

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2324 of 2018

Arising out of P.S. Case No.- Year- Thana- District- Buxar

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Ajay Parwat, Son of Makeshwar Parwat, Resident of Village-
Lohrhi, P.S.- Chapra (Muffasil), District- Saran at Chapra, at
present- Paritola (Babhanaiya) P.S.- Garkha, District- Saran,
Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar at Patna.
2. The Secretary, Home Department cum Chairman State Sentence Remission Board, Bihar, Patna.
3. The Commissioner, Home Special Government of Bihar, Patna.
4. The Inspector General (Prison) Government of Bihar, Patna.
5. The Jail Superintendent, Open Jail Buxar.
6. The Jailor Open Jail Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Prasad, Advocate

For the Respondent/s: Mr. P.N. Sharma, AC to AG

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE MADHURESH
PRASAD
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 25-10-2018

Heard parties.

The Principal Probation Officer, Saran, Chapra is
present before this Court along with the records.

We find from the records and we are of the opinion that
save and except that few letters supposedly written by the family
members of the victim there is nothing on record to show that



there is any inquiry in accordance with law done by the Principal Probation Officer. He expresses remorse and assures us that he will perform inquiry properly in future. His such statement is accepted and we now do not intend to move further in that respect.

Now coming to the main issue. The decision of the Bihar State Sentence Remission Board is under-challenge before us and with a further relief to direct for release of the prisoner who has admittedly completed about 18 years 2 months and 8 days of actual incarceration and 20 years 3 months 29 days along with remission.

The claim of the writ petitioner has been rejected by the Board on twin grounds. First is the adverse report of the Principal Probation Officer in which he has stated that there can be law and order problem if the prisoner is released prematurely. Second ground is that the Presiding Judge has given a report that since murder of the concerned was committed in the presence of his mother and crime is very heinous, as such, he should not be released, however, in our view, both the grounds cannot be sustained.

So far the Principal Probation Officer is concerned, we have already stated that there is no proper inquiry made on behalf of him and he has transgressed his jurisdiction saying that there



would be a problem of public peace and tranquility. That was the domain of the police authority to assess and for that purpose a separate report of Superintendent of Police is also sought and the Superintendent of Police has given a report that there will be law and order problem if the prisoner is released.

So far the Presiding Judge is concerned, his report is not acceptable for the reason that he has relied upon the pre-trial conduct of the prisoner, i.e., commission of the offence for which he has been convicted, in coming to the aforesaid conclusion.

We have said time without numbers in several decisions, that what is required to be considered is the post-conviction conduct of the prisoner. If the convict is serving life sentence it would definitely mean that he was involved in heinous crime. If that is taken as yardstick for determining as to whether a prisoner should be prematurely released or not in terms of the short sentencing policy of the State then not a single such prisoner would be released and result in frustrating the policy itself. The short sentencing policy is a reformist approach of the State and for that purpose we have held on several occasions that his conduct during his period of incarceration would be of paramount importance and for that reason the report of the Jail Superintendent and Probation Officer etc. is required which would be made



available to the Presiding Officer so that he could reach just and proper conclusion.

A reference in this regard is made to a decision of this Court rendered in **Cr.W.J.C. No. 2355 of 2017 on 29.11.2017 (Tahir Mian vs. The State of Bihar & Ors.)** in which almost identical view was taken by the Presiding Officer.

The Division Bench has concluded by saying that in the facts and circumstances of the case 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 as well as the benefits of Short Sentencing Policy of the State and the Board could have taken a different view in the matter.

We have held that the reports called from various authorities which are available to the Remission Board for taking a decision are not binding upon the Remission Board. These are only for assistance of the Remission Board to reach to just and proper conclusion. If the reports are not in accordance with law and not acceptable then the Remission Board can take a different view in the matter accordingly. We are of the view that the Remission Board has based its decision upon the report of the Probation Officer as well as the Presiding Judge both of which, as



discussed above were unsustainable. Otherwise, the Remission Board could have easily come to some other conclusion also.

In the result, this writ petition succeeds. The decision of the Remission Board, as contained in Annexure-2 so far it concerns the writ petitioner, is quashed and set aside.

Accordingly, 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 Remission Board in its next meeting after receipt/production of a copy of this order.

Personal appearance of the Principal Probation Officer, Saran, Chapra is dispensed with.

(Dr. Ravi Ranjan, J)

Vikash/-

(Madhuresh Prasad, J)

AFR/NAFR	NAFR
CAV DATE	NA
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