

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.190 of 2022

Arising Out of PS. Case No.-649 Year-2004 Thana- PHULWARISHARIF District- Patna

Sunny @ Sunni @ Sunny Deol @ Sunny Dewal S/o Gorakh Singh @ Gorakh Nath Singh Resident of Adarsh Nagar, Road No. 2, P.S.- 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 Sect., Govt. of Bihar, Patna,

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Rajesh Kumar, Advocate
For the Respondent/s	:	Mr. Prabhu Narayan Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 22-12-2022 Heard Mr. Ramakant Sharma, learned Senior Counsel for the petitioner and Mr. Prabhu Narayan Sharma, learned AC to AG for the State.

The petitioner in the present case is seeking the following reliefs:-

“That, this is an application for issuance of a writ/writs, order/orders, direction/directions for quashing the order of the Sentence Remission Board dated 27.08.2021 communicated vide letter No. 9555 dated 17.11.2021, whereby recommendation for remission of sentence of the petitioner has been rejected and further a direction to the respondent authorities to grant remission/premature release to the petitioner, who has been sentenced to death vide judgment dated



07.08.2007 passed in Sessions Trial No. 1602 of 2005 by learned Additional Sessions Judge-I, Patna. However, the Hon'ble High Court in Death Reference No. 07 of 2007 along with analogous appeals i.e. Cr. Appeal (DB) No. 1216 of 2007 and others was pleased to modify the sentence to imprisonment for life so far it relates to petitioner and acquitted all other co-convicts from the charges and since the petitioner is in jail since 21.09.2004 and he has completed 20 years in jail with remission on 20.06.2021 still he has not been considered for premature release.”

Learned Senior Counsel for the petitioner has submitted that in this case, the State Remission Board (hereinafter referred to as ‘the Board’) has rejected the proposal for pre-mature release of the petitioner on a completely misconceived ground.

Learned Senior Counsel submits that the charge against the petitioner of kidnapping for ransom could not be established in final conclusion before the Hon'ble Division Bench of the High Court in Death Reference No. 7 of 2007. In paragraph ‘30’ thereof has been placed before this Court.

Learned Senior Counsel submits that the petitioner was convicted under Section 302/34 IPC and in similar situation one Karu Mahto has been earlier ordered to be released by the Board. The case of the petitioner has been wrongly distinguished by the Board in order to debar him from the privilege of pre-mature release. Learned Senior Counsel has



drawn the attention of this Court towards the statements made in paragraph '11' of the writ application which has been sought to be answered by the State in paragraph '22' of the counter affidavit.

Mr. Prabhu Narayan Sharma, learned AC to AG for the State has gone through the judgment of the Hon'ble Division Bench of this Court and after going through paragraph '30' thereof, learned AC to AG agrees that the charge against the petitioner for ransom could not be established.

This Court has heard learned Senior Counsel for the petitioner and learned AC to AG for the State as also perused the records. The decision of the Board as respect this petitioner may be found in Annexure '1' to the writ application. It appears on perusal of the decision of the Board that the case of the petitioner was being considered under a wrong notion that he has been convicted for the offences under Sections 364(A)/302, 201, 120B read with 34 IPC. As noted hereinabove, learned counsel for the State has accepted at the Bar that the charge against the petitioner for ransom could not be established. A copy of the judgment of the Hon'ble Division Bench in Death Reference No. 7 of 2007 has been placed. Paragraph '30' of the Hon'ble Division Bench's judgment reads as under:-

"30. The aforesaid facts coupled with lack of any



explanation by the said two accused as to how they could know the facts disclosed by them leading to recovery of incriminating materials, in my view are sufficient to establish the charge under Section 302 read with 34 of the Indian Penal Code against appellants Sunny @ Sunny Deol and Ravindra Kumar @ Ravindra Kumar Singh beyond any reasonable doubts. However, the charge of kidnapping for ransom or conspiracy has not been proved beyond reasonable doubts.”

Further, this Court finds that the Hon’ble Division Bench ultimately held that the offence in question cannot be treated as rarest of rare and, therefore, award of death penalty to the appellant Sunny @ Sunny Deol and the co-appellant Ravindra Kumar @ Ravindra Kumar Singh was found to be not in accordance with law. The Hon’ble Division Bench, though affirmed their conviction under Section 302/34 but commuted the death penalty awarded to the petitioner to one of life imprisonment. The Hon’ble Division Bench did not preclude the petitioner from getting the benefit of remission under the Government policy.

This Court is, therefore, of the considered opinion that in the light of the judgment of this Court in Cr.W.J.C. No. 368 of 2019 (Sunny @ Sunny Deol versus The State of Bihar and Others), the Board was required to consider the case of the petitioner for remission. The Board proceeded to consider the case of the petitioner but committed grave error in rejecting his



case for premature release on the ground that the case of the petitioner would be covered under clause (iv)(क) of the Notification No. 3106 dated 10.12.2002. The Board has equated the case of the petitioner with that of a case of rape, dacoity and terrorist activity which is not a correct approach to give effect to the policy of the Government in the matter of grant of premature release. From the column showing “recommendations” in Annexure ‘1’, it would appear that all reports in respect of the petitioner were favourable and he had completed 20 years with remission on 26.08.2021 itself. The case of the petitioner could not have been distinguished from the case of one Karu Mahto who had also been convicted under Section 302/34 IPC for murder of 8 years old girl.

As regards the petitioner, the Board has placed the petitioner in the category of the cases covered under clause (iv)(क) by saying that the kidnapping and murder of a boy of 13 years age would also be covered under the said clause. The Board failed to appreciate that the charge of kidnapping was not proved against the petitioner and in case of Karu Mahto, the Board had granted privilege of premature release even as in his case, the murder was of one 8 years old girl.

This Court is unable to understand how the public



functionaries who have been bestowed such a responsibility to implement the Government's policy can discriminate between two similarly situated persons.

In result, this Court finds that the decision of the Board as respect this petitioner contained in Annexure '1' suffers from the vice of irrelevant considerations and the same is arbitrary as also discriminatory, hence, the decision is liable to be set aside.

Accordingly, this Court sets aside the decision of the Remission Board as respect the petitioner in Annexure '1' to the writ application and directs the Board through its Chairman to consider the case of the petitioner afresh within a period of one month from the date of receipt/communication of a copy of this order. Such considerations must be given in the light of the discussions made hereinabove in its terms and spirit.

This writ application is allowed.

(Rajeev Ranjan Prasad, J)

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