

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.201 of 2020

Arising Out of PS. Case No.-39 Year-2004 Thana- DALSINGHSARAI District- Samastipur

MUNILAL SHARMA Son of Saryug Sharma Resident of Village-Shahpur
Pagra, P.S.-Dalsingh Sarai, District-Samastipur. Petitioner/s
Versus

1. THE STATE OF BIHAR THROUGH THE CHIEF SECRETARY, GOVERNMENT OF BIHAR, PATNA Patna.
2. The State Sentence Remission Board through Principal Secretary, Home Deptt. Govt. of Bihar, Patna. Patna.
3. The Joint Secretary-cum-Director (Administration), Home Deptt.(Prison), Bihar, Patna. Patna.
4. The Secretary, Law Deptt., Govt. of Bihar, Patna. Patna.
5. The Additional Director General of Police, Criminal Investigation Department, Bihar, Patna. Patna.
6. The Inspector General, Jail and Reforms Services, Bihar, Patna. Patna.
7. The Assistant Inspector General, Jail and Reforms Services, Bihar, Patna. Patna.
8. The Jail Superintendent, Special Central Jail, Bhagalpur. Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vijay Kumar Singh, Advocate Mr. Abhinav Shandilya, Advocate Mr. Santosh Kumar, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Verma, AAG 3 Mr. Saroj Kumar Sharma, AC to AAG 3

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
Date : 19-07-2022

Heard learned counsel for the petitioner and learned
Additional Advocate General no. 3 for the respondents.

The petitioner has filed the instant application for the
following reliefs :

*“(I) For issuance of an appropriate
writ in the nature of **CERTIORARI** for
quashing the decision of State Remission*



dated 21.8.2019, so far it relates to the petitioner, whereby and where under the State Remission Board has been pleased to reject the proposal of the petitioner for his pre-mature release pursuant to the clause-(iv) (ka) of Notification No. 3106 dated 10.12.2002 on the ground that Notification No. 3106 dated 10.12.2002 is not applicable in the case of the petitioner since the petitioner was convicted on 25.9.2006 but the Notification No. 3106 dated 10.12.2002 acted upon only after 02.07.2007 as held by the Division Bench of this Hon'ble Court in catena of decisions.

*(II) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities to consider the case of the petitioner for grant pre-mature release pursuant to the 1984 provision contained in memo no. 550 dated 21.01.1984 in connection with Sessions Trial No. 827 of 2004/117 of 2004 arising out of Dalsingsarai P.S. Case no. 39 of 2004 on the ground that the petitioner had already completed more than 15 years of his physical incarceration and more than 20 years with remission.*

(III) For issuance of any other



appropriate writ/writs, order/orders direction/directions for which the writ petitioners would be entitled under the facts and circumstances of the case.”

The case of the petitioner in brief is that the petitioner was convicted vide judgment and order dated 25.9.2006 under sections 302 and 376 of the Indian Penal Code in Sessions Trial no. 827 of 2004/117 of 2004 and was sentenced to death by the learned Additional Sessions Judge, Fast Track Court No. II, Samastipur. The petitioner preferred Cr. Appeal no. 1128 of 2006 in the Patna High Court which was heard along with Death Reference no. 7 of 2006 and by judgment dated 4.1.2008 the Division Bench of this Court, though upholding the conviction of the petitioner converted the capital punishment of death to life imprisonment. The petitioner having completed 14 years 11 months 20 days of physical incarceration and 19 years 11 months 16 days with remission requested the Jail Superintendent, Special Central Jail, Bhagalpur to send the proposal for his premature release to the State Remission Board. Thereafter, the petitioner filed Cr.W.J.C no. 1105 of 2019 which was disposed of by order dated 20.8.2019 in view of the stand taken therein by the respondents that the matter of the petitioner shall be put up before the Remission Board in its next meeting for consideration.



The matter of premature release of the petitioner was placed before the State Remission Board in its meeting dated 21.8.2019 but the same was rejected by the Board in view of clause (iv)(ka) of the Notification no. 3106 dated 10.12.2002 of the Home (Special) Department, Bihar.

It is submitted by learned counsel for the petitioners that the said rejection is illegal and contrary to law. So far as the case of the petitioner is concerned, it was on 29.6.2007 that amendment in the 1984 policy was brought about and the same was communicated to all the District Magistrates and the Jail Superintendent by letter no. 4125 dated 2.7.2007. It was only thereafter that the Remission Board started taking steps for premature release of the convicts. Prior thereto it was the jail authorities who were taking a decision with respect to premature release of the prisoners in terms of the policy dated 21.1.1984. It is further submitted by learned counsel appearing for the petitioner that it was only for the first time by notification dated 9.4.2018 that the Bihar State Sentence Remission Board was constituted. The notification was given retrospective effect with effect from 10.12.2002. Referring to the letter dated 19.4.2019 of the Jail Superintendent, Central Jail, Bhagalpur with respect to the petitioner it is submitted that now the petitioner has remained



in actual physical custody for more than 16 years and with remission for more than 22 years. To substantiate his case with respect to the Remission Board having been constituted for the first time in the year 2007, learned counsel for the petitioner relies on the Division Bench judgment of this Court dated 20.6.2017 passed in Cr.W.J.C no. 748 of 2017 (Chandra Kant Kumar vs. The State of Bihar & Ors). Further reliance is placed on the Division Bench order of this Court dated 23.10.2019 passed in Cr.W.J.C. no. 1027 of 2019 (Chandra Kant Kumar vs. The State of Bihar & Ors) to submit that the State Government for the first time issued a letter to the Jail Superintendent on 2.7.2007 and directed that the premature release of life convicts shall now be done by the State Sentence Remission Board, as provided by ordinance dated 10.12.2002, and they were not to be released by the Jail Superintendent and further the Jail Superintendents were directed to send proposal six months in advance before the State Remission Board regarding premature release of life imprisonment convicts who have completed 14 years in jail and 20 years with remission. Learned counsel further places reliance on the order dated 12.10.2020 of the learned Single Judge of this Court in C.W.J.C. no. 1090 of 2009 (Anita Devi vs. State of Bihar & Ors) wherein it was held that the State



Government and State Remission Board erred in applying the 2007 policy and not applying the 1984 policy which was in existence on the date of conviction of both the petitioners. Learned counsel further submitted that the provisions of Bihar Prison Manual, 2012 replaced the 2002 policy. The case of the petitioner was to be considered on the basis of the policy existing on the date of his conviction and in support of his contention learned counsel for the petitioner relies on the judgment in the case of State of Haryana and Ors vs. Jagdish [(2010) 4 SCC 216], the Division Bench judgment of this Court dated 22.6.2016 passed in Cr.W.J.C. no. 953 of 2016 (Nagina Rai vs. State of Bihar and analogous cases) and the order dated 25.10.2021 of the learned Single Judge in Cr.W.J.C. no. 236 of 2021 (Surendra Mahto vs. the State of Bihar and Ors.). It is thus, submitted that the decision of the Remission Board dated 21.8.2019, so far it relates to the petitioners, be quashed, the respondents be directed to consider the case of the petitioner for his premature release in view of his physical incarceration of more than 20 years with remission.

The case of the respondents is that the petitioner was awarded death sentence in Sessions Trial no. 827 of 2004 on 25.9.2006 by the learned Additional District and Sessions Judge,



Fast Track Court No. II, Dalsinghsarai, which on appeal was converted into life imprisonment by judgment dated 4.1.2008 passed by this Court in Death Reference no. 7 of 2006 with Cr. Appeal no. 1128 of 2006. After completion of 14 years of actual custody and 20 years of custody with remission, the petitioner submitted representation before the Superintendent, Special Central Jail, Bhagalpur to put his proposal before the Remission Board for his premature release. The proposal with respect to the petitioner was put before the Remission Board on 21.8.2019. The Board, taking into consideration Rule (iv)(a) of the notification no. 3106 dated 10.12.2020 of the Home (Special) Department, Government of Bihar, rejected the proposal of the petitioner. It is submitted by learned Additional Advocate General that the allegation against the petitioner was of having committed rape on a 4 year old minor victim and of having caused her death. Referring to the notification dated 10.12.2002 of the Home (Special) Department, Government of Bihar it was submitted that in the said notification although Rule 529(i) provided for the constitution of Bihar State Sentence Remission Board, Rule 529(iv) stated about the category of convicted prisoners undergoing life sentence who were ineligible for premature release. Clause (a) of Rule 529(iv) provided that prisoners



convicted of heinous offences such as rape, dacoity, terrorist crime etc may not be considered eligible for premature release. It is submitted that the category of the offence alleged against the petitioner and for which he had been convicted, the conviction having been upheld up to the High Court falling in the category as provided in Rule 529(iv)(a) of the Bihar Jail Manual, the petitioner was rightly not considered eligible for premature release by the Remission Board and which rightly rejected the case of the petitioner. It was further submitted that the amendment in Rule 529 having been notified on 10.12.2002, the same came into effect immediately on publication of the notification in the Bihar Gazette. So far as the argument on behalf of the petitioner that the State Sentence Remission Board as provided in Rule 529(i) was not constituted till the year 2007 is concerned, it is submitted that the same would not have any effect on convicts like the petitioner who were not eligible for consideration for premature release in view of Rule 529(iv)(a). It was submitted that so far as the 1984 policy is concerned, there was no eligibility clause therein and so far as 29.6.2007 letter bringing about amendment in the 1984 policy is concerned, the same is not in conflict with the 2002 amendment.

Learned Additional Advocate General in support of his



contention further relied on the judgments in the case of Duryodhan Rout v. State of Orissa [(2015) 2 SCC 783], Sanaboina Satyanarayana v. Govt of A.P [(2003) 10 SCC 78] and I.T.C Limited v Collector of Central Excise, Bombay [(1996) 5 SCC 538]. Learned senior counsel further relied on the order dated 23.7.2015 passed in W.P (Crl.) no. 48 of 2014 (Union of India v. V. Sriharan @ Murugan & Ors) by the Hon'ble Supreme Court to submit that from perusal of the said order it would transpire that the Hon'ble Supreme Court by order dated 9.7.2014 had restrained the State Governments from exercising their powers of remission and commutation of sentence under sections 432 and 433 of the Code of Criminal Procedure. Although by order dated 23.7.2015 the Hon'ble Supreme Court modified its earlier order, however, even in the said order it observed that its earlier order dated 9.7.2014 shall apply to cases where the life sentence was under section 376 of the Indian Penal Code. It was thus, prayed that the State Remission Board having correctly decided the case of the petitioner, there was no merit in the instant application and the same be dismissed.

Heard Sri Vijay Kumar Singh learned counsel for the petitioner and Sri P.K. Verma, learned Additional Advocate General no. 3 assisted by Sri. Saroj Kumar Sharma learned



counsel for the respondent State.

The relevant facts for the purpose of the instant application are that the petitioner was accused of rape and murder of a four year old victim girl for which Dalsingsarai P.S. Case no. 39 of 2004 was registered. By judgment and order dated 25.9.2006 passed in Sessions Trial no. 827 of 2004/117 of 2004 by the learned Additional Sessions Judge, Fast Track Court No. II, Samastipur the petitioner was convicted for the offence under sections 376 and 302 of the Indian Penal Code and sentence to death. The appeal preferred by the petitioner was registered as Cr. Appeal no. 1128 of 2006 which was heard along with Death Reference no. 7 of 2006. By judgment dated 4.1.2008, the Division Bench of this Court upheld the conviction of the petitioner, however converted the sentence of death awarded to him by the learned trial Court to a sentence of life imprisonment. Having completed 14 years of actual custody and 20 years of custody with remission, the petitioner moved for his premature release before the Superintendent, Special Central Jail, Bhagalpur. The Superintendent concerned put up proposal for premature release of the petitioner before the Remission Board, however the Remission Board by its order dated 21.8.2019 was pleased to reject the case of premature release of the petitioner



primarily in view of clause 4(ka) of the notification no. 3106 dated 10.12.2002 of the Home (Special) Department, Government of Bihar.

At this stage it would be relevant to mention that notification no. 3106 of the Home (Special) Department, Bihar which was published in the Bihar Gazette (Extra Ordinary) brought about amendment in Rule 529 of the Bihar Jail Manual. Relevant part of the notification is quoted herein below for ready reference :-

“Home (Special) Department

NOTIFICATION

The 10th December, 2002

No. K/Kara-Bibidh-63/2001-3106-In exercise of powers conferred by Section 59 of the Prisons Act, 1894, the State Government makes the following amendments in the Bihar Jail Manual with immediate effect.-

Amendment

Rule 529 of the Bihar Jail Manual shall be substituted by the following :-

“529 (i) Composition of the State Sentence Remission Board.

There shall be a Board known as “ Bihar State Sentence Remission Board which shall consider cases of remission of the sentence awarded to a prisoner and recommend his premature release in appropriate cases. This Board shall be a permanent body and be constituted consisting of the following members :-

- | | |
|--|--------------------------|
| <i>(1) Home Secretary</i> | <i>Chairman</i> |
| <i>(2) Law Secretary</i> | <i>Member</i> |
| <i>(3) Director and Session Judge</i> | |
| <i>nominated by Patna High Court.</i> | |
| <i>(4) Director, Probation Services</i> | <i>Member</i> |
| <i>(5) I.G Police, nominated by D.G.P.</i> | <i>Member</i> |
| <i>(6) I.G Prisons,</i> | <i>Member Secretary.</i> |

The recommendation of this Board shall be invalid merely by reason of any vacancy in the Board or the inability of any Member to attend the meeting



of the Board. The meeting of the Board shall not , however, be held if the quorum is not present. The quorum of the Board shall be with four members including the Chairman.

.....

(iv) Ineligibility for premature release.

The following category of convicted prisoners undergoing life sentence may not be considered eligible premature release-

(a) Prisoners convicted of the heinous offences such as rape, dacoity, terrorist crimes etc.

(b) Prisoners who have been convicted for organised murdered in a premeditated manner and in an organised manner.

(c) Professional murderers who have been found guilty of murder by hiring.

(d) Convicted prisoners, who commit murder while involving in smuggling operations or who are guilty of murderer of public servants on duty.”

The Hon'ble Supreme Court in its judgment in the case of S.K. Shukla v. State of U.P [(2006) 1 SCC 314] as also in the case of I.T.C Limited v. Collector of Central Excise, Bombay [(1996) 5 SCC 538] has held that a notification comes into effect on the date of its publication. Relevant part of the judgment in the case of S.K. Shukla (supra) is as follows :

“18.....Normally under the State General Clause Act, an Act comes into force on the date when the assent of the Governor or the President as the case may be, is first published in the official gazette of the State. Therefore, publication in the gazette is essential as it affects the rights of the public. Since this prohibitory notification notifying that the possession of certain kinds of



arms in the notified area is prohibited, therefore, it would come into effect from the date when it was published in the Official Gazette.”

Relevant part of the judgment in the case of I.TC Limited (supra) is as follows :

“1. The points raised in this appeal are covered squarely against the appellant by the decision of this Court in M/s.Pankaj Jain Agencies vs. Union of India¹ wherein it was emphatically stated as under : (SCCp. 206, para 18)

"We, therefore, see no substance in the contention that notwithstanding the publication in the Official Gazette there was yet a failure to make the law known and that, therefore, the notification did not acquire the elements of operativeness and enforceability. This contention of Shri Ganesh is unacceptable."

Further, from perusal of the notification dated 10.12.2002, copy of which has been brought on record as Annexure-B to the supplementary counter affidavit filed on behalf of respondent nos. 1 to 3 and 8 also states that the same has been brought about in exercise of powers conferred by section 59 of the Prisons Act,



1894 and that by the said notification the State Government makes the amendments in the Bihar Jail Manual with immediate effect.

Thus, from a conjoint reading of the notification dated 10.12.2002 which states that it comes into effect with immediate effect together with the ratio of the judgments of the Hon'ble Supreme Court in the case of S.K. Shukla (supra) and ITC Limited (supra), there remains no doubt that the notification no. 3106 of the Home (Special) Department came into effect with effect from its date of publication in the Bihar Gazette (Extra Ordinary) on 10.12.2002.

So far as the composition of the State Sentence Remission Board is concerned, the amended Rule 529 (i) of the Bihar Jail Manual which came into effect on 10.12.2002 provides that there shall a Board known as Bihar State Sentence Remission Board which shall consider cases of remission of sentence awarded to a prisoner and recommend his premature release in appropriate cases. It further provides that this Board shall be a permanent body and be constituted consisting of the following members :

<i>(1) Home Secretary</i>	<i>Chairman</i>
<i>(2) Law Secretary</i>	<i>Member</i>
<i>(3) Director and Session Judge nominated by Patna High Court.</i>	
<i>(4) Director, Probation Services</i>	<i>Member</i>
<i>(5) I.G Police, nominated by D.G.P.</i>	<i>Member</i>
<i>(6) I.G Prisons,</i>	<i>Member Secretary.</i>



Although it is correct that the constitution of the Bihar State Sentence Remission Board was notified on 9.4.2018, from the fact stated herein below it would transpire that the same would have no effect so far as the case of the petitioner is concerned.

It would be relevant to take note of the amended Rule 529(iv) introduced by the notification dated 10.12.2002. The same talks about 'ineligibility for premature release'. The said clause further provides that the categories of convicted prisoners mentioned therein who are undergoing life sentence may not be considered eligible for premature release and the same at clause (a) speaks of 'prisoners convicted of the heinous offences such as rape, dacoity, terrorist crime etc'.. The very fact that by the said amendment and on introduction of Clause (iv) in Rule 529 of the Bihar Jail Manual the words used in clause (a) is 'heinous offences such as rape....etc', it goes without saying that the heinous offences mentioned in the said clause (a) have been given only by way of illustration and are not exhaustive. So far as the facts of the instant case is concerned, the petitioner was convicted for an offence under sections 376 and 302 of the Indian Penal Code for having raped and killed a 4 year old minor victim girl and for which he was sentence to death. Although in appeal



his sentence was converted to a sentence of life imprisonment, nevertheless his conviction was affirmed. In the opinion of this Court, the case of the petitioner would fall in the category (a) of Rule 529(iv) of a prisoner convicted of heinous offence and the petitioner would be ineligible for premature release.

On the subject of claim of remission as also the policy decision of the government making classes of persons or category of offender to whom the remission would be extended was decided by the Hon'ble Supreme Court in the case of *Sanaboina Satyanarayan v. Govt of A.P* [(2003) 10 SCC 78] wherein it held as follows :

“7. We have carefully considered the submission of the learned counsel appearing on either side. In our view, the rejection of the plea on behalf of the appellant by the High Court was well merited and supported by sound reasons. As pointed out earlier, the remission to be granted was in respect of only a specified class of convicts and that too "subject to the conditions" specified in the very Government order. Consequently, the claim for remission cannot be made or countenanced de-hors the specific conditions subject to which only it has been accorded and in as much as the grant as well as the conditions formed a compendious single



common pattern or scheme of concession by way of remission, pregnated with a policy designed in public interest and the safety and interests of the society, either the remission could be availed of only subject to the conditions stipulated or the entirety of the scheme fails as whole, and there is no scope for judicial modification or modulating the same so as to extend the concession in excess of the very objective of the maker of the order which seems to have been guided by considerations of State policy. In such class or category of orders, there is no justification for any addition or subtraction to facilitate enlargement of the scope and applicability of the order beyond what was specifically intended in the order itself.

8. Clause (iv) of paragraph 3 of the Government order dated 25.01.2000 specifically stated that prisoners convicted for "Crimes against women such as [section 376](#) and 354IPC while being sentenced to imprisonment for life" will fall outside scheme for remission granted under the said G.O. When the clause noticed above, in the later portion referred to two of the provisions of the after the words "such as" it was more by way of illustration of the excepted category of offences relating to crimes against women in general and not with an intention to be



exhaustive of the same and to merely confine the words "crimes against women" to only those convicts for come against women under [Section 376](#) and [354](#) IPC. Acceptance of any such plea would amount to not only doing violence to the language of the order of the Governor but also rewriting the same and that too in utter disregard of the very intention, a laudable one in larger and greater public interest. When keeping into consideration the societal needs and dictates of the gruesome events happening in large scale all over the State, a conscions decision has been taken by the policy maker to keep out a class of ,anti socials from availing the benefit of the remission, courts cannot by stretching the language confer an undeserved benefit upon the class of convicts, who in our view also have not only been designedly but deservingly were kept out of the scheme for according the benefit of remission.

9. The plea of discrimination needs mention only to be rejected. The remission proposed in commemoration of the 50 years of Indian Republic itself is a boon and concession to which no one had any vested right. As to what classes of persons or category of offenders to whom the remission has to be extended is a matter of policy particularly when it is also a constituent power conferred



upon the constitutional functionary and Head of the State Government, larger area of latitude is to be conceded in favour of such authority to decide upon the frame and limits of its exercise under Article 161 itself. The Constitution of India itself has chosen to countenance the claims of women for favourable treatment and acknowledge the fact that sex is a sound classification. The issue in question being one pertaining purely to the area policy and political philosophy of the State, the Courts except in the rarest of rare cases, cannot be called upon to adjudicate on the desirability or wisdom of such decisions. It is no exaggeration to place on record that instances of violence against women and children particularly female, such as rape, dowry deaths, domestic violence, bride burning, molestation, brazen, ill treatment of horror, vulgarity and indecency are not only rampant but on phenomenal increase casting a shadow of shame on the society, the culture and Governance in this country and it seems that cruelty to women problems of battered wives have become ironically almost a world wide phenomenon. Such a situation deserves a special treatment in the hands of the State. Consequently, the classification in this regard to keep away convicts for crimes against



women from the benefits of remission under the order dated 25.01.2000 cannot be said to violate any reasonable principle or concepts of law so as to call for its condemnation in exercise of the powers of judicial review. The classification therefore sound just, reasonable, proper and necessitated in the larger interest of society and greater public interest and consequently cannot by any stretch of imagination be branded to be invidious to attract the vice of Article 14 of the Constitution of India. A careful scrutiny of the various excepted class of convicts only show that the real object is to ensure that those who prey on the community and violate fundamental values of mankind, society and national interest should not get undeserved benefit.”

The Hon'ble Supreme Court in the case of Duryodhan Rout v. State of Orissa [(2015) 2 SCC 783] held that the word 'imprisonment' has not been defined either in the Code of Criminal Procedure or in the Indian Penal Code, under the General Clauses Act would mean imprisonment for the remainder of the convict's life'. It held as follows :

“18. The word “imprisonment” has not been defined either in the Code of Criminal Procedure or in the Indian Penal Code. As per the General Clauses Act,



1897 under Section 3(27) “imprisonment” shall mean imprisonment of either description as defined in the Indian Penal Code. The definition of imprisonment under the General Clauses Act would, therefore, in case of life imprisonment mean imprisonment for life/imprisonment for the remainder of the convict’s life. We are not in agreement with submission made on behalf of the State that imprisonment for life has not been included in the definition of term ‘imprisonment’ under Section 3(27) of the General Clauses Act, 1897.

“28 From the aforesaid decisions rendered by this Court, it is clear that a sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under the provisions of the Criminal Procedure Code.”

Once this Court has come to the conclusion that the case of the petitioner was ineligible for premature release in terms of Rule 529(iv) of the Bihar Jail Manual as amended on 10.12.2002, the question as to whether the Bihar State Sentence Remission Board was constituted or not constituted in terms of the notification dated 10.12.2002 is of no relevance. So far as the



submission made on behalf of the petitioner on the point as to which policy is applicable in case of the petitioner and what would be the relevant date for the same is concerned, it goes without saying, that the said question has already been decided by the Hon'ble Supreme Court in the case of State of Haryana v. Jagdish [(2010) 4 SCC 216] that the date of original conviction is the relevant date. In the instant case the petitioner was convicted by judgment dated 25.9.2006 by the learned trial Court. Thus, the case of the petitioner would be covered by Rule 529 of the Bihar Jail Manual quoted herein above as amended by notification dated 10.12.2002.

In view of the facts and circumstances stated above, this Court is of the opinion that the Bihar State Sentence Remission Board rightly considered the case of the petitioner and rejected the same by the order impugned dated 21.8.2019. There is no illegality in the order of the Remission Board.

There being no merit in the application, the same is dismissed.

(Partha Sarthy, J)

Prakash/-

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Uploading Date	
Transmission Date	

