

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.605 of 2021

Arising Out of PS. Case No.-232 Year-1987 Thana- MURLIGANJ District- Madhepura

Jay Narayan Yadav @ Gannu @ Jay Narayan Prasad Yadav, Son of Surya Narain Yadav Resident of Village- Kalotaha, P.S.- Murliganj, District- Madhepura.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary cum Commissioner, Department of Home, Government of Bihar, Patna.
3. The Secretary, Department of Law, Government of Bihar, Patna.
4. The Director General of Police Government of Bihar, Patna
5. The Inspector General, Koshi Division, Saharsa.
6. The Inspector General (Jail and Reform Services), Government of Bihar, Patna.
7. The Deputy Inspector General (Jail and Reform Services), Government of Bihar, Patna.
8. The Director, Probation Services, Government of Bihar, Patna.
9. The Bihar State Sentence Remission Board Patna through its Chairman.
10. The District Magistrate, Madhepura, P.S. and District- Madhepura.
11. The Superintendent of Police, Madhepura, P.S. and District-Madhepura.
12. The Superintendent of Divisional Jail, Madhepura, P.S. and District- Madhepura.
13. The Probation Officer, Home (Jail) Department, Madhepura.
14. The S.H.O. Murliganj P.S., District- Madhepura.
15. The Superintendent, Central Jail, Purnea.

... .. Respondents

Appearance :

For the Petitioner : Dr. Sanjay Kumar Singh, Advocate
For the Respondents-State: Mr. Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 17-09-2021

Heard Dr. Sanjay Kumar Singh, learned counsel for
the petitioner and Mr. Prabhu Narayan Sharma, learned



Assisting Counsel to the Advocate General, Bihar.

2. The petitioner is a life convict. He has filed the present application under Article 226 of the Constitution of India for a direction to consider his release from the prison by granting him remission of sentence in accordance with law.

3. The contention of the petitioner is that he has already served 14 years of his imprisonment following his conviction. Hence, with remission of sentence in terms of Sections 432 and 433A of the Code of Criminal Procedure, he is entitled to be released from custody. The case of the petitioner is similar to other co-convicts, who have been released pursuant to remission of sentence by the respondents. The petitioner has filed an application before the respondents for release from prison, but no action has been taken till date on his application.

4. A counter affidavit has been filed on behalf of the respondents no. 2, 6, 7, 9 and 15. The contention of the respondents is that by now the petitioner has undergone actual custody for a period of just over 15 years and with remission, he has completed 16 years ten months and 27 days.

5. Mr. Prabhu Narayan Sharma, learned counsel appearing for the State submitted that for the consideration of



a life convict for pre-mature release, the proposal for consideration is sent to the Remission Board only when the convict completes 14 years of actual custody and 20 years of custody with remission. He contended that since the petitioner has not completed his custody with remission of 20 years, his proposal has not been sent to the Remission Board for consideration. He further contended that as soon as the petitioner would complete his custody with remission of 20 years, the proposal of the petitioner would be sent to the Remission Board.

6. We have heard learned counsel for the parties and perused the record.

7. The petitioner has been convicted *inter alia* for the offence punishable under Section 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life vide judgment dated 07.09.1990 passed in Sessions Trial No. 95 of 1989 arising out of Murliganj P.S. Case No.232 of 1987 by the learned Additional Sessions Judge, Madhepura. The appeal preferred on behalf of the petitioner was dismissed by this Court vide judgment dated 05.10.2012 passed in Criminal Appeal (DB) No.417 of 1990. Thereafter, the petitioner preferred appeal before the Supreme Court vide



Criminal Appeal No. 1173-1174 of 2017, which was dismissed vide order dated 05.10.2017. The judgment passed by the Trial Court has attained finality.

8. As per counter affidavit filed on behalf of the State, by now the petitioner has completed about 17 years and few days in custody. The contentions made in the counter affidavit have not been disputed by the petitioner by way of filing rejoinder.

9. Since the application has been filed in the nature of a *habeas corpus* and the detention of the petitioner in prison is neither illegal nor he is being kept in custody beyond the period for which the sentence has been awarded pursuant to judgment of conviction, in our opinion, the application deserves to be dismissed.

10. Accordingly, the writ petition is dismissed.

(Ashwani Kumar Singh, J.)

(Arvind Srivastava, J.)

sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.09.2021
Transmission Date	NA

