

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1894 of 2018

Arising Out of PS. Case No.-55 Year-1997 Thana- CHHATAPUR District- Supaul

Bal Kumar Bhagat, son of Bijendra Prasad Bhagat, resident of village-Tamua,
P.S.-Chatapur, District-Supaul.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna.
2. The Principal Secretary-cum-Commissioner, Department of Home, Government of Bihar, Patna-cum-Chairman, Remission Board, Patna.
3. The Secretary, Department of Law, Government of Bihar, Patna.
4. The Director General of Police, Govt. of Bihar, Patna.
5. The Inspector General of Police, Koshi Division, Saharsa.
6. The Inspector General (Jail and Reforms Service), Government of Bihar, Patna-cum-Member, Remission Board, Patna.
7. The Deputy Inspector General (Jail and Reforms Service), Government of Bihar, Patna.
8. The Director, Probation Service, Government of Bihar, Patna.
9. The Bihar State Sentence Remission Board, Patna through its Chairman.
10. The District Magistrate, Supaul, District-Supaul.
11. The Superintendent of Police, Supaul.
12. The Superintendent of Divisional Jail, Supaul, P.S. + District-Supaul.
13. The Probation Officer, Home (Jail), Department of Home, Supaul.
14. The S.H.O., Chhatapur Police Station, District-Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Amrit Abhijat, Advocate
For the Respondent/s : Ms. Prachi Pallavi, AC to AG.

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 08-08-2018

Heard learned counsel for the petitioner and the State.

The challenge has been made to the order of the Bihar

State Sentence Remission Board dated 3.05.2018 by which the



petitioner's claim for his release under the Short Sentencing Policy of the State has been rejected on the ground that the Presiding Officer's opinion is adverse.

We have seen the recommendation. In column no.8, the opinion of the Presiding Judge, i.e., A.D.J.-1, Supaul has been quoted. It appears therefrom that he has given adverse opinion on two grounds. Firstly, that the High Court is the real authority to give opinion in such matters and secondly, that the petitioner had committed brutal murder of the deceased and, therefore, he is not entitled for any remission.

We have held time without number that such recommendations are not binding upon the Remission Board. The provision for seeking opinion has been inserted in the statute only with a view to have sufficient materials before the competent authority to reach to a conclusion but if such opinions are not based on cogent materials and that would not be binding upon the Remission Board. The Board, after recording reasons, may differ from the opinion also. It will be its discretion to reach to the conclusion irrespective of the fact whether there is favourable report or opinion or not. So far as the first part of the opinion of the Presiding Judge is concerned, that is not at all tenable and he has totally misdirected and mis-oriented himself in making such



comment that the High Court is competent for supply of such opinion to the statutory authority. Sub-section 2 of Section 432 of the Code of Criminal Procedure, of course, says that the opinion has to be given by the Presiding Judge of the Court which has conducted the trial by which the conviction was confirmed but it does not mean that he will jump to the subsequent part and forget the first part that he was the Presiding Judge of the concerned trial court and he was required to give opinion. Under the Prison Rule also, it is the Presiding Judge who has to give such opinion. Thus, in our view, that part of the opinion that only the High Court is required to supply such opinion to the statutory authority is held to be totally unwarranted and recorded under utter misconception. So far as the other part of the opinion of the Presiding Judge is concerned, we have already held in several decisions that in almost all the cases in which capital sentence has been awarded and subsequently converted to life sentence or life imprisonment has been given, crime must be heinous. That does not mean that the Short Sentencing Policy of the State would not be applicable in such matters. The exclusion lies embedded in the State Policy, i.e., the Prison Rules itself. The Presiding Judge should have opened the book and should have tried to see what is the short sentencing policy of the State, thereafter, he should have formed opinion. If a



person has been convicted in a heinous crime, it does not mean that short sentencing policy would not be applicable to him unless and until his class stands excluded by the policy. In this regard, a reference is made to a decision of a Division Bench rendered in **[2017 (2) PLJR 201 (Ravi Pratap Mishra Vs. The State of Bihar and Ors.)]** as well as the decision dated 1.12.2017 rendered in CWJC No.2224 of 2017 as also a decision dated 7.03.2018 rendered in CWJC No.735 of 2018 holding that the Presiding Judge has totally misled himself in reaching to such conclusion merely on the basis of the fact that the crime was heinous without checking as to whether such type of offence is excluded from the Short Sentencing Policy of the State or not. The Remission Board has also committed the same error by not considering the materials and only banking upon such report of the Presiding Judge which is not at all tenable and it has not gone through the various judicial pronouncements of this Court on the concerned issue and, without doing that, it has come to such conclusion in rejecting the claim of the petitioner.

In the result, this writ application succeeds. The decision of the Board dated 3.05.2017, so far it concerns the petitioner, is quashed and set aside. The matter is remitted 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 within a period of three months from the date of receipt/production of a copy of this order.

However, it is made clear that since the date of petitioner’s conviction is 18.01.2001, the 1984 Policy would be applicable in his case.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

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