

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.778 of 2018

Arising Out of PS. Case No.-41 Year-1987 Thana- PARSA District- Saran

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1. Ram Dayal Rai, S/o Late Kashish Rai, R/o Village Peer Maker, Mali Tola, P.S. Maker, Dist-Saran Chapra.
 2. Baleshwar Rai S/o Late Bhikan Rai, R/o Village Peer Maker, Mali Tola, P.S. Maker, District-Saran Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar, Through The Chief Secretary, Government of Bihar, Patna.
2. The State Remission Board through the Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Joint Secretary Cum Director (Administration) Home Department, Government of Bihar, Patna.
4. The Secretary, Law Department, Government of Bihar, Patna.
5. Inspector General Jail & Reforms Services, Government of Bihar, Patna
6. The Registrar, Civil Court, Saran at Chapra
7. The Jail Superintendent, Mandal Kara, Saran Chapra

... .. Respondent/s

Appearance :

For the Petitioner/s : M/s Sandeep Kumar and
Avanish Kumar Singh, Advocates

For the Respondent/s : Ms. Prachi Pallavi, AG to AG

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 09-03-2018

Heard learned counsel for the petitioners and the State.



This writ application has been filed for a direction to the respondents to consider the premature release of the petitioners in terms of the Short Sentencing Policy of the State of Bihar.

This is the second time, the writ petitioners have approached this Court. On the first occasion, they had filed Cr.W.J.C. No. 2120/2017 which was disposed of by a judgment dated 8.11.2017, a copy of which stands appended as Annexure 5. It appears from the judgment that this court has found that Presiding Officer did not apply his mind in accordance with the provisions contained in Section 432 of Cr.P.C. as well as Short Sentencing Policy of the State of Bihar rather a mechanical opinion was given by him. In that background of the matter, the Presiding Officer was directed to send a fresh opinion in accordance with law. Thereafter, direction was to forward the matter before the Bihar State Sentence Remission Board (hereinafter referred to as “the Board”) so that it could be considered in its next meeting. The writ petitioners have appended the fresh opinion of the Presiding Officer of the concerned court as Annexure 6 which runs in more than three pages. It is submitted by them that in fact again a cryptic opinion has been given inasmuch as it has taken and dealt with facts which were available at the stage of trial and after



holding that since the petitioners have been convicted for heinous crime, therefore, they should not be released.

This Court as well as co-ordinate Benches on so many occasions have dealt with this issue and has held that while giving an opinion pursuant to the provision contained in section 432 of the Cr.P.C., whether the crime was heinous or not would not to be the only thing which is to be taken as consideration for that purpose. A prayer for premature release is made only for the reason that there is Short Sentencing Policy of the state of Bihar. The Presiding Officer, thus, has to consider whether it comes under the Policy or not and whether their release would be detrimental for the public peace or tranquility or not or any other issue which it is post trial but not pre-trial.

Be that as it may, we are not making any final decision regarding the aforesaid issue as the final decision of the Board is not available on record. Thus, we find this writ application is premature.

We must record it further that this Court has held in **Cr.W.J.C. No. 2224 of 2017 [Ram Babu Singh vs. The State of Bihar & Ors]** and in **Cr.W.J.C. No. 434 of 2018 [Rajo Sharma Vs. The State of Bihar & Ors.]** that even if such adverse opinion is given by the Presiding Officer that would not be binding upon



the Board as the Board would have power to take an independent decision in accordance with law even contrary to such opinion but only after recording reason for doing that.

The opinions which are required to be procured from different authorities including the opinion of the Presiding Officer under section 432 of the Cr.P.C. or other relevant provision only provides tools and assistance to the Board to reach a just and proper conclusion. A reference is made in this regard to a decision of a Division Bench of this Court rendered in **2017(2) PLJR 201 [Ravi Pratap Mishra Vs. The State of Bihar & Ors.]**.

In aforesaid background of the matter, we are inclined to dispose of this writ application with a direction to the Board to take a decision on its own merit and in accordance with law with respect to the case of the petitioners expeditiously preferably in its next meeting from the date of receipt / production of a copy of this order and while doing that, it would be required to consider various judicial pronouncements including those which stand mentioned in the present order.

However, in case a decision has already been taken by the Board that should be communicated to the petitioners immediately as learned counsel for the petitioners submitted that no such decision has been received by the petitioners as yet. Even if a fresh



decision is taken in compliance of the present direction, that
should also be communicated to the petitioners immediately.

(Dr. Ravi Ranjan, J)

(Prakash Chandra Jaiswal, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.03.2018
Transmission Date	NA

