

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1755 of 2018

Arising Out of PS. Case No.-148 Year-1998 Thana- KARAKAT District- Rohtas

-
1. Uma Shankar Tiwary, son of Late Ramlagan Tiwary,
 2. Lala Tiwary, son of Late Ramlagan Tiwary,
 3. Laloo Tiwary, son of late Ramlagan Tiwary,
 4. Pramod Tiwary, son of Umashankar Tiwary, All resident of village- Mangara,
P.S.- Karakat, (Gorari), District- Rohtas at Sasaram.

... .. 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 Jailor, Open Jail, Buxar.
7. The Superintendent of Police, Rohtas at Sasaram.
8. The Officer In Charge, Karakat P.S., District- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Umesh Prasad
For the Respondent/s : Mr.Lalit Kishore , AG

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-01-2019



Heard learned counsel for the petitioners and the learned counsel for the State of Bihar.

The conviction of the petitioners is dated 9th of May, 2002 when the policy dated 21st of January, 1984 for remission was applicable. The contention of the learned counsel for the petitioners is that the obtaining of reports and then finalizing the issue of remission is a policy that came to be adopted later on on 10th of December, 2002, which would not be applicable in the present case. The contention, therefore, is that having obtained any such material should not be taken into account for the purpose of consideration of remission and, consequently, the decision so taken cannot withstand the scrutiny of law.

It has been pointed out by the learned counsel for the petitioners that the petitioners had earlier filed C.W.J.C. No. 2219 of 2017, which was disposed of on 15th of November, 2017 by the following order :

“Heard learned counsel for the petitioners and the State.

The decision taken by the Bihar State Sentence Remission Board so far the petitioners are concerned is challenged in this writ application.

The petitioners' case has not found favour on the ground that Superintendent of



Police has given adverse report. That report is based upon the report of the Officer-in-charge of the concerned police station which has said that the people of the locality had stated that they would not have any problem if the petitioners are released prematurely, however, the informant's side/victim's side has said that they had some apprehension. We are unable to understand this.

A decision has to be taken in this regard in accordance with law also considering the conduct of the petitioners during the period of incarceration and other things which are stated in the Short Sentencing Policy.

Now, today learned counsel for the State has submitted that the Superintendent of Police has sought a fresh report from the concerned Officer-in-charge so that the matter could be sent for its re-consideration.

In such a situation, we set aside the order impugned (Annexure-2) so far as it concern the petitioners and with an expectation that after receiving a fresh report, the matter would be sent to the Remission Board for its consideration in accordance with law so that it can be properly considered in the next meeting.

The concerned authority before reaching to a conclusion would also



determine whether this case is covered under Short Sentencing Policy, 1984 or 2002 which was, though notified earlier, but implemented in the year 2007.

It is expected that the whole exercise would be completed by the respondent authorities within a period of two months from the date of receipt/production of a copy of this order so that the matter could be forwarded to the Bihar State Sentence Remission Board for its consideration in accordance with law in its next meeting.

Accordingly, this writ application stands disposed of.”

It is submitted that the Remission Board has nowhere taken notice of the aforesaid directions issued and have proceeded to reject the claim of remission on erroneous considerations.

It appears that after the aforesaid direction issued by the High Court, the matter was considered by the Remission Board and a copy of the said decision has been filed along with I.A. No.2312 of 2018. A perusal thereof indicates that the informant and the family members of the deceased had raised objections which has been taken notice by the Probation Officer in his report extracted in Column No.7 of the decision of the Remission Board. Column No.8 is of the Presiding Officer of the Court, who has also



declined to give any such benefit. It has further been pointed out that the petitioners claim for remission had been earlier rejected and there is no need to consider it again.

The conviction of the petitioners is under Sections 302/34, 201, 148, 452, 323, 379 and 452 of the Indian Penal Code. Apart from this, we find that in the deliberations of the Remission Board, a reference has been made to the policy dated 21st of January, 1984. In the said circumstances, it cannot be said that the orders have passed mechanically or without application of mind. The informant Bimla Devi has also filed a counter affidavit opposing the prayer for grant of remission.

We have considered the submissions raised as well as the affidavits filed on behalf of the respondents in the present case and we find that the considerations by the Remission Board have been made in accordance with law. Apart from this, the observations made by the Apex Court in the case of Union of India vs. V. Sriharan @ Murugan and others, reported in (2016)7 SCC 1 has also to be taken notice of for the purpose of considering remission. Applying the aforesaid principles, it cannot be said that the decision of the Board was arbitrary or otherwise not in consonance with law.



We are, therefore, not inclined to interfere with the decision already taken by the Board, without prejudice to the rights of the petitioners to apply for a fresh consideration for remission in accordance with law.

The application is consigned to records.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Nasimul/K.C.Jha

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	31-01-2019
Transmission Date	N/A

