

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.931 of 2018

Arising Out of PS. Case No.-120 Year-1995 Thana- DALSINGHSARAI District- Samastipur

Dinesh Kumar Mahto Son of Yugeshwar Mahto Resident of Village-
Kamrawan, P.S. Dalsingsarai, District- Samastipur.

... .. 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 Superintendent of Police, Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Umesh Prasad, Adv & Mr. Pramod Kumar Singh, Adv

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

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 30-04-2018

Heard learned for the parties.

2. This writ petition has been filed challenging part of Annexure-2 which is decision of the recommendation dated 27.07.2017 of the Bihar State Sentence Remission Board, Patna, (hereinafter referred to as "the Board") so far it relates to the petitioner, by which the proposal for his premature release was rejected on the ground that the reports of Superintendent of Police and Presiding Officer are adverse. In fact, the Remission



Board has considered the opinion of Superintendent of Police which was given about 7 years back, in our view, intervening period was long enough for seeking a fresh report from the Superintendent of Police.

3. This Court in the case of Rajdev Yadav vs State of Bihar and Ors (Cr. W.J.C No. 735 of 2018), has already held that such opinion are not binding upon the Board as they are for the purpose of assistance to it to reach to a just and proper conclusion and further that the Remission Board may differ from such opinion, however, only but after recording reason it may take a different view of the matter. Relevant portion of the aforesaid judgment is extracted and quoted as under:-

"xxxxxxxxxxxxx

This issue is no longer res integra having been considered and decided by a Division Bench of this Court rendered in **2017(2)PLJR 201 [Ravi Pratap Mishra Vs. The State of Bihar & Ors.]** holding that it would not be proper for the Presiding Officer to take such view of the matter as in such cases the conduct during imprisonment and whether his release would be detrimental for the peace and tranquility of the society are some of the factors for such consideration.

This Court has further held in **Cr.W.J.C. No. 2224 of 2017[Ram Babu Singh vs. The State of Bihar & Ors]** that even if such adverse opinion is given by the Presiding Officer that would not be binding upon the Board as the Board would have



power to take a different view of the matter on justifiable grounds notwithstanding favourable or unfavourable recommendations by the authorities.

XXXXXXXXXXXXXXXXXX.

4. In the present case, admittedly Jail Superintendent has opined that during the incarceration period the conduct of the petitioner was satisfactory. However, Superintendent of Police has given adverse opinion stating that, since he has killed his grandfather, grandmother and mother, if he is released, it may be possible that he can repeat the act again. His opinion appears to be based upon some enquiry which has been done by the concerned police station. However, it is not stated in the opinion that how the Superintendent of Police could come to the conclusion that even after 20 years in prison, he may repeat the act? What were materials before him to come to such conclusion.

5. That apart, it appears that the Presiding Officer, while recording of his opinion, which has been appended at Annexure-A to counter filed on behalf of respondent nos. 3 to 5, has banked upon the observation of the appellate court in its judgment while commuting the death sentence to life imprisonment that the convict shall not be released unless he serves out 20 years of imprisonment. But in the present case,



admittedly he has already served more than 20 years of imprisonment at the time of consideration or even at the time of transmitting the opinion of the Presiding Judge. Second reason which has been given by the Presiding Judge is nature of offence and the manner of offence. Even if the year 2002 amended Rules are to be considered to be operative in the case in hand, though we are not deciding this issue in the present proceeding, the present case would not come within the criteria for refusing premature release. The relevant provision is extracted as under for better appreciation:-

"529(i)xxxxxxxxxxxxxxxxxxxx

(ii)xxxxxxxxxxxxxxxxxxxx

(iii)xxxxxxxxxxxxxxxxxxxx

(iv) Ineligibility for premature release.

The following category of convicted prisoners undergoing life sentence may not be considered eligible for premature release:-

(a)Prisoners convicted of the heinous offences such as rape, dacoity, terrorist crimes etc.

(b)Prisoners who have been convicted for organised murder in a premediated manner and in an organised manner.

(c)professional murderers who have been found guilty of murder of hiring.

(d)Convicted prisoners, who commit murder while involving in smuggling operations or who are guilty of murderer of public servants on duty."

6. Thus in our opinion the Presiding Judge should have



perused the relevant law before giving his opinion which does not appear to have been done by him because multiple murder is not a ground in which short sentencing is not permissible.

7. At this juncture, learned counsel appearing for the State has tried to impress upon us that since this was an organized murder in premeditated manner, his case has rightly been rejected by the Court.

8. The aforesaid stand of the learned counsel for the State is to be noted only to be rejected, inasmuch as, the judgment of appeal which has been appended as Annexure-3 has clearly noticed the manner of occurrence. It stands noticed in the judgment that on account of quarrel the appellant got angry and went to the house and killed his family members. Thus, it would appear that it was not a premeditated or organized murder rather was outcome of in-house quarrel.

9. In the facts and circumstances of this case, in our view a fresh report from the Superintendent of Police should have been taken before coming to a conclusion. The opinion of the Presiding Officer would also not be binding but for accepting or rejecting the same, reason has to be assigned by the Board.

10. Accordingly, this writ application succeeds. The



decision of the Sentence Remission Board, as contained in Annexure-2 is set aside, so far it concerns the petitioner. The matter is remitted back to the authority concerned so that a fresh report of police and fresh opinion of the Presiding Officer are obtained. Thereafter, a decision in accordance with law is to be taken by the Remission Board considering the ratio of the Division Bench Judgment of this Court relied in **Ravi Pratap Mishra Vs. The State of Bihar & Ors [2017(2) PLJR 201]**, as also the decision of this Court dated 01.12.2017 rendered in **Cr.W.J.C No. 2224 of 2017 [Ram Babu Singh vs. The Sate of Bihar & Ors]** and others. The aforesaid exercise should be completed within a period of four months from the date of receipt/production of a copy of this order.

11. It is again made clear that otherwise also, after July-2018 the petitioner would be entitled under amended Rule-529(i)(vi)(d) for reconsideration of his case in accordance with law.

12. Let it also be noted that even if it is assumed that under the amended Rule of the year 2002 is to be considered where the procedure and guidelines for Remission Board has been laid down under 529(vi)(c), the following stands incorporated:-

"529(vi)(c) While considering the case of



premature release of a particular prisoner, the Board shall keep in view the general principle of amnesty, remission of the sentences etc. as laid down by the State Government or by Courts as also the earlier precedents in the matter. The paramount consideration before the Sentence Remission Board shall the Welfare of the prisoner and the society at large. The Board shall not ordinarily decline a premature release of prisoner merely on the ground that the police has not recommended his release on certain farfetched and hypothetical premises. The Board shall take into account the circumstances in which the offence was committed by the prisoner and whether he has the propensity and is likely to commit similar or other offence again."

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
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