

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1241 of 2019

Arising Out of PS. Case No.-224 Year-1994 Thana- BIHPUR District- Bhagalpur

Paro @ Parma Nand Kunwar, Son of Late Nanho Kunwar, Resident of
Village-Morwa, P.S.-Bihpur, District-Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Chairman, Bihar State Sentence Remission Board, Patna Bihar.
4. The Inspector General (Prisons) Government of Bihar, Patna.
5. The Jail Superintendent, Sahid Jabba Sahni, Central Jail, Bhagalpur, Bihar.

... .. Respondents

Appearance :

For the Petitioner : Mr. Amrendra Kumar, Advocate
For the Respondents-State: Mr. Manish Kumar, GP-4

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 02-09-2019

Heard learned counsel for the petitioner and learned
counsel for the State.

2. This application has been filed by the petitioner
under Articles 226 and 227 of the Constitution of India for
directing the respondents to release the petitioner forthwith as he
has remained in judicial custody for more than eleven years in
connection with Bihpur P.S. Case No.29 of 1994 giving rise to S.T.
No.764 of 1996.

3. The contention of the petitioner is that the petitioner
was made accused in Bihpur P.S. Case No.29 of 1994 registered



inter alia under Section 302 of the Indian Penal Code. In the said case, he was put on trial and was awarded rigorous imprisonment for life. He challenged the judgment passed by the trial court vide Cr. Appeal No.391 of 2001(DB). The said appeal was finally dismissed by the Division Bench vide judgment dated 10.09.2007 and the judgment of trial court was upheld. He contended that the petitioner sought for an information under the Right to Information Act, 2005 from the Public Information Officer, Central Jail, Bhagalpur regarding the period of custody spent by him in jail. The Public Information Officer, informed vide Memo No.1698 dated 15.04.2019 that he has remained in custody for fifteen years one month and twenty-eight days. He contended that the petitioner has served the jail custody for more than fifteen years with remission and so, he deserves to be released from jail custody.

4. *Per contra*, learned counsel appearing for the State submitted that in view of Section 433A of the Code of Criminal Procedure as also Rule 481 of the Bihar Prison Manual, 2012, a convict, who has been imprisoned for life for murder, a prisoner who has not served out the sentence of fourteen years of actual imprisonment i.e. without remission shall not be eligible to be considered.



5. At this stage, learned counsel for the petitioner submits that the petitioner has completed more than fourteen years in prison.

6. The oral statement made by the learned counsel for the petitioner is in conflict with the submissions made on oath in the writ application wherein he has stated that he has remained in custody for more than fifteen years with remission has to be given supremacy over the oral statement made at the Bar.

7. Section 433A of the Code of Criminal Procedure puts restriction on powers of remission or computation in certain cases. The said provision provides that notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

8. Similarly, Rule 481(i) of the Bihar Prison Manual, 2012 provides categories of prisoners, who shall be eligible to be considered for a review of sentences and premature release by the State Remission Board.



9. Clause (i) of Rule 481 of the said manual provides that every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A CrPC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment i.e. without the remissions. The said clause further provides that the following categories of convicted prisoners covered under section 433A CrPC undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions:

(a) Convicts who have been imprisoned for life for murder in heinous cases such as murder with rape, murder with dacoity, murder involving an offence under the Protection of Civil Rights Act 1955, murder for dowry, murder of a child below 14 years of age, multiple murder, murder committed after conviction while inside the prison, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty.

(b) Gangsters, contract killers, smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-meditation and with exceptional violence or perversity.



(c) Convicts whose death sentence has been commuted to life imprisonment.

10. Thus, in view of Section 433A of the Code of Criminal Procedure as also Rule 481(i) of the Bihar Prison Manual, 2012, a convict shall not be eligible to be considered for premature release by the State Remission Board unless he has served out the sentence of fourteen years of actual imprisonment i.e. without remissions and twenty years including remissions.

11. Since the petitioner has not completed the mandatory minimum period of fourteen years in prison, he is not entitled to be considered for remission by the Board.

12. In that view of the matter, no mandamus for release of the petitioner can be issued by the Court. The application is dismissed. However, the petitioner would be at liberty to file his representation to the State Remission Board for consideration of his case for grant of remission after he completes the mandatory minimum period in prison as prescribed in section 433A of the Code of Criminal Procedure and Rule 481(i) of the Bihar Prison Manual, 2012.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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