offence for which he was convicted under Section 302 of I.P.C. and for which the Government of Andhra Pradesh and the Government of Bihar are in communication with each other. The Government of Andhra Pradesh is in the process to take him into custody and confine him



to a prison in Andhra Pradesh for undergoing the remaining sentence.

That being so, as is now apparent from the supplementary counter affidavit filed by the State of Bihar and the documents, Annexures A and B, annexed therewith, which clearly goes to show that the parole granted by the Government of Andhra Pradesh has been cancelled vide order, Annexure A dated 10.3.2017 and they are now required to take further action into the matter for taking him into custody and confining him for undergoing the remaining part of the sentence after cancellation of his remission under Section 432(3) of Cr.P.C., we see no reason to make any indulgence in the matter for release of the applicant. The prayer for release, as communicated to this Court, cannot be accepted in the light of the fact available on record, now it is for the Government of Andhra Pradesh and the State of Bihar to take steps for effecting transfer of the applicant from the State of Bihar to the State of Andhra Pradesh and for the State of Andhra Pradesh to take steps for ensuring that he undergoes the remaining part of the sentence. That apart, in case the petitioner has any grievance with regard to the action taken by the State of Andhra Pradesh, he has to challenge the same in accordance with law.



Accordingly, now in the light of the aforesaid facts available on record and the reasons discussed hereinabove, the petition stands disposed of.

A copy of this order be forwarded by the Registrar General immediately to the Superintendent of Jail in question at Purnea for communication and service on the applicant petitioner, namely, Md. Mirza Khan @ Gulam Rasul Khan for necessary action in view of the aforesaid developments.

With the aforesaid, this petition stands disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	12.9.2017
Transmission Date	

