

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1027 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

CHANDRA KANT KUMAR Son of Shri Tribhuwan Sharma Resident of
Village- Ahiyapur (Chhotaki), P.S.- Arwal, District- Arwal, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Old Secretariate, Patna, Bihar.
2. The Principal Secretary, Department of Home, Govt. of Bihar, Patna.
3. The State Sentence Remission Board, through its Chairman, Govt. of Bihar, Patna.
4. The Law Secretary cum Legal remembrance, Department of Law, Govt. of Bihar, Patna.
5. The Director General of Police, Govt. of Bihar, Patna.
6. The Director, Probation Services, Govt. of Bihar, Patna.
7. The Inspector General, Prison, and Jail Reforms, Govt. of Bihar, Patna.
8. The Additional Director General of Police, Criminal Investigation Department, Govt. of Bihar, Patna.
9. The Superintendent, Gaya Central Jail, Gaya, Bihar.

... .. Respondent/s

with

Miscellaneous Jurisdiction Case No. 1828 of 2019

In

Criminal Writ Jurisdiction Case No.53 of 2019

Chandra Kant Kumar S/o Sri Tribhuwan Sharma, Resident of Vill.- Ahiyapur
Chhotaki, P.S.- Arwal, Distt.- Arwal, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Deepak Kumar the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna, Bihar
3. Amir Subhani, the Principal Secretary, Department of Home, Govt. of Bihar, Patna
4. Amir Subhani Chairman, the State Sentence Remission Board, Govt. of Bihar, Patna
5. Akhilesh Kumar Jain, the Law Secretary cum Legal remembrance, Department of Law, Govt. of Bihar, Patna
6. Gupteshwar Pandey, the Director General of Police, Govt. of Bihar, Patna
7. Om Prakash Gupta, the Director, Probation Services, Govt. of Bihar, Patna



8. Mithilesh Mishra, the Inspector General, Prison and Jail Reforms, Govt. of Bihar, Patna
9. J. S. Gangwar, the Additional Director General of Police, Criminal Investigation Department, Govt. of Bihar, Patna
10. Rajiv Kumar, the Superintendent, Gaya Central Jail, Gaya, Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kamal Nayan Choubey, Sr. Advocate
Mr. Bhairaw Nand Sharma, Advocate
For the Respondent/s : Mr. Lalit Kishore (A.G)
Mr. Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 23-10-2019

Successive writ applications for issuance of certiorari and for quashing the orders by which attempts by the petitioner for premature release of his father from jail, have made the petitioner knock the doors of this Court once again as the State has failed to pass any orders for the release of the petitioner's father.

2. In the present writ application, the petitioner has again approached this Court aggrieved by an order dated 14.05.2013 (Annexure-19) by which the grievances of the petitioner for premature release of his father, Tribhuwan Sharma from jail has been rejected by the respondent no. 3



for the very said reasons for which it was earlier rejected. The case of the writ petitioner, son of the detenue, is that his father Tribhuwan Sharma had filed a request for his release after award of remission to him on the grounds which were tenable and in accordance with remission policy adopted by the State Government.

3. It would be necessary at the stage to recapitulate a few facts before we proceed to consider the legality/illegality of the repeated orders of rejection passed by the respondents.

(I) The father of the petitioner was made accused in Arwal P.S. Case No. 193/1998 (G.R. No. 7/92) along with others. The trial of the aforesaid case by the Sessions Court-cum-Special Judge, TADA was held and by judgement dated 21.07.2003 and order of sentence dated 04.08.2003, the father of the petitioner and others were convicted and sentenced to rigorous life imprisonment with fine under TADA Act 1987, Arms Act and other sections of the Indian Penal Code including Section 302 of the Indian Penal Code etc. Having been confirmed, the above judgement was finally placed to test before the Apex Court



in Criminal Appeal No. 1285 & which were dismissed on 02.04.2004 reported in 2004(2) BLJR, page 930.

(II) The Imprisonment Department of Bihar vide Circular No. 1647 dated 24.02.1984 issued under the signature of I.G., Prisons and General Reforms clearly indicated that any sentence of life pronounced on or after 18.12.1978, the convicts shall be released after 14 years of actual custody period spent in jail and with remission, who has completed 20 years (Annexure-1).

(III) The aforesaid circular dated 24.02.1984 was amended on 25.05.1985 vide Circular No. 3115 in the light of the judgement of Hon'ble Apex Court of five Hon'ble Judges in the case of Rakesh Komik, by which circulars, the respondents directed the Jail Superintendent that they release all the life convicts, who had completed four years including the period from the date of conviction and completed 20 years with remission and the same criteria was followed till 02.07.2007 before the State Remission Board was constituted. Thus, all types of convicts including life imprisonment convicts were released by Jail Superintendent till 02.07.2007 itself.



(IV) Subsequently, the State Government issued an Ordinance No. 3106 on 10.12.2002 by which it fixed that the persons who were convicted for life and sentenced for heinous offence including rape, Dacoity, terrorists as well as organized murder in premeditative manner, professional murder, murder during smuggling, murderer of government servants etc. are not eligible for premature release.

(V) In pursuance to the aforementioned, State Government for the first time issued a letter to the Jail Superintendent on 02.07.2007 and directed that the premature release of life convict persons shall now be released by the State Sentence Remission Board, as provided by ordinance dated 10.12.2002 (Annexure-3) and not released by the Jail Superintendent and again directed the Jail Superintendent to send six months prior proposal before the State Sentence Remission Board regarding premature released of life imprisonment convicts who have completed 14 years in jail and 20 years with remission.

(VI) The aforementioned order of ordinance dated 10.12.2002 (Annexure-3) came into implementation



after 02.07.2007, which is evident from the fact that all categories of life imprisonment convicted persons were eligible for premature release by the Jail Superintendent itself after completion of 14 years in Jail as provided in letter dated 25.05.1985 and accordingly, the father of the petitioner who had been convicted on 21.07.2003/04.08.2003 was to be guided by the earlier circular of 1985 and the ordinance dated 10.12.2002 was not applicable in the case of the father of the petitioner as on the said date only the letter dated 25.05.1985 was in force and the subsequent ordinance was acted upon only after 02.07.2007. It was, thus, contended that the petitioner was eligible for premature release in the light of the Annexure- 2 itself.

4. Learned counsel for the writ-applicant has also drawn our attention to Annexure -5 which is an order passed in Criminal Writ No. 1090 of 2009 in which vide order dated 12.10.2010, this Court has held that the notification dated 10.12.2002 is not part of the existing 1984 policy which was amended for the first time by the Law Department on 29.06.2007 and circulated vide Memo



No. 4125 dated 02.07.2007.

5. In the aforesaid case, the Court while considering the case of one such life convict vide his judgement dated 12.10.2010 at paragraph – 35 noted as hereinunder.

“Thus, in view of the law laid down by the Apex Court, the short sentencing policy of remission which was in existence on the date of judgement would be the policy which would govern the case of premature release of life convict and not the subsequent policy which is in existence on the date of consideration of the case of a prisoner for his premature release. Nevertheless, the State would be also obliged to apply the policies which could be construed more liberally in favour of a prisoner for consideration of such release.”

6. It is relevant to mention here that in the said judgement, the learned Court has also referred to paragraph – 54 of the Case of State of Haryana Vs. Jagdish reported in 2010 (4) scc page 216 which at page 54 as noted as



follows :-

“The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power to remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a lifer for premature release, he should be given benefit thereof.”

7. Learned counsel for the writ petitioner, thus, contended that in view of the aforementioned observation, it is quite clear that at the time of punishment to the father of



the petitioner, the subsequent policy was not in existence and the detainee was legally entitled to premature release in the light of the 1984 policy.

8. It was thus, contended by the petitioner that his father was granted 6 years, 4 months and 17 days of remission/ Special remission for the good behavior and good conduct by the respondent no. 7 on the recommendation of the yearly constituted departmental 3 member committee which has not been withdrawn/cancelled till date by any authority nor is there any adverse report made by the authorities against the father of the petitioner.

9. The notification no. 3106 dated 10.12.2002 has been amended in the year 2012 as mentioned in the Bihar Police Manual, 2012. It is important to point out here that the Bihar Prison Manual came into force after repeal of the Bihar Jails Manual wherein it is provide in Rule 481 regarding review of sentences and premature release of life sentence prisoners including the case of the father of the petitioner. Rule 481 (1) is extracted herein under:-



“481(1) Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered the provision of Section 433 A Cr.P.C. 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 following categories of convicted prisoners covered under Section 433 A Cr.P.C. undergoing life sentence would be entitled for premature release only after undergoing imprisonment for 20 years including remissions.

(a) Convicts who have been imprisoned for life for murder of 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 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 in 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 exceptional violence or perversity.

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

10. The father of the petitioner has completed 14 years of actual imprisonment in jail without remission as well as after completion of more than 20 years in the month of February, 2016 and, as such, requested for premature release as per law. However, the concerned authorities sat tight over the matter and kept the issue of premature release pending for a long time for reasons best known to them whereas in 2007 several life convicts were granted premature release by respondent no. 3 even though their



cases came under the notification dated 10.12.2002 which included the cases of

(I) Kriti Yadav @ Ram Krit Yadav
sentenced to life imprisonment.

(II) Dina Yadav @ Dinanath Yadav

(III) Ramasis Yadav

11. Both convicts at Serial Nos. 2 & 3 were sentenced to capital punishment but later on converted to life imprisonment in Sessions Trial No. 25/206 of 1989 arising out of Kako P.S. Case No. 74/98.

12. Constrained by the inaction of the respondents, the petitioner as *pairvikar* of his father namely, Tribhubhan Sharma moved this Court in Cr. WJC No. 334 of 2017 and at the time of final hearing, the respondents in their counter affidavit submitted that on 07.04.2017, the application of the father had been rejected and thus, the said case was withdrawn with liberty to take proper remedial action as also to file a fresh case.

13. Subsequently, the petitioner, for redressal of the grievance of his father filed Cr. WJC No. 748 of 2017 which was allowed by a clear cut judgement dated



20.06.2017 whereby this Court set aside the order of rejection dated 07.04.2017 and clearly held that notification no. 3106 dated 10.12.2002 is not applicable in the case of the petitioner, as the same became operational from the year 2007 and again it was held that the order passed by the Remission Board with respect to the father of the petitioner was unreasonable and discriminatory as several other similarly situated convicts had been released in the light of the Hon'ble Court's order, who were convicted before 02.07.2007 (Annexure-8).

14. In pursuance of the aforementioned order, the petitioner again filed his representation on 30.06.2017 but again the respondent no. 3 vide its order dated 20.07.2017 did not recommend the case of the father of the petitioner and ignoring the order of this Hon'ble Court rejected the same vide order contained in Annexure-9 on the same grounds as mentioned in Annexure-6 which have already been quashed and set aside vide judgement dated 20.06.2017.

15. Faced with such a callous approach, the petitioner again moved this Court on behalf of his father in



Cr. WJC No. 2130 of 2017 and on 08.11.2017, this Court took a very serious view of the matter and orally chastised the authorities for violation of the order dated 20.06.2017 and accordingly, a counter affidavit was filed on 22.11.2017 in which an undertaking was given by the respondents before this court stating that the case of the father of the petitioner for premature release will be placed for a fresh consideration before the respondent no. 3 in the next meeting for being placed before the Remission Board once again. However, till 04.01.2018 the respondents failed to honour their undertaking and his case was not put up before the Remission Board, although the statutory/mandatory period of three months for next meeting had lapsed on 04.01.2018 itself.

16. Forced by such an attitude by the respondents, the petitioner filed Cr. WJC No. 1100 of 2018. In the said application, this Court again directed the State to verify as to why the case of the father of the petitioner has not been considered and also why not a suo moto contempt of Courts proceeding be initiated against the respondents for deliberately and willfully violating the order and judgement



passed by the Hon'ble Court and also the undertakings extended by the State before the Court. However, on 22.06.2018, the Court was informed that due to the some mistake and unavoidable circumstances, the respondents have not been able to release the father of the petitioner though instructions have already been given to the respondents to release the father of the petitioner after proper consideration by respondent no. 3 for compliance of the Hon'ble Court's order. However, when the matter was taken up on 19.06.2018, the Court was informed that there was a recommendation for filing an SLP before the Apex Court in the light of the order passed in Cr. WJC No. 1503 of 2017. However, this Court while considering the undertaking that have been given earlier by the respondents permitted fresh consideration of the case of the father of the petitioner by the Remission Board Meeting which was to be held in the month of July, 2018. Again the father of the petitioner was not released.

17. This necessitated the petitioner to file a contempt petition bearing MJC No. 3064 of 2018 and accordingly, during the course of hearing, the Court taking



serious view of the matter directed the respondents to file a show cause. In its show cause, filed in pursuance of the earlier order of the court, respondents produced fresh rejection order dated 01.08.2018 on the very same grounds which had been mentioned in Annexures-6 and 9 and which had been quashed by the Annexure-8 itself. The said MJC No. 3064 of 2018 has been admitted on 07.12.2018.

18. While the contempt application remains pending before this Court, the petitioner filed Cr. WJC No. 53 of 2019 and this Court after hearing the said writ application allowed the same on 22.01.2019 and again quashed the order dated 01.08.2018 and the respondents were directed to pass an appropriate orders in the light of the judgement as well as any other material that may be necessary for such consideration (Annexure-18).

19. Nevertheless, the said order was not complied with and the petitioner filed contempt application bearing MJC No. 1828 of 2019 in which this Court has taken a serious note of the action of the respondents and directed to file a show cause. The text of the order dated 06.05.2019 (Annexure- 19) is extracted herein under :-



“Having heard learned counsel for the applicant and having perused our judgement dated 22nd January, 2019, we find that the allegation is that the respondents-opposite parties have not complied with the directions issued in Cr. W.J.C. No. 53 of 2019.

The compliance of the judgement has to be effected through the Principal Secretary (Home), the opposite Party No. 3 herein. The 3rd respondent is put to notice for filing a show cause by the 16th of May, 2019 as to in what manner the judgment dated 22nd January, 2019 has been complied with and in the event it has not been complied with, then why should this Court not proceed under the Contempt of Courts Act for punishing the opposite parties for willful and deliberate disobedience of the judgement of this Court.

List on 16th May, 2019.”

20. Nevertheless the respondents did not seem



to move an inch and in compliance of the order dated 06.05.2019, the respondents filed a show cause dated 16.05.2019 stating that in compliance of the judgement dated 22.01.2019 , the Remission Board has considered the case of the father of the petitioner and rejected the same on 14.05.2019 in the light of Annexure-3. From a perusal of the said rejection order dated 14.05.2019, it is abundantly clear that the reason for repeated rejection orders is nothing but the same as it was in the first order of rejection which have already been quashed by this Court on 20.06.2017 in Cr. Appeal no. 748 of 2017 (Annexure- 8) and 22.01.2019 in Cr. Writ No. 53 of 2019 (Annexure-18) Vexed by the said order passed incessantly by the respondents, the writ petitioner once again has come before this Court challenging the order dated 14.05.2019 as contained in Annexure- 20.

21. Learned Senior Counsel Sri Kamal Nayan Choubey, appearing on behalf of the petitioner contends that the rejection of the case of the father of the petitioner incessantly on grounds which had already been negated by this Court, smacks of arbitrary executive action as on these



very grounds this Court had quashed the previous orders of rejection in Cr. W.J.C. No. 748 of 2017 vide order dated 20.06.2017 (Annexure-8) and in Cr. W.J.C. 53 of 2019 vide order dated 22.01.1991 (Annexure 18), whereby Annexures 6 & 9 had been quashed. Even then the authorities in the Remission Board have once again passed the order dated 14.05.2019 (Annexure-20) from which it is clear that the respondent no. 3 has virtually reviewed the earlier orders passed by this Court, which it has no jurisdiction to do. Such an order if at all reviewed could be only in an appellate jurisdiction by a Competent Court of Law that alone has the power to review or modify the order passed by this Court.

22. Learned counsel for the writ petitioner further contended that the respondents have arbitrarily reviewed the case of Ajay Choudhary, though it has no power or jurisdiction vested in it and the same has been done only to justify the order of rejection passed against the petitioner.

23. Steering his argument further, learned Senior counsel Shri Choubey has urged before this Court



that the action of the respondents is wholly discriminatory and against the settled principles of law. He submitted that the respondent no. 3 has been acting as per his own whims and has adopted a pick and choose method in applying the policy to some and refusing to adopt the same in case of others which is evident from the fact in the case of Ramashish Yadav and Krit @ Ram Krit Yadav. It is has been admitted by the respondent no. 3 that these two are ineligible in the light of the 2002 notification, but on the contrary in the case of Dina Yadav @ Dina Nath Yadav, the respondent has said that the offence of multiple murder does not make him ineligible under the 2002 notification but again in the case of several life convicts, the benefit of the policy has been given on a pick and choose basis to certain life convicts, for reasons best know to themselves. It is important to note here that the said Dina Yadav, though involved in a case of multiple murder was recommended for premature release under the 2002 notification by giving a false statement that multiple murder is not an “ineligible criteria” under the 2002 notification, even though he was a convict of multiple murder. It is submitted that the



respondent nos. 2 and 3 have admitted that two co-accused, (out of three namely, Ramashish Yadav and Krit Yadav) who are convicts of multiple murder have been given remission, though they are not entitled for the same in the light of the 2002 notification and have also boldly admitted that the third co-accused namely, Dina Yadav @ Dina Nath Yadav, who is also a convict of multiple murder has been given remission on a ground contrary to the policy that multiple murder does not come under the 2002 notification. This illogical and irrational conduct, is indicative of the malafide action taken by the respondents and cannot be sustained before any court of law and is, thus, fit to be quashed. This also entitles to pre-release of the father of the petitioner forthwith as the respondents have clearly violated the mandate of the earlier orders by reviewing the order passed by this Court and also further misleading this Court and adopting stands which is likely to hinder the administration of justice. It is, thus, submitted that such an action on the part of the respondents entails initiation of suo moto contempt of court proceeding against the concerned respondents, as they have been willfully and deliberately



violating the orders passed by this Court despite having given an undertaking to pass correct orders, which is evident from Annexures – 10 & 13.

24. Learned Senior counsel further reiterated and recapitulated that it was clear and evident that after actual completion of 14 years in jail custody and after 20 years with remission the father of the petitioner was clearly eligible for premature release but his case has not been recommended according to the provisions of Law/Policy as contained in Annexures - 1, 2, 4 & 5 and also the Bihar Prison Manual as well as other Laws and various sections of the Cr.P.C.

25. Leave alone the aforementioned provisions, this Court had also given a clear cut judgement on 20.06.2017 and 22.01.2019 in Cr. W.J.C. No. 748 of 2017 and in Cr. W.J.C. No. 53 of 2019 which is sought to be defeated by the order passed on 16.05.2019 (Annexure-20). The said orders tinge on willful violation and contemptuous intention on the part of the respondents and, thus, warrant appropriate orders from this Court as the father of the petitioner is legally entitled for his premature



release like other similarly situated convicts, whose conviction dates were after Notification No. 3106 dated 02.10.2002 and before 02.07.2007. It was stated that the date of conviction/sentence of the father of the petitioner is 21.07.2003/04.08.2003 and on that date only circular dated 25.05.1985 (Annexure-2) was in force and applicable. The father of the petitioner, thus, completed 14 years actual punishment in jail without remission and completed 20 years with remission in the month of February, 2016 itself and on that date the Bihar Prison Manual 2012 (Rule 481) was in force and applicable and the provisions thereof were mandatory and both the circulars speaks same in favour of life convicts. Accordingly, the father of the petitioner was legally entitled to premature release in all aspects but the authorities have gone beyond the principles of law and their undertaking in the various judgements to deny the father of the petitioner to the benefit of the polices as well as judgement.

26. Having urged, learned Senior counsel, thus, contended that the entire action of the respondents are against the Principles of Natural Justice equity and fair play



and violative of Article 21 of the Constitution of India as the same is purely discriminatory. Apart from the same, the entire action being violative of the undertaking given earlier to this Court is also contemptuous and calls for stringent action for their willful disobedience and their consistent efforts in impeding the course of administration of justice. Learned senior counsel, thus, contended that the respondents, whose action are purely contemptuous cannot be heard unless they purge themselves of the contempt as they have violated the three successful orders of this court and also attempted to review this court's order which is wholly without their jurisdiction.

27. Referring to the observation of Lord Denning, as narrated in (1952) 2 All ER 567 in which the case of Hadkinson Vs. Hadkinson was reported, learned Senior counsel further submitted that this principle was also reiterated in the matter of Anil Panjwani reported in AIR 2003 SC, 2177 wherein the view adopted by Lord Denning is same. Paragraph -7 of the aforesaid judgement is extracted hereinunder :-

“ The leading English authority



on the subject is Hadkinson v. Hadkinson (1952) 2 ALL ER 561. Under a decree of divorce the custody of the child born out of wedlock was given to the wife with an undertaking that the child should not be taken out of the court's jurisdiction except by its leave. The wife defied the court's order. In an appeal against the order of custody preferred by the wife she has refused to be heard unless she purged the contempt by returning the child. Lord Denning stated the rule by observing that disobedience with an order of the Court is not itself a bar to be heard but "if his disobedience is such that, so long as it continues, it impedes the course of justice and the cause by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make" the Court may form opinion for exercise of court's discretion in favour of refusing to hear the contemnor.



Romer LJ with whom Somervell LJ agreed, held that the contempt committed by the wife was one of grossest kind and stated as a general rule that no application to the court by such a person would be entertained until the contempt had been purged. In our opinion, the view taken by Denning LJ is more acceptable being less rigid. The house of Lords in *X Ltd. v. Morgan Grampian Ltd.* (1990) 2 ALL ER 1, chose to follow the view taken by Denning LJ and observed that in a case where a contemnor not only falls willfully and contemptuously to comply with an order of the Court but makes it clear that he will continue to defy the court's authority if the order should be affirmed on appeal, the court must have a discretion to decline to entertain his appeal against the order."

28. It was thus submitted that the present case



was also a fit case where this Court may apply the aforementioned principle in passing necessary orders against the concerned respondents.

29. It was also contended that over and above the aforementioned principle of law, the action of the concerned respondents is also an abuse of process of court as the authorities having once again given an undertaking to pass necessary orders in the case of the father of the petitioner, their action deceiving the court by deliberately suppressing the facts or giving false facts amounts to an offence punishable as it has the influence of misleading the court and preventing it from issuing a positive mandamus.

30. Learned Senior counsel for the writ petitioner further contended that it is a civil Contempt of Court to refuse or neglect to do an act required by a judgement or order of the court or to act in breach of an undertaken given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction. It is relevant to mention here that in the supplementary counter affidavit filed in the earlier writ application, the state authorities gave an undertaking



through a counter affidavit filed that the premature release of the convict would be considered afresh. This fact stands recorded in order dated 22nd of November, 2017 passed in Cr. W.J.C. No. 2130 of 2017 at paragraph 3, which is extracted hereinunder :-

“ However, in view of the statement made in paragraph No. 13 of the counter affidavit filed on behalf of respondent Nos. 2,3,7 and 9 today making a categorical statement that in view of the issues involved in this matter the proposal for fresh consideration of petitioner's father premature release would be put up before the Remission Board in its next meeting so that the same once again be considered by the Remission Board in accordance with law in the light of various decisions of this Court, this writ application stands disposed of with



a direction to the authorities once again to put up the matter of the petitioner's father for fresh consideration by the Remission Board in its next meeting which would take a decision in accordance with law without being prejudiced by its earlier decision.”

31. Again in Cr. W.J.C. No. 1100 of 2018, an affidavit was filed by the Inspector General of Police (Prisons) that the case of the petitioner would be considered by the Board on its own merit in its next meeting. Thus, vide order dated 29th of June, 2018, the Court disposed off the case in the following terms :-

“Heard learned counsel for the petitioner and learned Advocate General.

Affidavit has been filed on behalf of the I.G. Prison Bihar that in the facts and circumstances of



the case, the petitioner's case would be considered by the Board on its own merit and in accordance with law in its next meeting.

On such affidavit having been given, this writ application stands disposed of with such direction to consider the case of the petitioner in the next meeting of the Board in accordance with law which is likely to be held, as per the affidavit filed today, in the next month.”

32. The third round of litigation which was decided in by this very court in Cr. W.J.C. No. 53 of 2019 clearly disposes of the case of the petitioner in terms of its operative portion, as contained in paragraph -18 of the aforementioned order, which is extracted hereinunder :-

“We would have proceeded to impose heavy cost on



the State of Bihar keeping in view the fact that the petitioner has had to approach this Court time and again for the consideration of the case of his father on the basis of the material produced but in view of the nature of the offence alleged and the period which has been spent in incarceration, we at this stage refrain from doing so with a clear direction to the State of Bihar and the Remission Board in particular that it would this time consider each and every fact which is necessary for complying with the judgement of this court dated 20th June, 2017 which has become final between the parties. There is nothing on record to indicate that the judgement of the High Court in Cr. W.J.C. No. 748 of 2017 has



been subjected to any further appeal before the Apex Court. Consequently, the Remission Board cannot avoid the observations made therein or even otherwise the facts which have been made the basis for the claim of remission on behalf of the convict by the petitioner particularly the second instance where the date of conviction is stated to be 5th of June, 2003. The conviction in the said case, therefore, appears to have been pronounced after the promulgation of the policy dated 28th December, 2002 in respect of a heinous offence of multiple murders. It is strange as to how these facts have escaped the notice of the Remission Board and as to why the aforesaid facts have not been taken into consideration



for the purpose of either accepting
or rejecting the claim of the convict
in the present case.”

33. Considering though, the respondent authorities have once again rejected the case of the petitioner's father particularly after notices were issued in the contempt application bearing MJC NO. 1828 of 2019 wherein vide order dated 06.05.2019, the respondent no. 3, Principal Secretary (Home) was put to notice and a direction was issued to list the case on the 16th of May, 2019. It is notable that the order impugned in the present criminal writ application was issued only on 15.05.2019, and the decision is said to be signed on 14.05.2019. The result obviously indicates non- application of mind by the concerned respondents and is but a sham exercise made to defeat the spirit and intent of the directions of the earlier writ application which calls for severe deprecation and initiation of contempt proceedings against the concerned respondents and also for quashing of the impugned order as contained in Annexure- 20.



34. Resisting the prayer made by the writ petitioner, the respondents have filed a counter affidavit stating that the proposal of the petitioner's father was put up in the meeting of Bihar Sentence Remission Board on 27.07.2017 but was rejected in the light of the notification no. 3106 dated 10.12.2002 whereby the convicted prisoners were undergoing life sentence for offence such as rape, dacoity, terrorist crime etc. and who are guilty of murder of public servants on duty are declared ineligible for premature release. However, in the light of the order passed in Cr.W.J.C. NO. 2130 of 2017 vide order dated 22.11.2017, the issue regarding premature release of the petitioner's father was again put up before the Remission Board in its meeting held on 03.05.2018. The Remission Board, however, recommended to file an SLP before the Hon'ble Supreme Court but the same was not filed in the light of the opinion of the counsel of the Supreme Court. As such, the petitioner again preferred Cr.W.J.C. 1100 of 2018, which was disposed of on 29.06.2018 with the directions to the State to consider the proposal of the petitioner's father in its next meeting in accordance with law. In compliance of



the order dated 29.06.2018, the matter was put up before the Remission Board but again the same was not recommended by the Board in the light of the provision of Clause (iv) (K) of notification no. 3106 dated 10.12.2002 (Annexure A). The MJC No. 6034 of 2018 filed by the petitioner for compliance of the order passed in Cr.W.J.C. No. 1100 of 2018 but again the case of the father of the petitioner was rejected, which necessitated the filing of the Cr.W.J.C. No. 53 of 2019 which ended in the order dated 22.01.2019.

35. Learned counsel for the State further contended in its counter affidavit that the case of Ajay Kumar Choudhary, whose case was recommended by the Remission Board on 07.04.2017, was convicted on 23.09.1997 under Section 376 and 302/34 of the Indian Penal Code. However, the petitioner's appeal was dismissed by the Hon'ble Court and after dismissal of appeal by the Court, the lower court issued fresh conviction warrant against the petitioner on 08.04.2003. The petitioner was covered under the 1984 short sentencing policy. Under this policy, the prisoners who had completed the actual custody of 14 years and 20 years of custody with remission were



eligible for recommendation of premature release by the Remission Board. Since the Ajay Kumar Choudhary was sentenced on 23.09.1997, hence he was covered under the 1984 policy and he was recommended for premature release by the Remission Board.

36. The further stand of the learned counsel for the State is that so far as Dina Yadav, Ramashish Yadav and Krit Yadav @ Ram Krit Yadav is concerned, the State contended that they were recommended for release by the Remission Board in the light of the policy applicable. Learned counsel for the respondents has also referred the case of **State of Haryana & Ors. Vs. Jagdish reported in (2010) 4 SCC, page 2** wherein the Apex Court has held that on several occasions in the matter of remission the policy implemented on the date of conviction will prevail and it was under these judgements/orders that the Remission Board had recommended the release of Ajay Kumar Choudhary and Dina Yadav and others under the prevailing policies of short sentencing prevalent at that point of time.

37. Learned counsel for the State also stated that so far as the Short Sentencing Policy, 2002 is



concerned, the Departmental Notification 3106 dated 10.12.2002 made it specifically clear that in exercise of the power conferred by Section 59 of the Prison Act, 1894, the State Government makes the following amendments in the Bihar Jail Manual with immediate effect and thus, the notification No. 3106 dated 10.12.2002 was implemented with immediate effect.

38. Responding to the contentions made by the respondents in their counter affidavit, learned counsel for the petitioner has stated in his rejoinder that the new guidelines for release of prisoners was introduced by the State Government by making amendment in Rule 529 of the Bihar Jail Manual in exercise of power conferred under Section 59 of the Prison Act, 1894 notified in Bihar Gazette on 10.12.2002, by which it is fixed that the persons who are convicted for life sentence for the Heinous offences including Rape, Dacoity, Terrorist as well as organized murder in premeditated manner, professional murderer, murder during smuggling, murderer of government servant etc may not entitled to premature release after completion of 20 years of actual imprisonment in a given case.



39. It was further contended that the State Government or the State Remission Board may not release the life convict in which death is also punishment, on the ground that one has completed 20 years of imprisonment including 14 years of actual imprisonment. But the same criteria has not been followed till date and the State Government or the Remission Board only released life convicts as per their will for the causes best known to them.

40. It is further contended that 6 years 4 months and 17 days of Remission/Special Remission has been awarded for the good conduct of the father of the petitioner, by the respondent no. 7 on the recommendations of yearly constituted departmental three member committee and the same has not been withdrawn/cancelled till date by the authority concerned according to law. The petitioner also drew the kind attention of this Court that several Heinous offences, whose cases were covered under clause (iv) (a) to (d) of notification No. 3106 dated 10.12.2002 (Annexure-3) have been released by the said Remission Board.

41. It is further contended that the case of



Dina Yadav, who was sentenced to capital punishment on 05.06.2003 and later on in Appeal, the capital punishment was converted into life imprisonment on 27.02.2008, and, thus, he is also falls within the parameters under 2002 notification, but this point has been suppressed by the respondents/opposite parties and not included the list of 17 convicts, who have been wrongly awarded remission as admitted by the opposite parties in the case of Naresh Sahni case. It is also relevant to mention here that two co-convicts namely Ramashish Yadav and Ram Kri Yadav have already been included in the said 17 convicts at serial no. 15 and 17 of Annexure- 9 series, meaning thereby that the opposite parties/respondents have tried to mislead this Court in Naresh Sahni case as well as in the present case.

42. It is further contended that it is admitted fact that all the concerned authorities as provided in Bihar/Jail Prison Manual have given consent for premature release of the father of the petitioner and there is no adverse report/finding against the father of the petitioner which obstruct the premature release of the father of the petitioner.

43. We have heard learned counsel for the



parties and perused the materials on record wherein we find clearly that the authorities have acted in a wholly irrational manner on a pick and choose basis in which remissions have been granted to convicts as have been pointed out by the petitioner in the writ application as well as the rejoinder to the counter affidavit which clearly indicates an arbitrary exercise of power by the concerned respondents. It appears that convicts of heinous offences (including rape and multiple murder) on the one hand are being released right and left which stands admitted by them in their own document, wherein it has been observed at Annexure- K that several cases in which remission have been granted were not fit for being granted, and this has been duly affidavit and filed in this Court in the counter affidavit filed in this court by the respondent no. 2 in the case of Naresh Sahni in Cr. W.J.C. No. 2530 of 2011. They having admitted so, it is astonishing as how and under what circumstances, the authorities have ratified such action by affirming their release and stating them to be in accordance with the policy is quite baffling to this court.

44. We must also note with much seriousness



that such stance adopted in different legal proceedings before this Court is but meant to obstruct the administration of justice and defeat its cause and is also wanting in bona fides resulting in frivolous and vexatious litigation, which in our opinion cannot be condoned. The consideration as accorded by the respondents to the cause of the present petitioner does not seem to be in accordance with the parameters fixed in the policy and it is obvious that the respondents have adopted a totally discriminatory approach against the petitioner for reasons best known to themselves.

45. We have also noticed that the orders passed in the case of Dina Yadav is but a misuse of the power bestowed on the concerned respondents and the case of Ram Krit Yadav, who were ineligible for consideration were released by the respondents no. 3 and 4 and they have been passing orders of premature release in their favour without following the procedure prescribed under the law on a pick and choose basis. We, thus, hold that the impugned order of rejection of the petitioner is not only illegal and arbitrary but it is also vexatious harassing and above all contemptuous. In the circumstances, Annexure –



K appended to the counter affidavit in the case of Naresh Sahni is self expository of the arbitrary executive action and we thus find and hold that the impugned order passed by the Remission Board fit to be condemned by this Court as contemptuous.

46. In view of the aforementioned observations made by us and the history of the litigation which has been generated on account of the scant regard for the order of this Court coupled with their earlier undertakings to this Court as referred to hereinabove and in total violation of the rule of law, we have no hesitation in quashing the impugned order as contained in Annexure – 20.

47. In the result, the order 14.05.2019 passed by the respondent no. 3, the State Sentence Remission Board, Government of Bihar, Patna, as contained in Annexure- 20 is hereby quashed.

48. We also issue notice taking *suo moto* cognizance of the contemptuous act of the concerned respondents. Office is directed to register the case as a *suo moto* proceeding and to issue notice on the respondent no 4



calling upon him to show cause as to why proceedings under the Contempt of Courts Act be not initiated against him for having violated the judgements and orders of this Court as observed above.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	06.08.2019
Uploading Date	23.10.2019
Transmission Date	

