

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.497 of 2018

Arising Out of PS. Case No.-123 Year-2012 Thana- DEHRI TOWN District- Rohtas

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1. Pawan Kumar Singh, son of Ram Kumar Singh, Resident of Village- Dighi, P.S. Nabinagar, District- Aurangabad.
 2. Bipunjay Kumar Singh, son of Anirudh Singh, Resident of Village- Anantpura Basdiha, P.S. Deo, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through I.G. Prison, Bihar, Patna.
2. The District Magistrate, Rohtas.
3. The District Magistrate, Aurangabad.
4. The Jail Superintendent, Mandal Kara, Sasaram, Rohtas.
5. The Jail Superintendent, Mandal Kara, Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Adv, Mr. Parasnath, Adv & Mr. Rohit Raj, Adv
For the State	:	Mr. Lalit Kishore(AG)

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

Date : 04-05-2018

Heard parties.

This writ petition has been filed by the petitioners inter alia for grant of following reliefs:-

(i) An appropriate writ or writs, order, orders direction, directions in the nature of Habeas Corpus directing the respondents to release the petitioners from jail after the setting off of the period of incarceration spent with respect to subsequent sentences awarded in trial No. 420/16 arising out of Dehri P.S. Case No. 123/12 by the order dated



22.02.2016 passed by S.D.J.M. Dehri-on-Sone whereby and whereunder the petitioners have been convicted u/s 414/34 of the I.P.C and sentenced them to R.I. for three years with fine of Rs. 3000/- and U/s 25(1-B)a, 26/35 of the Arms Act and further sentence to R.I. for two year and fine of Rs. 2000/- and all the sentences run concurrently and prior to that the petitioners have served the sentences since their remand on 24.03.2012 and now the petitioner no. 2 has been released from custody on 01.12.2017 after set off the period of subsequent sentences passed on 22.02.2016 but the respondent no. 4 called to have talk with him and again booked him in custody on 14.12.2017, may be issued.

An appropriate writ in the nature of Certiorari/mandamus for commanding the respondent to release the petitioners from custody after set off the period of custody since their arrest dated 22.03.2012 in connection with Gr. No. 647/12 Trial No. 420/16 arising out of Dehri P.S. Case No.123/12 likewise the other convicts namely Suraj Kumar Rai, Ashok Singh and Raju Singh, Raghu Paswan, Sanjay Singh and Vijay Singh have been convicted and sentenced in G.R. No. 647/12 Tr. No. 1286/17 by the order/judgment dated 10.10.2017, have been released from custody after giving set off the period under Section 428 of Cr.P.C likewise the petitioners are also entitle to get benefit of Section 427 and 428 of the Cr.P.C. may be issued."



However, upon consideration of the materials available on record, we are of the view that no order for release of petitioners was passed by the court concerned. Actually, such order was passed with respect to other prisoners i.e., Suraj Kumar Rai & Ors. However, these petitioners were also released without any order of release by competent authority by the concerned jail officials. Subsequently, it appears that they came to know about their mistake and after realizing the mistake, somehow the jail officials impressed upon the petitioner no. 2 to come back and, therefore, he was again taken into custody. This is being objected by petitioner no. 2.

It has been submitted that once he was released from jail, the jail authority did not have any statutory power to take him back on their own i.e. without the order of the public administration.

It is informed that serious action has already been taken against the concerned officer and a departmental proceeding has already been initiated against him. Charges have also been framed.

In our view, so far it relates to petitioner no. 2, since he has not completed his tenure of incarceration, it is not possible for this Court to direct for his release even if he was erroneously



released and taken back in prison without following proper procedure.

Thus such relief which is being sought by the petitioner no. 2 is rejected.

However, this order would not come in the way of the petitioners in challenging the judgment of conviction and order of sentence before competent forum in accordance with law.

Accordingly, this writ petition stands disposed of.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15.05.18
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