

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1911 of 2018

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1. Harendra Rai, Son of Paras Rai, Resident of Village- Maharajganj, P.S. Chapra Muffasil, District- Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The State Sentence Remission Board through the Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Joint Secretary-cum-Director (Administration), Home Department (Prison), Bihar, Patna.
4. The Secretary, Law Department, Government of Bihar, Patna.
5. The Additional Director General of Police, Criminal Investigation Department, Bihar, Patna.
6. The Inspector General, Jail and Reforms Services, Bihar, Patna.
7. The Assistant Inspector General, Jail and Reforms Services, Bihar, Patna.
8. The Jail Superintendent, Khudi Ram Bose Central Jail, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Vijay Kumar Singh
Mr. Pankaj Kumar Singh
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 ORDER
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

4 14-09-2018 Heard learned Counsel for the petitioner and the learned
Counsel for the respondents.

Through this writ application the petitioner seeks his premature release in view of short sentencing policy of the State Government. He also seeks quashing of the decision of the State Remission Board, dated 3.5.2018, with respect to this petitioner, by which such claim made by him has been rejected on the basis



of adverse report of the Superintendent of Police and the Presiding Officer.

So far as the report of the Superintendent of Police is concerned, now it is an admitted fact and which will also be evident from the counter affidavit filed on behalf of the Superintendent of Police, Saran, that earlier the report was in favour of the petitioner. Strangely another report was sought and that report is adverse. In fact, what is being done by the Superintendent of Police is that only a view from the victim family is taken when process of remission is undertaken without even looking to the past conduct of the convict during the period of incarceration. Without analyzing such relevant material, on the basis of complaint made by the victim, adverse recommendation is being given by the SHO and that is being accepted in toto by the Superintendent of Police.

In our view, it would be of paramount importance as to whether during the period of incarceration there had been any complaint regarding the conduct of the convict or his family members, or his friends or his supporters giving threats to the victim. Also whether any complaint in this regard was lodged, whether any action was taken by the police in this regard or not. In absence of any such adverse material, simply a view of the



victim at the time of consideration of short sentencing is being taken. In majority of cases such opinion would be that he should not be given benefit of remission. That is not the proper way of conducting enquiry.

The authority has to take independent view of the matter and after assessing the entire period of incarceration and making proper enquiry in that regard such decision should be very carefully taken. In a given case, they may find that the conduct of the family or friends or the supporters or even the convict himself is such that benefit of short sentencing may not be granted. Assessment should be made as to whether his release would be detrimental for the society or not.

It has to be kept in mind that a life term is always given for a heinous crime. It is well settled by now that life term means life term subject to any policy which is adopted by the State concerned in terms of Section 432 Cr.P.C., and Articles 72 and 161 of the Constitution of India.

The State Government has come up with a policy. It has excluded certain offence from the consideration zone for short sentencing but such offences which have not been excluded cannot be dealt with by the Presiding Judge in the manner in which it is being done. The Presiding Officer was not required to



take a view that since the crime committed by the victim was heinous, therefore, he should not be released. We have held time without number that it would amount to *putting the cart before the horse*, which cannot be allowed.

In this case especially two other co-accused namely Parma Rai and Hari Badan Rai, who were convicted for the same offence in the same case with the writ petitioner, have already been recommended by the Remission Board to be released and in fact it is informed by the writ petitioner that they have already been released. We are unable to understand, in such a situation, how the Remission Board could have taken such a decision in respect of the instant petitioner even after order contained in Annexure 7 with respect to the other co-convicts in the same case?

In our view, such a decision is arbitrary, without application of mind and can be termed as stereo type decision. Even equating the claim of instant petitioner with that of similarly situated co-convict has not been considered. That apart, we have also held time without number that such report of the Presiding Officer is not binding. After recording reasons, the Sentence Remission Board may differ from the view expressed by the authority which has given the report.



In the present case, in our view nothing of that sort has been followed by the Remission Board.

As a result, this writ petition succeeds.

The impugned order dated 3.5.2018 passed by the Remission Board, as contained in Annexure 6 so far it concerns the writ petitioner, is quashed and set aside. The matter is remanded to the Sentence Remission Board to take a fresh decision in accordance with law in its next meeting after receipt/production of a copy of this order. We hope and trust that case of the petitioner would also be considered in the light of the decision of this Court rendered in the case of co-convicts of the concerned case as contained in Annexure 7.

(Dr. Ravi Ranjan, J.)

(Madhuresh Prasad, J.)

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