

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.289 of 2020**

Arising Out of PS. Case No.-93 Year-1994 Thana- TEKARI District- Gaya

CHINTU KUMAR S/o Satyendra Sharma @ Totan Sharma Resident of
Village- Bhor, P.S.- Tekari, Distt- Gaya.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE SECRETARY MINISTRY OF HOME, GOVT. OF BIHAR, PATNA Bihar
2. Inspector General (Prison), Home Department Government of Bihar, Panta Bihar
3. The State Sentence Remission Board through its Chairman, Department of Home, Patna. Bihar
4. The Jail Superintendent, Central Jail, Gaya. Bihar
5. Union of India, through the Home Secretary, Government of India, New Delhi. India

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Manish Kumar No2, Adv.
For the Respondent/s : Mr.Saroj Kumar Sharma, AC to AAG-3

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

Date : 21-05-2021

The petitioner in the present case is seeking a direction to the respondent nos. 1 to 4 to consider the premature release of the father of the petitioner who, according to him, has completed 14 years of actual custody and 20 years with remission in terms of the remission policy of the government on the date of his conviction. According to the petitioner, his father is entitled to be considered for his premature release.

The short facts of the case are as under:-



The father of the petitioner was an accused in Tekari P.S Case No. 93 of 1994 registered under Sections 364, 302 and 34 of the Indian Penal Code. He was convicted by the learned trial court presided by the 2nd Additional District and Sessions Judge, Gaya and was awarded rigorous imprisonment for life.

The father of the petitioner preferred Criminal Appeal No. 86 of 1998 before this Court which was eventually allowed and he was acquitted from the charges levelled against him. The judgment of this Court was, however, challenged by the informant before the Hon'ble Supreme Court in Criminal Appeal No. 553-554 of 2001. The said Criminal Appeal before the Hon'ble Supreme Court was allowed. The father of the informant was directed to surrender to serve the remaining sentence.

It is stated that on 29.08.2011, the father of the petitioner surrendered in the learned court below. On 15.11.2018 he filed an application before the Chairman, Remission Board, Patna through the Jail Superintendent, Central Jail, Gaya for his premature release. Thereafter, he also filed a writ application being Cr.W.J.C. No. 750 of 2019 before this Court. At the relevant time he had completed only 13 years of actual custody. On 20.06.2019, the said writ application was disposed of with



an observation that as per the Government's policy the father of the petitioner was not entitled to move the application at this stage without completing the years of incarceration in terms of the policy applicable in the year 1994.

In the aforementioned circumstance, on 02.08.2019 the petitioner filed a representation before the respondent authorities for release of his father claiming therein that his father had already completed 14 years of custody without remission and 20 years with remission. The grievance of the present petitioner was that the respondent authorities were sitting over the matter and they were not taking any decision.

Learned counsel for the petitioner submits that in terms of the settled pronouncement of the Hon'ble Supreme Court in the case of **State of Haryana versus Jagdish** reported in **(2010) 4 SCC 2016** the remission policy as existing on the date of conviction of the father of the petitioner would be applicable. The father of the petitioner was convicted in the year 1997, therefore, the remission rule of that time would be applicable in his case. It is his submission that as per the prevailing policy of the government in the year 1997 premature release were allowed upon 14 years of actual custody and 20 years with remission.



Stand of the State

In response to the writ application, a counter affidavit came to be filed on behalf of the respondent nos. 1 to 4. In the counter affidavit, a plea has been taken in paragraph '6' that for consideration of a case for premature release of a life convict, it is mandatory that the convict must have completed the actual custody of 14 years and 20 years of custody with remission. In paragraph '7' of the counter affidavit it is stated as under:-

“.....That the father of the petitioner has completed the actual custody of 15 years 4 months and 20 days as on 15.03.2021 and total custody with remission as on 15.03.2021 is 19 years 3 months and 11 days.....”

A plea has been taken by the State respondent nos. 1 to 4 that because he has not completed his custody of 20 years with remission so his proposal for consideration of premature release cannot be sent to the Remission Board. As soon as he completes the said period, the proposal for premature release will be put up before the Remission Board. In course of submission Mr. Saroj Kumar Sharma, learned AC to AAG-3 informed this Court that the father of the petitioner would complete 20 years with remission on 04.12.2021 and the same would be the expected date of his release.

The stand taken by the respondent nos. 1 to 4 has been



vehemently contested by the petitioner. Mr. Manish Kumar No.2, learned counsel representing the petitioner submits that from Annexure -A to the counter affidavit it would be clear that total remission of 1401 days only has been granted to the father of the petitioner. According to him, the said chart would show that the remission has not been considered properly. Petitioner has brought on record the detail chart of the custody of his father after conviction and further the period of remission granted to him. Year-wise detail has been provided.

It has been strongly pleaded that the father of the petitioner was firstly taken into custody on 17.10.1994 and he was convicted and sentenced vide judgment dated 21.12.1997. After his conviction, he remained in custody till 19.08.2000 before the Hon'ble High Court acquitted him vide judgment dated 20.08.2000. It is submitted that on perusal of Annexure-'A' to the counter affidavit it would appear that while the other periods of the convicted prisoner has been counted and accordingly remission of 1404 days has been granted to him but for the period from first conviction i.e. from 21.12.1997 till 19.08.2000 no remission has been granted to the father of the petitioner. If the total period of remission of these years are taken into consideration, then it would come to '353' days and



on adding the 353 days of remission his period of twenty years with remission would be complete.

After filing of the reply to the counter affidavit, the matter was heard by this Court on 12.04.2021 and upon noticing the submission of learned counsel for the petitioner, this Court vide its order dated 12.04.2021 granted adjournment to the State respondents to come out with specific instruction as to why the remission for the period the father of the petitioner served his sentence from 21.12.1997 till 19.08.2000 has not been granted.

In response, the State respondent nos. 1 to 4 have filed a supplementary counter affidavit. In the supplementary counter affidavit, the only plea for not giving the remission for 353 days as claimed by the father of the petitioner may be found in paragraph '6' to '10'. Those are, thus, being extracted hereunder for a ready reference:-

“6. That in the light of the order of the Hon'ble Court dated 09.08.2000 passed in Cr. Appeal No. 86 of 1998, the father of the petitioner was released from Jail on 19.08.2000.

7. That the Hon'ble Supreme Court vide order dated passed in Cr. Appeal No. 553-554 of 2001 set aside the order of the Hon'ble High Court, Patna dated 09.08.2000 passed in Cr. Appeal No. 86 of 1998.

8. That in the light of the order of the Hon'ble Supreme Court dated 20.08.2008 passed in Cr. Appeal No. 553-554 of 2001,



the father of the petitioner came in Jail on 29.08.2011 and thereafter he is confined in Central Jail, Gaya.

9. That it is humbly submitted that as per Rule 740(8) of Bihar Prison Manual, 1927, the remission cards of released prisoners shall be preserved for only one year after the release of such prisoners.

10. That it seems that in the light of the above Rule, the remission cards of the father of the petitioner had been destroyed and so the remission card of the pensioners is not available in Central Jail Gaya.”

Consideration

In view of the pleadings exchanged by the parties, the solitary question which has now come up for consideration before this Court is as to whether the plea of non-availability of the remission card taken on behalf of the State respondents to deny the benefit of remission for the period father of the petitioner served after his conviction by the learned trial court and before his acquittal by the Hon’ble Patna High Court is a legally valid and tenable plea?

It is not in dispute that under the Bihar Prison Manual 1927 which was applicable prior to coming into force of Bihar Prison Manual 2012, the petitioner is entitled for remission. The remission are of three types i.e. ordinary remission, special remission and State government remission. The eligibility to get the remission to various types of convicted prisoners are also



governed by the Rules. Calculation of remission is also done as per the relevant rule in Prison Manual. There is no submission of the State respondents that the father of the petitioner was not eligible to earn any type of remission. They have not questioned the eligibility on any ground whatsoever. This Court has, therefore, no hesitation in recording that for the period 21.12.1997 to 19.08.2000 when the father of the petitioner was serving his sentence he was eligible to get remission(s). At the time of his release from jail after his acquittal the total period of the remission earned by him was very much available in his remission card.

After his release by virtue of Hon'ble High Court's order the informant preferred Special Leave Petition to Appeal before the Hon'ble Supreme Court. The State respondents were fully aware of the leave granted by the Hon'ble Supreme Court and pendency of the appeal.

The respondents have relied upon Rule 740 (8) of the Bihar Prison Manual, 1927 (hereinafter referred to as the 'Rules of 1927'). This Court therefore, extracts the entire rule 740 with its sub-rules as under:

“740. Remission cards (B.J. Form No.18.)

(1) On the admission of any prisoner entitled to the grant of ordinary remission under these rules, the jailor shall prepare, or cause to be prepared, a



remission card in respect of such prisoner. All the entries on this card shall be made with great care; the registered number of the prisoner must be entered in the appropriate space in bold figures. No knife erasures shall be permitted, but clerical inaccuracies shall be crossed through and the corrections shall be initiated by the jailor personally.

Prisoners who, though not entitled to the award of ordinary remission, have been granted special remission, shall similarly be provided with remission cards wherever necessary.

(2) Before the end of the first week of every quarter the award or forfeiture of remission shall be copied into this card from the prisoner's history ticket, under the initials of the entering officer who shall, at the same time, verify the accuracy of the various entries in the prisoner's history ticket, relating to remission awarded, or forfeited during the past quarter. Any extraordinary remission of sentence (such as coronation remission) that have been granted by Government, independent of the remission system shall be entered in red ink in the column for special remission.

(3) During the last year of imprisonment, the date of release (after deducting the remission actually earned) shall be entered in the appropriate column as a guide to the preparation of the monthly Remission Roll (B.J. Form No. 34)

(4) The responsibility for the accuracy of each entry shall rest with the officer whose initial is appended to such entry, and any undue detention or release of any prisoner resulting from the inaccuracy of such entry shall be visited on such officer.



(5) Remission cards shall be kept in a special locked box, or almirah, divided into compartments.

(6) Cards shall be arranged in each compartment serially according to the register numbers of the prisoners or in bundles according to the months of release.

(7) No prisoner shall, in any circumstances, be allowed access to any remission card.

(8) Remission cards of released prisoners shall be preserved for one year after the release of such prisoners.”

A bare reading of the Scheme of Rule 740 of the Rules of 1927, this Court finds that it applies to those prisoners who are entitled for grant of remission. On reading of sub-rule(3) of Rule 740 of the Rules of 1927 it would appear that it talks of the date of release (after deducting the remission actually earned) and this has to be entered in the last year of the imprisonment. Sub-Rule (8) of Rule 740 of the Rules of 1927 say that remission cards of released prisoners shall be preserved for one year after release of such prisoners.

In the present case, on 19.08.2000 the father of the petitioner was not released by virtue of remission earned by him or after deducting the remission actually earned by him in terms of sub-rule (3) of Rule 740 of the Rules of 1927. He was in fact acquitted from all the charges by this Court in the criminal appeal. Therefore, the jail authorities had no occasion to



consider case of the father of the petitioner for release after deducting remission actually earned by him. In the facts of the present case where State respondents were aware of the pending criminal appeal before the Hon'ble Supreme Court at the instance of the informant, could not have destroyed the remission card of the father of the petitioner. Even otherwise such action of destruction of remission card is required to be taken with all circumspection and care. The total period of remission earned by a released prisoner whose case was still pending before the Hon'ble Apex Court should have been preserved, if not duly entered in the admission register or history sheet of the prisoner.

Before this Court, no substantial proof by way of any document or order of a competent authority showing destruction of the remission card of the father of the petitioner notwithstanding pendency of the matter before the Hon'ble Apex Court, has been placed. This Court has therefore, reasons to believe that having neglected to consider the period which were liable to be considered for purpose of remission, the respondents have taken a completely vague stand before this Court just to defeat the writ application. Rules are made to facilitate justice, not to defeat a just claim of a prisoner.



Neither in the counter affidavit nor in the supplementary counter affidavit the State respondents have taken a plea that the 353 days period as are being claimed by the petitioner are not correct or are not required to be considered to calculate the total period of remission. In the opinion of this Court, in the matter of the constitutional rights of a prisoner under Article 21 of the Constitution of India, the State should not act with jealous, there must be a distinction between these kinds of application(s) and an adversarial kind of litigation. The State cannot contest these cases with a view to defeat the writ petition on any ground whatsoever. In the present case, in the opinion of this Court the State respondents should have acted bonafide to accept their own mistake in destroying the remission card of the father of the petitioner without keeping any entry of the total period of remission earned by his father.

This Court, therefore, rejects the plea of the State in the garb of sub-rule (8) of Rule 740 of the Rules of 1927. The plea taken on behalf of the State is held unjust and unfair towards its own citizen.

This Court directs the respondent nos.1 to 4 to consider the case of the father of the petitioner for pre-mature release by giving benefit of remission earned by father of the



petitioner during the period 21.12.1997 to 19.08.2000. The remission will be calculated from the available pleadings and records and from such other sources the respondents may find it out. The calculation given on behalf of the petitioner claiming 353 days of remission shall also be considered while doing the entire exercise. Let this exercise be completed within four weeks from today.

In the supplementary counter affidavit, a statement has been made before this Court that the special remission of I.G., Prison for the year 2019 and 2020 is under consideration and the same will be considered and granted to the father of the petitioner very shortly. If remission of I.G., Prison for the year 2019 and 2020 has still not been granted to the father of the petitioner, this is another indication that the State respondents are not taking the matters of remission seriously and they are not appreciating that the delay in granting such remission causes injustice to a prisoner. This Court directs that the special remission of I.G., Prison for the year 2019 and 2020 shall be granted in terms of the statements made in paragraph '11' of the supplementary counter affidavit within a period of three weeks from today.

This Court further directs that respondent nos. 1 to 4



shall act jointly and severally in tandem with each other to complete the entire exercise within the given period and dispose of the representation of the petitioner (Annexure-3) with reasoned order within six weeks from today. In case, the father of the petitioner is found entitled to be released, he shall be released forthwith.

This writ application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22.05.2021
Transmission Date	22.05.2021

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'.

