

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1872 of 2019

Arising Out of PS. Case No.-100 Year-2003 Thana- UJIYARPUR District- Samastipur

Binod Sah @ Binod Kumar aged about 48 years Sah Son Of Rajendra Sah
Resident Of Village- Paroria, P.S.- Ujiyarpur, District- Samastipur

... .. Petitioner

Versus

1. The State Of Bihar Through The Chief Secretary, Govt. Of Bihar, Patna
2. The State Sentence Remission Board Through The Principal Secretary, Home Deptt., Govt. Of Bihar, Patna.
3. The Joint Secretary-Cum-Director (Administration), Home Deptt. (Prison), Bihar, Patna.
4. The Secretary, Law Department, Govt. Of Bihar, Patna.
5. The Additional Director General Of Police, Criminal Investigation Deptt., Bihar, Patna.
6. The Inspector General, Prisons And Correctional Services, Bihar, Patna.
7. The Assistant Inspector General, Prisons And Correctional Services, Bihar, Patna.
8. The Jail Superintendent, Special Central Jail, Bhagalpur

... .. Respondents

Appearance :

For the Petitioners : Mr.Vijay Kumar Singh, Advocate
For the Respondents : Mr.Md. Nadim Seraj, GP 5

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

4 23-03-2021 This matter is taken up for consideration through
Video Conferencing.

2. Heard learned counsel for the petitioner and learned
State counsel.

3. Instant criminal writ petition has been filed for
quashing the decision of the State Remission Board dated
28.11.2018 (Annexure-P11), whereby and whereunder the State
Remission Board has been pleased to reject the proposal of the



petitioner for his premature release on the ground that under clause (iv) (ka) of Notification No. 3106 dated 10.12.2002, the petitioner is not eligible for consideration of his premature release, and also there is no favourable report of Presiding Officer of the convicting court.

4. Short facts giving rise to this criminal writ petition is that petitioner and other accused persons were convicted for the offence punishable under section 376 of the Indian Penal Code vide judgment dated 24.2.2006, and sentenced on 1.3.2006 to undergo RI for life by learned Additional Sessions Judge cum FTC No. IV, Samastipur in Sessions Trial No. 554 of 2004/30 of 2004.

5. It is submitted on behalf of petitioner that petitioner has already completed more than 16 years of his physical incarceration and 21 years with remission and, therefore, he is entitled to grant of premature release in view of 1984 policy contained in Letter No. 550 dated 21.01.1984 which was prevalent at the time of conviction of the petitioner on 24.02.2006 and order of sentence on 1.3.2006. It is further submitted that in view of the fact that the petitioner has been convicted in the year 2006 his case will be governed by 1984 policy contained in Letter No. 550 dated 21.01.1984 which was



issued under the signature of the Additional Secretary, Law Department, Government of Bihar, Patna. A copy of Letter No.550 dated 21.1.1984 is contained in Annexure P 2 to the writ petition. Clause (2) of the 1984 policy clearly provides that if the life conviction was awarded on or after 18.12.1978, the convict will be released from the jail on completion of 14 years of his physical incarceration and 20 years with remission.

6. Learned counsel appearing for the petitioner submits that the issue is no more *res integra* as the same has also been decided by the Division Bench of this Court vide judgment dated 20.6.2017, passed in Cr.W.J.C. No. 748 of 2017 (Chandra Kant Kumar Vs. the State of Bihar and others) and the case of the petitioner cannot be considered in the light of Notification No.3106 dated 10.12.2002, in view of the fact that the same has come into effect on 2.7.2007 and the petitioner has been convicted on 24.2.2006 and sentenced on 1.3.2006. He submits that the Hon'ble Division Bench has found that though the ordinance Notification dated 10.12.2002 was issued, but the same came to be implemented after 02.07.2007 and during the period, all categories of life imprisonment convicts were eligible for premature release by the jail superintendent himself after completion of 14 years of actual imprisonment and 20 years



with remission in jail, as provided in the letter dated 25.05.1985.

7. However, learned State counsel opposes the writ petition and submits that clause (iv)(a) of Notification No. 3106 dated 10.12.2002 of the Home Department (Special) provides that the life convicts which are convicted for rape, dacoity and terrorist activity are not entitled for pre-mature release. Learned counsel refers to the judgement of the Hon'ble Apex Court dated 23.7.2014, passed in **Writ Petition (Crl.) No. 48 of 2014 (Union of India Vs. V. Sriharan @ Murugan and others)** in which the Hon'ble Apex Court has restrained the State Government from exercising its power of remission and commutation where the life sentence is under any Central Law or with respect to offence punishable under section 376 of the Indian Penal Code or any other similar offence. He submits that the recommendation of the Remission Board is in light of the aforesaid order.

8. However, conspicuously the entire counter affidavit is silent on the point raised by the petitioner in the writ petition.

9. Having heard the submission of learned counsel for the parties, this Court is, prima facie, satisfied with the submission of learned counsel for the petitioner and is in agreement that the case of the petitioner is covered by a decision



of Division Bench of this Court dated 20.06.2017 passed in Cr.W.J.C. No. 748 of 2017. In this case, petitioner has been convicted prior to 02.07.2007 and thus, his case is required to be considered in the light of 1984 policy, contained in Letter No. 550 dated 21.01.1984 (Annexure P 2).

10. In the aforesaid facts and circumstances, the impugned order dated 28.11.2018, passed by State Remission Board, Bihar is hereby set aside.

11. The criminal writ petition is allowed with a direction to the State Remission Board to consider the case of the petitioner afresh in the light of various judgments of this Court referred hereinabove and take an appropriate view of the matter within a period of six weeks from the date of receipt/production of a copy of this order.

(Prabhat Kumar Singh, J)

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