

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.62 of 2021

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

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KHELAWAN YADAV S/o Late Dulli Mahto @ Late Dulli Yadav R/o Village-
Kathrahi, P.S.- Bind, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Home Department, Govt. of Bihar, Old Secretariat, Patna
2. The Inspector General (Prison), Government of Bihar, Patna
3. The Deputy Inspector General (Prison), Government of Bihar, Patna
4. The District Magistrate, Patna
5. The Superintendent of Police, Nalanda at Biharsharif
6. The Superintendent, Mandal Kara, Nalanda at Biharsharif

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Kishor Prasad, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Verma, A.A.G. 3
		Mr. Suman Kumar Jha, A.C. to A.A.G.3

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

11 15-12-2021 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner has preferred this application for a direction to the respondents-authorities to consider the case of the petitioner for remission on the ground of the period spent by him in jail, for setting aside the decision taken by the Remission Board dated 5.10.2017, to grant remission to the petitioner and for other reliefs.

The case of the petitioner in brief is that vide judgment and order dated 24.3.1990 (Annexure-P/4) passed in



Sessions Trial no.170 of 1984 by the learned Additional Sessions Judge II, Nalanda at Biharsharif, the petitioner was convicted and sentenced to undergo R.I. for life. The appeal preferred by the petitioner vide Cr. Appeal (DB) no.153 of 1990 was dismissed by this Court vide judgment dated 13.3.2013. Thereafter the appeal preferred by the petitioner before the Hon'ble Supreme Court was also dismissed vide judgment dated 9.1.2017 (Annexure-1) whereby the life imprisonment awarded to the petitioner under section 302 of the Indian Penal Code was maintained.

It is submitted by learned counsel for the petitioner that pursuant to the petitions filed, the period that the petitioner has remained in custody was calculated by the respondents-authorities and document with respect to the same dated 17.9.2021 issued under the signature of the Superintendent, Mandal Jail, Biharsharif has been brought on record as Annexure-C to the counter-affidavit filed on behalf of the respondent nos.2, 3 and 6. From perusal of the same, it would transpire that the petitioner has remained in custody as on 17.9.2021 for a period of 10 years 10 months 2 days. Learned counsel for the petitioner further refers to the notification dated 10.12.2002 issued by the Home (Special) Department, Govt. of



Bihar which has been brought on record as Annexure-P/2 to reply to the counter-affidavit of the petitioner to submit that as per amendment in Rule 529 of the Bihar Jail Manual, prisoners undergoing life imprisonment and who are over 65 years of age would be entitled for being released on completion of 7 years in custody. Learned counsel for the petitioner refers to the judgment of his conviction dated 24.3.1990 passed in Sessions Trial no.170 of 1984 to submit that the petitioner being aged about 54 years in the year 1990, is aged about 85 years today and thus being over 65 years of age, in terms of the relevant clause of the notification referred to above is entitled for being released. It is submitted that the Remission Board did not consider the case of the petitioner and bypassing the order as contained in Annexure P/4 wherein it was decided that the case of the petitioner for release shall be considered after he has completed 14 years in custody. As such, the order be set aside. The Board be directed to consider the case of the petitioner for remission and for his release.

The application is opposed by learned counsel for the State. It is submitted by learned counsel for the State that the case of the petitioner was considered by the Remission Board who recommended to put up the proposal of the petitioner after



the petitioner serves 14 years in custody. The petitioner having completed only 10 years 10 months 2 days in custody as on 17.9.2021, thus, the Remission Board rejected the case of the petitioner.

Having heard learned counsel for the parties and taking into consideration the facts of the case, it transpires that the petitioner who is aged about 85 years has completed 10 years 10 months 2 days in custody as on 17.9.2021 as per the report of the Superintendent of Jail, Bihasharif contained in Annexure-C to the counter-affidavit of respondent nos. 2, 3 and 6. Thus, in the opinion of this Court, the case of the petitioner qualifies for consideration by the Remission Board in terms of clause 3 (gha) to the notification dated 10.12.2002 issued by the Home (Special) Department, Government of Bihar ie the amendment to Rule 529 of the Bihar Jail Manual which has been brought on record as Annexure P/2 to reply to the counter-affidavit filed on behalf of the petitioner.

In view of the facts and circumstances of the case, the decision of the Remission Board as contained in its order contained in Annexure P/4 taken with respect to the petitioner is hereby set aside. The case of the petitioner is referred back to the Remission Board to take a decision with respect to the



petitioner in terms of the amended Rule 529 together with the observations made herein above within a period of three months from today.

The writ petition stands disposed of with the above observations and directions.

(Partha Sarthy, J)

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