

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2180 of 2018

Arising Out of PS. Case No.- Year- Thana- District- Patna

1. Md. Istehar @ Md. Estehar Dewan
2. Md. Hasmullah @ Md. Hasmullah Dewan
Both sons of Md. Issa Dewan, resident of village-Turha Patti (Tarwa Tola),
P.S. Chanpatia, District West Champaran (Bihar). 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, Shahi Khudi Ram Bose, Central Jail, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate
For the Respondent/s : Mr. P.N. Sharma, A.C. to A.G.

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

Date : 10-09-2018

It appears from the decision of the Bihar State Sentence
Remission Board that though the direction of this Court was noted
down therein but there is no consideration at all.



In such a situation, since it has been done twice, this *prima facie* appears to be deliberate.

Now, we proceed to consider this matter on merit.

Heard parties.

This is the third time that the writ petitioners have approached this Court in the matter concerned. The claim of the writ petitioners' is that both of them who have been convicted under Section 302 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life in connection with murder of one Mohan Rai, have already completed about 16 years of actual incarceration and 21 years with remission. Their judgment of conviction having been passed on 02.07.2001, admittedly their case would have to be considered as per the provisions contained in 1984 policy of the State Government with respect to shortening of sentence.

On the first occasion, when the petitioners approached this Court by filing Cr.W.J.C. No. 1140 of 2017, it was admitted on behalf of the State that the petitioners have completed required period of incarceration and, as such, they qualify for consideration for their premature release. As such, the writ petition was disposed of after noticing the submission made on behalf of the counsel for the State that the petitioners' case would be put up before the



Bihar State Sentence Remission Board (hereinafter referred to as “the Board”) so that the same could be considered in its next meeting itself.

The Board considered the cases of the writ petitioners and rejected the claim on the basis that the Presiding Officer’s report is adverse. Petitioners again approached this Court by filing Cr.W.J.C. No. 3973 of 2017. The State filed counter affidavit in that matter stating that there would be fresh consideration, therefore, the writ petition was disposed of on 03.01.2018 directing the Board to consider it afresh in light of the decision of a Division Bench of this Court rendered in **Ravi Pratap Mishra Vs. the State of Bihar & Ors. [2017 (2) PLJR 201]**. This was purposely included in the decision of this Court for the reason that though the reports of Superintendent of Police, Probation Officer as well as Superintendent of Jail concerned were in favour of the petitioners but the Presiding Officer’s report was adverse solely on the basis that the nature of crime was brutal and gruesome murder causing death of a person who had earlier played role of Panch in dispute between warring faction of one Mohan Rai and, therefore, they do not deserve any sympathy.

The Division Bench in the **Ravi Pratap Mishra** (supra) case, after considering the provisions contained in Section 432 of



the Cr.P.C., has observed that in view thereof if a Presiding Officer takes a view that the person concerned has been convicted for heinous offence and deserves no sympathy then it would amount to clearly putting the cart before the horse and is self-defeating for the reason that Section 432 Cr.P.C. itself comes into play only when a person has been convicted and has served substantial part of sentence for having committed such heinous offence. In case, when there is no such conviction, there would be no operation of Section 432 Cr.P.C. itself. Thus, if such a view is taken by the Presiding Officer and is affirmed or adopted by the Board then the provisions contained in Section 432 Cr.P.C. as well as the policy framed by the State for their sentence would become nugatory and would serve no purpose.

In our view, as per the Division Bench, what was to seen would be whether considering the past conduct of person leading to commission of offence, his release is likely to prejudicially affect the society? Whether it would be detrimental for the peace and tranquility of the society? Whether they would become menace to the society upon their release? Thereafter, in several of its decision, the subsequent Division Bench concurred with the aforesaid view of the Division Bench and in one case this Bench also has decided the matter bearing



Cr.W.J.C. No. 2080 of 2018 [Hardeo Rai Vs. The State of Bihar] showing full and complete agreement with the aforesaid view. The Presiding Officer would be required to see these aspects also after looking into the reports of the Superintendent of Police, Superintendent Jail and Probation Officer etc., as also the applicable policy of the State framed in this regard and then only an opinion should have been formed. However, we have seen that in majority of the cases, the Presiding Officers are not doing that. As a result, we have also held that such opinions of the Presiding Officers would not be binding upon the Board rather the Board, for the reasons recorded in writing, may form another opinion.

Report of the Presiding Officer is one amongst the other reports submitted by the Jail Superintendent, Superintendent of Police and Probation Officer. The Remission Board is required to take into consideration all the materials before it. Decision of the Remission Board without considering the various reports and solely relying upon report of the Presiding Officer cannot be sustained.

These were the reasons why this Court had directed the Board to consider the case of **Ravi Pratap Mishra** (supra) but what has been done by it? It has merely noted the decision but neither has considered this nor has it taken independent decision in



compliance of the directions contained therein. Therefore, decision of the Board *prima facie* appears to be contumacious in nature. But in the present case, we are not inclined to proceed in that direction rather we would be granting another opportunity to the Board to take an independent decision in accordance with law in the case of the writ petitioners.

In the result, this writ application succeeds. The impugned decision of the Board, in so far as it concerns the writ petitioners, is quashed and the matter is remitted back to the Board to take a fresh decision in accordance with law also considering the observations recorded by this Court in the present order.

(Dr. Ravi Ranjan, J)

(Madhuresh Prasad, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
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