

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.368 of 2019

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

SUNNY @ SUNNY DEOL Son of Gorakh Singh @ Gorakh Nath Singh
Resident of Adarsh Nagar, Road No. 2, Police Station - Phulwari Sharif,
District - Patna.

... .. Petitioner

Versus

1. THE STATE OF BIHAR THROUGH THE HOME SECRETARY, GOVT. OF BIHAR, PATNA
2. The Inspector General (Prison), Govt. of Bihar, Patna
3. The District Magistrate, Patna
4. The Senior Superintendent of Police, Patna
5. The Superintendent, Adarsh Central Jail, Beur, Patna
6. The Bihar State Sentence Remission Review Board through its Chairman, Home Secretary, Govt. of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Rama Kant Sharma, Sr. Adv.
	:	Mr. Rajesh Kumar, Advocate
For the Respondent/s	:	Mr. Sanjay Kumar Ghosarware, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 15-03-2021 Heard Mr. Rama Kant Sharma, learned senior counsel
for the petitioner and Mr. Sanjay Kumar Ghosarware, learned
AC to AAG-3 for the State.

Petitioner in the present case is seeking a writ in the
nature of a writ of mandamus commanding the respondent
authorities especially the respondent no. 5 to place the case of
the petitioner before the Bihar State Sentence Remission
Review Board (hereinafter referred to as the 'Remission Board')
who is respondent no. 6 in the writ application to consider the



case of the petitioner for grant of remission/premature release in accordance with law.

Learned senior counsel for the petitioner submits that the petitioner was earlier sentenced to death vide judgment dated 07.08.2007 passed in Sessions Trial No. 1602 of 2005 by the learned Additional Sessions Judge-I, Patna. An appeal was carried over in Death Reference No. 07 of 2007 along with analogous appeals i.e. Cr. Appeal (DB) No. 1216 of 2007 and others.

Learned senior counsel submits that this Hon'ble Court was pleased to modify the sentence to life imprisonment in so far as it relates to the petitioner while acquitting all other convicts. It is his stand that the petitioner is in jail since 21.09.2004 and has become entitled to be considered for premature release subject to such conditions and the report regarding his conduct and the other social factors.

The respondent nos. 2, 5 and 6 came out with a counter affidavit. A stand has been taken in the counter affidavit that the petitioner has so far completed 14 years 5 months and 15 days of actual custody as on 13.03.2019 and 16 years 7 months and 4 days with remission. According to the respondents, for premature release it is mandatory that the



convict must have completed 14 years of actual custody and 20 years of custody with remission. After noticing the stand taken by the respondents, this Court in its order dated 19.02.2021 adjourned the matter on the request of learned counsel for the State to seek instruction and file a supplementary counter affidavit. One of the contentions on behalf of the petitioner was that in the case of co-convict namely Ravindra Kumar @ Ravindra Kumar Singh who was also held guilty and was awarded death sentence and later on his sentence was modified to life imprisonment in Sessions Trial No. 1602 of 2005, the respondents had sent his case for consideration to the Remission Board.

A supplementary counter affidavit has been filed on behalf of the State and this time the respondents took a stand that the total period of custody with remission as on 27.02.2021 has been counted as 19 years 03 months and 1 day. This Court deliberated upon the various provisions under Chapter-XIII of the Bihar Prison Manual dealing with the award of remission, those were briefly noticed in its order dated 02.03.2021. Once again the State was directed to make categorical statement as to how and in what manner as also under which guideline of the Government as regards the scale and quantum of remission the



total period of imprisonment with remission in respect of the petitioner had been counted for.

In view of the order passed by this Court on 02.03.2021, an another supplementary counter affidavit has been filed through the Jail Superintendent, Beur, Patna. The affidavit has been filed on behalf of the respondent nos. 2, 5 and 6. This time the respondents have come out with a plea that the modified warrant of life imprisonment of Ravindra Kumar @ Ravindra Kumar Singh was issued by the learned convicting court on 16.12.2008 whereas the modified warrant of life imprisonment of this petitioner was issued on 03.07.2012 by the learned Presiding Officer of the convicting court. In the preceding paragraph of the same affidavit the respondents have admitted that in Cr. Appeal (DB) No. 1216 of 2007 and Cr. Appeal (DB) No. 1085 of 2007 this Court vide it's order dated 03.09.2008 commuted the death penalty awarded to them to life imprisonment. It is therefore, an admitted position that this Court had allowed both the appeals on the same day. The co-convict Ravindra Kumar @ Ravindra Kumar Singh was granted remission from fourth quarter of 2008, whereas the petitioner has been deprived of getting the remission on the only ground that the learned Presiding Officer of the convicting court issued



the modified warrant on 03.07.2012 which was received in jail office on 05.07.2012. The petitioner has thus been granted remission from third quarter of the year 2012. In paragraph '9' of this supplementary counter affidavit a specific stand has been taken that the petitioner could not get the remission for 4 years i.e. before the date of modified warrant given by the convicting Court on 03.07.2012 i.e. the date on which the modified warrant was issued to the jail office.

Learned senior counsel for the petitioner has submitted before this Court that from the stand in the supplementary counter affidavit it is evident that the petitioner has not got benefit of remission for four years despite there being no fault on his part. Learned senior counsel also submits that there is a well settled principle of law enunciated by this Court that no person would suffer for the act of the Court. In other words, if the modified warrant was not issued by the learned Presiding Officer of the convicting court for about four years in the case of this petitioner, the petitioner cannot be deprived of the benefit of remission. The fact that this Hon'ble Court had allowed the appeal of this petitioner to the extent indicated above and this was known to the State respondents is not in dispute.



Learned counsel for the State reiterates his stand as disclosed in the counter affidavit and supplementary counter affidavit. Learned counsel has pointed out from the statements made in paragraph '11' of the supplementary counter affidavit that though the special remission of I.G. in respect of this petitioner for the year 2015, 2016, 2017, 2018, 2019 and 2020 was found unfit by the Jail Superintendent but his proposal is pending consideration at the headquarter level.

Having heard learned senior counsel for the petitioner and learned counsel for the State as also on perusal of the records, this Court finds that the only reason for not giving the benefit of remission for the period of almost four years is that there was a delay in issuance of modified warrant by the learned Presiding Officer of the convicting court. This Court has no iota of doubt that the petitioner cannot suffer for the fault on the part of the Court. The delay in issuance of modified warrant cannot be attributed to the petitioner. The respondent State and its authorities were aware of the fact that the Criminal Appeal preferred by this petitioner had been allowed to the extent that the death sentence had been converted in a sentence of life imprisonment. In fact in the case of co-convict Ravindra Kumar @ Ravindra Kumar Singh the modified warrant was issued



immediately after the order passed by this Hon'ble Court in Cr. Appeal but it is not known as to why in case of this petitioner the Presiding Officer of the learned convicting court did not issue the modified warrant immediately. Be that as it may, the petitioner cannot suffer for the same. The law must bend before justice.

The writ application is allowed with a direction to the respondents to consider the case of the petitioner for grant of premature release after taking into consideration the four years period for which the modified warrant was not issued by the learned convicting court, the similar benefit which has been given to co-convict Ravindra Kumar @ Ravindra Kumar Singh for the said period be allowed to the petitioner.

Learned senior counsel for the petitioner has submitted that while considering the case of the petitioner for remission, the policy of remission which was in existence on the date of the judgment has to be applied. This Court need not discuss this issue at length because it is well settled legal position that a policy prevailing on the date of judgment has to be applied and not the policy at the time of consideration of remission. A reference in this regard may be made to the judgment of this Court in the case of Anita Devi Vs. State of



Bihar & Ors. reported in 2011 (1) BBCJ 602.

Let the entire consideration including the consideration of the proposal pending at the headquarter level be given within a period of 30 days from the receipt/production of a copy of this order and necessary order be passed by respondent no. 6.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

