

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2080 of 2018

Arising Out of PS. Case No.-46 Year-1996 Thana- DAUDPUR District- Saran

Hardeo Rai, Son of Late Ram Jee Rai @ Tuna Rai, Resident of Village-
Soniya, P.S.- Daudpur, District- Chapra (Saran), Bihar.

... .. 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, Kendriya Kara Buxar.
6. The Jailor, Kendriya Kara Buxar.
7. The Superintendent of Police Saran at Chapra.
8. The Officer-in-Charge Daudpur P.S. district Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Umesh Prasad, Advocate
For the State : Mr. P.N. Sharma, AC to AG

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

Date : 06-09-2018

Heard parties.

Through this writ application, the petitioner seeks his release in terms of short sentencing policy of the State and also for setting aside the decision dated 03.06.2018 of the Bihar State Sentence Remission Board (hereinafter referred to as “the Board”) to the extent it is applicable to the petitioner by which, the petitioner’s claim for release in view of the short sentencing policy of the State has been rejected on the ground that the Board



has concurred with the opinion of the Presiding Officer that in view of the heinous nature of crime committed by the writ petitioner, it would be hazardous to the society and prejudicially affect the same.

This Court in several of its decisions has held that what is to be considered under the short sentencing policy of the State for grant of such benefit is not actually the nature of crime being heinous, rather the consideration should be as to whether the release of such prisoner would be detrimental to the peace and tranquility of the society or not for the reason that for such crime, such prisoner has already been convicted and has undergone considerable period of sentence, i.e., at least 14 years of actual imprisonment and 20 years with remission.

From the decision, it appears that the Jail Superintendent has given its opinion that his conduct during the period of incarceration was satisfactory. The Superintendent of Police concerned has also given its opinion that if he is released, there is no possibility of any problem with respect to peace and tranquility of the society. The Probation Officer's report is also favourable but it appears that the Presiding Officer, without considering such report, has come to such conclusion only on the basis of the nature of the crime which was committed by him for



which he, as stated above has undergone 14 years of actual imprisonment and 20 years with remission. It appears that the Board also overlooking the report of Superintendent of Police that there is no issue of breach of peace and tranquility of the society in view of his release, has simply accepted the opinion of the Presiding Officer without assigning any reason. In **Tahir Mian Vs. the State of Bihar and others (C.W.J.C. No. 2355 of 2017)**, this Court vide order dated 29.11.2017 has considered the issue and has held that such opinion of the Presiding Officer merely on the basis of the heinous crime which was committed and opining that he is not entitled for release is not sustainable. It has held that giving such opinion pursuant to Section 432 of the Cr.P.C. would amount to putting the cart before the horse and would be self-defeating. Anybody who has been convicted under Section 302 of the I.P.C. in all cases has to be held that crime was heinous otherwise, they would not have been convicted under the aforesaid section. Then what is the purpose of Section 432 of Cr.P.C., if they are not to be considered for short sentencing policy on such ground? For such reason, the State Government has come with a policy as to what type of nature of crime, the short sentencing policy would be attracted or not attracted. The crime of murder is not one amongst the prohibited nature and category of offence.



For such purpose, rape, dacoity and terrorist activities have been excluded in 2002 Policy. Only premeditated murder as a result of organized crime has been excluded from the ambit of grant of such benefit under the short sentencing policy.

All these aforesaid matters have neither been considered by the Presiding Officer nor by the Board. This Court has already held in so many of its decisions that the various opinions which are being sought under the policy of the State or under the provisions contained under Section 432 of Cr.P.C. are merely for assisting the State to reach to a conclusion with respect to grant or non-grant of benefit under such policy to a particular prisoner. It does not mean that those opinions are binding upon the State or the Board rather the Board may take a different view of the matter, and arrive at a different conclusion even after considering these opinions. But if it is differing then it has to record the reason for that.

Having regards to the aforementioned facts and circumstances and discussion, we are of the view that the decision of the Board suffers from the vice of non-consideration of the relevant material as it has merely considered the opinion of the Presiding Officer who has not recorded any reason that why it has not concurred with the opinion given by the Superintendent of Police, Superintendent Jail and Probation Officer that the release



of the prisoner would not be detrimental for peace and tranquility of the society.

In the result, this writ application succeeds. The impugned decision, as contained in Annexure-3, so far it concerns the writ petitioner, is quashed and set aside. The matter is remitted back to the Bihar State Sentence Remission Board to take decision afresh in accordance with law and also considering the observations and findings recorded in the present order in its next meeting after receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

(Madhuresh Prasad, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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