

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.832 of 2018

Arising out of P.S. Case No.-70 Year-1994 Thana-
RAGHUNATHPUR District- Siwan

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PARMA KURMI @ PARMA PATEL, Son of Late Bir Bahadur Kurmi, Resident of Village- Narahan, Police Station- Raghunathpur, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Department of Home, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Prison, Bihar, Patna.
4. The Inspector General of Jail (Prisoner), Bihar, Patna.
5. The Joint Superintendent Special Central Jail, Bihar.
6. The Prison Officer, Bhagalpur Special Central Jail, Bihar. null null
7. The Superintendent Mandal Kara, Siwan.
8. The Superintendent of Police, Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Advocate

For the Respondent/s: Mr. Prabhu Narayan 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 : 18-09-2018

Heard parties.

It is the third time when the writ petitioner who is serving life sentence has approached this Court for premature release in terms of the short sentencing policy of the State. On the



first occasion, he had challenged the order passed by the Remission Board rejecting his claim in CWJC No. 716 of 2013 which was allowed vide order dated 11.12.2013 as contained in Annexure-2 setting aside the order of the Board and for fresh consideration in terms of 1984 Policy by speaking order. On the second occasion, when the petitioner came before this Court then Cr.W.J.C. No. 398 of 2017 was disposed of vide order dated 01.05.2017 directing the Presiding Officer to send his opinion in accordance with law and, thereafter, for consideration by the Board. However, when the final order could not be passed, again the petitioner has approached this Court by filing the present writ petition in which stand has been taken by the State that the Presiding Officer has not sent his opinion and on such stand having been taken, we directed the Presiding Officer to explain that why he was not sending his report.

We have perused the explanations kept and Flags “L” & “O” and a report sent by the Jail Superintendent, Siwan kept and Flag “P”. The Presiding Officer in his explanation kept at Flag “L” has stated that no document with respect to the conduct etc. and the social perspective of the family of the accused is available on record so that he could come to the conclusion. However, having considered that it is a case of multiple murder of two minor



children he has opined that the benefit of short sentencing could not be given to the writ-petitioner.

In our view, such report was required to be sent by him to the concerned Jail Superintendent and not to us.

That apart, while taking a stand he does not have to see the pre-conviction conduct of the convict rather he has to see what has happened subsequent to the conviction. Conduct during the period of incarceration was to be seen. Whether from jail or with the help of his friends or family members he was intimidating or threatening the family of the victim during the period of incarceration. Also whether post-conviction incarceration was upto mark or not and many other factors as per the policy of the State for short sentencing, however, he has categorically stated that none of the records were available to him.

On earlier occasion, we had directed the State to produce the entire original file of the writ-petitioner maintained by the Jail Authorities which is available today.

It appears therefrom that the letters were written to the Presiding Officer for giving opinion but none of the reports, i.e. the report of Jail Superintendent, Superintendent of Police or Probation Officer etc. was enclosed.



In our view, in the absence of such reports it was not possible for the Presiding Officer to take the correct decision.

Accordingly, we would direct the State respondent to send all the relevant documents along with the extract of the relevant short sentencing policy of 1984, which is applicable in the instant case, as stand has been taken vide Annexure-2, along with the request for giving opinion. The same should be sent within a period of two weeks from the date of receipt/production of a copy of this order and within a further period of two weeks the Presiding Officer is required to send his opinion positively.

It is made clear that failure on part of any authority to comply the aforesaid may amount to contempt of Court.

After such report is sent, the Presiding Officer would be required to form a fresh opinion than that which has been formed by him in his explanation dated 06.08.2018 appended at “L” to this file after considering all the relevant documents and short sentencing policy of the State and while doing so he would also consider the decision of this Court dated 10.09.2018 rendered in **Cr. W.J.C. No. 2180 of 2018 (Md. Istehar @ Md. Estehar Dewan and Ors vs. The State of Bihar and Ors.)**.

After such opinion is received by the respondents then the same should be at once transmitted with all the relevant



records to the Bihar State Sentence Remission Board for its consideration in accordance with law in its next meeting.

We have come to the aforesaid opinion only for the reason that the writ-petitioner is struggling to get a proper decision of the respondent authorities since 2013.

Let this order be communicated to all the concerned respondent authorities including the Jail Superintendents of the concerned jail so that at the time of making a request to the Presiding Officer for sending opinion in terms of Section 432 Cr.P.C., relevant material would be supplied to the Presiding Officer for coming to just and proper conclusion.

Accordingly, this writ petition stands allowed.

(Dr. Ravi Ranjan, J)

(Madhuresh Prasad, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.09.2018
Transmission Date	NA

