

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.299 of 2018

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Ramanuj Tiwari, S/o Mahant Tiwari, R/o Village- Barki Kothia, Buxar (M),
P.S.- Buxar, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Inspector General, Prison and Reform services, Government of Bihar, Patna.
4. The Additional Director General of Police, Crime and Investigation Department, Bihar, Patna.
5. The Director, Parviksha Services, Bihar, Patna.
6. The Incharge Ad. A.D.J. Ist Buxar.
7. The Superintendent Open Jail, Buxar.
8. The Jail Superintendent Open Jail, Buxar.
9. The Bihar State Sentence Remission Board through the Principal secretary, Department of Home, Bihar, Patna.
10. The Probation Officer, Department of Home (Prison), Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rakesh Kumar Singh, Advocate
For the Respondent/s	:	Md. Nadeem Seraj (GP-5)
		Mr. Dhurendra Kumar, AC to GP5

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 07-02-2018

Heard learned counsel for the petitioner and the State.

This writ application has been filed for the following reliefs :

(a) For issuance of a writ in the nature of habeas corpus or any other appropriate writ, order or direction for quashing the order in letter no.2 dated 31.05.2016 (Annexure-4) passed by respondent no.6 as well as decision



of State Remission Board dated 30.06.2016 (Annexure-5) along with another, afresh, decision taken by the State Remission Board on 27.07.2017 (Annexure-8) whereas and whereunder the Board had received the 21 orders passed by this Hon'ble Court and rejected the prayer of the petitioner.

(b) For issuance of writ in the nature of habeas corpus directing the respondents to release the petitioner from judicial custody on remission whereas he served more than 16 years of physical incarceration and with remission over about 22 years.

(c) For issuance of direction to release the petitioner in terms of Section 432 of Cr. P.C. as well as the remission/short sentencing Policy dated 21.01.1984.

(d) For issuance of any other order for relief(s) as the petitioner is entitled for in the facts and circumstances of the case.

From perusal of the counter affidavit as well as the decision of the Board, it appears that the Board, after considering the adverse opinion given by the Presiding Officer, had taken a decision rejecting the proposal for release of the petitioner. For better appreciation the opinion dated 31.05.2016 of the Presiding Officer which stands entered at Column No.8 (Annexure-8) is extracted as under:-

“03

31.05.2016

..... “This accused has made many fires from his rifle and due to which Gauri Shanker Mishra fell down. Gauri Shankar Mishra requested not to kill him despite that this petitioner again fired on



him. Due to which Gauri Shanker Mishra died on spot. This is a cold blood murder. In my view this accused does not deserve remission in sentence”.

From perusal of the aforesaid, it appears that the petitioner was convicted for life for brutal murder of one person and as such the Presiding Officer has found his case not fit for release.

In our view, the decision taken by both the forums, the Presiding Officer as well as the Board are erroneous as both of them have failed to act in accordance with law.

The issue is no longer *res integra* having been considered and decided by a Division Bench of this Court rendered in Cr.W.J.C. No. 272 of 2017 [Ravi Ratap Mishra Vs. The State of Bihar & ors.].

After consideration in almost identical circumstance it has been held that what would be relevant is as to whether it emanates from the records that release of the prisoner would be detrimental for the peace and tranquility of the society but there is no such consideration. The Presiding Officer has merely said that since he has been convicted for a heinous crime, therefore, he should not be released. In our opinion, it defeats the very purpose of Section 432 of the Code of Criminal Procedure which would only be applicable if a person is convicted and, thereafter, in accordance



with the policy of the State, completes qualified period of incarceration. The Division Bench in aforesaid decision has considered and held as under:

“5 We have heard the parties and considered the matter and, in our view, both the designated authorities have failed to act in accordance with law. A reference to paragraphs 4 and 5 of the opinion of the learned Additional Sessions Judge III would show that all he says is that the petitioner had been convicted for a heinous offence and, as such, does not deserve sympathy. This is clearly putting the cart before the horse and is self-defeating. Section 432 of Cr P C itself comes into play only when a person has been convicted and has served substantial part of the sentence for having committed a heinous offence. Where he is not so convicted, the provision of Section 432 of Cr P C itself does not come into play. It is only when a person is so convicted for such an offence that the question of premature release arises. If the view taken by the learned Additional Sessions Judge is to be accepted then Section 432 of Cr P C becomes nugatory and serves no purpose. In our view, what is to be seen is whether considering the past conduct of the person leading to commission of the offence, his release is likely to prejudicially affect society? Without being exhaustive, by way of illustration, we may point out, that if there is a serial killer or a psychopathic killer or a person who has repeatedly committed heinous offences, they may be cases where his future conduct cannot be guaranteed and he would be a menace to society upon release. Such would be cases where adverse opinion of the trial Judge can be given because, undisputedly the trial Judge, as we call him, is surely not the Judge who tried the case for the case was concluded more than 15 years ago by another Judge. The trial Judge now has to look into the records and, accordingly, advise the Board but, merely because he was convicted in a heinous offence, is no ground to deny this privilege which the legislature has conferred on a convict of Section 432 of Cr P C. We would just quote the relevant part of paragraph 6 from the judgment of the Apex Court in the case of Shri Mandir Sita Ramji –Versus- Lt Governor of Delhi & Others, (1975) 4 Supreme Court Cases 298:



“... ..When a procedure is prescribed by the Legislature, it is not for the Court to substitute a different one according to its notion of justice. When the Legislature has spoken, the Judges cannot afford to be wiser.”

6 Thus, the learned Sessions Judge was clearly wrong in his opinion. We may also add that paragraphs 2 and 3 of his communication also show his ignorance. Section 432 of Cr P C does not talk of any guidelines to be laid out by the High Court. The desirability of guideline was merely indicated by the Apex Court in the judgment referred to therein but that does not mean that in the absence of guideline laid by the High Court, the learned Additional Sessions Judge is precluded from applying his mind. He is a Judicial Officer trained for such eventuality. It was expected of him to apply himself to the law and the legal requirements. Thus clearly, this is not an opinion which could be taken to be adverse to the petitioner sufficient to deny him the statutory relief under Section 432, Cr P C. "

So far the Board is concerned, a view has been taken by the Division Bench that the various opinions are solicited for the purpose of assisting the Board to come to a just and proper conclusion regarding the release of the prisoner. They would be guiding factors only and would not be binding upon the Board. The Board after consideration of the opinion including the opinion of the Presiding Officer may, after recording reason, accept or deny to accept the opinion and may take another view in the matter.

The Division Bench in this regard has further held as under:

“7 Now we may come to the function of the Board. From what has been noted above, it appears that the Board felt bound by the opinion of the Judicial Officer, however irrelevant it may be. Is this stand of the Board correct? In our view, it is not.



Board consists of very high level officials. It consists of the Law Secretary, the Home Secretary, the Inspector General of Prison, the District and Sessions Judge, Patna among st other officials. It is an independent statutory body which has to exercise its independent wisdom in accordance with law. It is not bound by the opinion of any other person. The opinions of the Jail Superintendent, the Superintendent of Police, the Probationary Officer, the trial Judge are guiding factors to enable the Board to come to an independent opinion. It is not bound by what is said in any one or all of the opinions. We will not try and illustrate this inasmuch as the Board having been constituted by senior responsible officers, they would exercise the power keeping in view the legislative policy as enacted in Section 432 of Cr P C in respect of a convict of a heinous offence and who has served the sentence substantially. It is only such person who are to be considered for release. The object of the Section is not to condemn such persons but to ensure that having spent a substantial period of their sentence, they be permitted to come back into society. It is only when there is serious apprehension about their future conduct, serious and inevitable apprehension about their future conduct upon their release which is bona fide born out from the records that the Board would be legitimately justified in refusing to release the convict otherwise it is not bound by the opinion of the authorities though, as noted above, they are guiding factors to be taken into account. From this meeting itself, we would note that in Item 32, one of the trial Judges made an absurd recommendation. The absurdity is writ large which is quoted hereunder:

“... .. 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.”

8 The learned trial Judge, who is an officer of the Superior Judicial Service of the rank of Additional Sessions Judge, did not even bother to look for the provision under which his opinion has been sought but notwithstanding this, the Board did recommend the release of the person concerned probably because of the last line written by the trial Judge, that is, you do as per law i e in accordance with law conferring



the discretion on the Board. This discretion is always on the Board whether there is a favourable report or not. Board is not bound by the reports for justifiable grounds. It can take a different view of the matter notwithstanding favourable recommendations by all authorities. The Board may still disallow the same which may be valid subject to judicial review. On the other hand, notwithstanding adverse recommendations, the Board may, for justifiable reason, as in this case noted just above, take a different view of the matter and release. Board is constituted of higher officials with a heavy responsibility in this matter. It has to exercise its discretion in a manner compatible to the facts of this case and the law in these regards and the objects with which the Section has been enacted.

9 All this is of course subject to the provisions in these regards as are to be found in the Jail Manual and Prisoners Act as applicable to the facts of individual cases.”

Having considered the facts and circumstances of the case and the decision of the Division Bench discussed as above, we are also of the view that the opinion of the Presiding Officer as available in this case could not have been taken to be adverse to the petitioner sufficient to deny him the statutory relief under Section 432 of the Code of Criminal Procedure and the Board could have taken the different view in the matter accordingly.

Accordingly, Annexure-4, 5 and 8 are quashed and set aside. the matter is remitted back to the Remission Board to take a fresh decision in accordance with law and also considering the observations and findings recorded in the present writ application.



It is expected that such decision would be taken by the Board
in its next meeting after receipt / production of a copy of this order.
As a result, this writ application succeeds.

(Dr. Ravi Ranjan, J)

(Prakash Chandra Jaiswal, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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