

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1330 of 2021

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

CHITRANJAN KUMAR @ BABLOO S/o Late Lallan Singh Resident of
Village- Mahajpura, P.S.- Bikram, District- Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH CHIEF SECRETARY, GOVT. OF BIHAR,PATNA-1 Bihar
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna-1 Patna
3. The State Sentence Remission Board through its Chairman, Govt. of Bihar, Patna-1 Patna.
4. The Secretary-cum-Law Remembrance, Law Department, Govt. of Bihar, Patna-1 Patna.
5. The Director General of Police Department, Govt. of Bihar, Patna-1 Patna
6. The Director, Probation Service, Govt. of Bihar, Patna-1 Patna.
7. The Inspector General of Police (Prison) Jail Reforms, Govt. of Bihar, Patna-1 Patna.
8. The Superintendent of Jail, Adarsh Central Jail, Beur, Govt. of Bihar, Patna. Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Pathak
For the Respondent/s	:	Mr.P.N. Sharma, Advocate
		Mr. Ajay Kumar Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 05-08-2022

Heard learned counsel for the petitioner and learned
counsel for the respondents.

The petitioner has filed the instant writ application
praying therein for quashing the decision of the State Remission
Board (hereinafter referred to as ‘the Remission Board’) dated
19.11.2021 whereby and whereunder the Remission Board has



pleased to rejected the proposal for premature release of the petitioner on the ground that he has not been found eligible in terms of the notification bearing memo no.3106 dated 10.12.2002 of the Home (Special) Department, Government of Bihar communicated to the petitioner vide order contained in letter no. 11740 dated 19.11.2021.

The case of the petitioner in brief is that he was convicted vide judgment dated 17.9.2008 passed in Sessions Trial no. 816 of 2005 by the learned Additional Sessions Judge III, Patna under sections 364, 364A, 34 and 120B of the Indian Penal Code and by order dated 16.10.2008 sentenced to undergo rigorous imprisonment for life. It is submitted that the petitioner is a first offender and has served more than 20 years 3 months including the period of remission till 14.2.2021 and has served actual physical custody of more than 15 years till 19.3.2020. The character of the petitioner was found to be satisfactory in the report of the Jail Superintendent and the Probation Officer also recommended for his release.

It is submitted by learned counsel for the petitioner that in cases similar to that of the petitioner, the Remission Board has considered the cases favorably, however, by order dated 19.11.2021, the Remission Board rejected the proposal for



premature release of the petitioner which was communicated to the petitioner through the Superintendent of the Jail vide letter dated 19.11.2021. It is further submitted that so far as notification no.3106 dated 10.12.2002 is concerned, the same was wrongly relied upon by the Remission Board in case of the petitioner as it was for the first time given effect to with retrospective effect vide memo no. 2214 dated 9.4.2018 and before that the same it was not workable. Relying on the judgment in the case of State of Haryana vs. Jagdish [(2010) 4 SCC 216] it was submitted that the policy as existing on the date when a person is convicted would only be applicable and thus the instant policy as contained in notification no.3106 dated 10.12.2002 not being in existence on the date of conviction of the petitioner, the same has wrongly been applied in the petitioner's case. Thus, it is submitted that the order impugned i.e. the decision of the Remission Board dated 9.11.2021, impugned herein be set aside and consequential order of release of the petitioner be passed.

The case of the respondents is that the petitioner was convicted by judgment dated 17.9.2008 passed in Sessions Trial no. 819 of 2005 by the learned Additional District and Sessions Judge III, Patna under sections 364A, 365, 120B and 34 of the



Indian Penal Code and sentenced to undergo life imprisonment. On his having completed 14 years of actual custody and 20 years of custody with remission, the proposal of the petitioner was put up for consideration before the Remission Board which in its meeting dated 27.8.2021 rejected the case of the petitioner in light of clause 14(ka) of the notification no.3106 dated 10.12.2002. It is submitted that clause (iv)(ka) of notification dated 10.12.2002 states that prisoners convicted of heinous offences such as rape, dacoity, terrorist crimes etc are considered not eligible for premature release. Further the Remission Board having taken the stand that the offence of kidnapping for ransom is as serious as the offences mentioned in clause (iv)(ka) of notification dated 10.12.2002, rightly rejected the proposal of the petitioner for his premature release. It is submitted that the case of the petitioner has correctly been considered and rejected by the Remission Board and there being no merit in the instant appeal, the same be dismissed.

Heard Mr. Sunil Kumar Pathak, learned counsel for the petitioner and Mr. P.N. Sharma, learned counsel appearing for the respondents.

The facts relevant for the instant case are that by order dated 17.9.2008 passed in Sessions Trial no. 816 of 2005 the



learned Additional Sessions Judge III, Patna convicted the petitioner for the offence of abduction and kidnapping for ransom under sections 365, 364A, 34 and 120B of the Indian Penal Code and by order dated 16.10.2008 sentenced him to undergo rigorous imprisonment for life. From the materials on record, it appears that no appeal was preferred by the petitioner against the said judgment of conviction and order of sentence.

Having completed more than 14 years of actual physical custody and more than 20 years of custody with remission, the petitioner filed an application for his premature release. The proposal of the petitioner was forwarded with the reports of the Jail Superintendent and the Probation Officer and was put up before the Remission Board. The Remission Board in its meeting dated 27.8.2021 rejected the proposal for premature release of the petitioner in view of clause (iv)(ka) of the notification no. 3106 dated 10.12.2002.

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 Clause 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

Clause 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</i> |
| <i>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.”

Before dealing with the contents of the notification no.



3106 dated 10.12.2002 of the Home (Special) Department, Government of Bihar, it would be relevant to take up the point raised by learned counsel for the petitioner that the provisions of the said notification would not be applicable so far as the petitioner is concerned because for the first time it was given effect to with retrospective effect vide memo no. 2214 dated 9.4.2018 and before that it was not workable. The Hon'ble Supreme Court in its judgment in the case of S.K. Shukla v. State of U.P [(2000) 1 SCC 314] has held in paragraph no.18 thereof that notification comes into effect from the date of its publication in the official gazette. Further, the Hon'ble Supreme Court in its judgment in the case of ITC Ltd v. Collector of Central Excise, Bombay [(1996) 5 SCC 538] observed that the points being raised were squarely covered by the decision of the Court in M/s. Pankaj Jain Agencies vs. Union of India wherein the Hon'ble Supreme Court had observed that there was 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.

So far as the facts of the instant case is concerned, it is not in dispute that the notification no.3106 dated 10.12.2002 was



published in the Bihar Gazette (Extra Ordinary) on 10.12.2002. On reading of the notification, as quoted in the Bihar Gazette (Extra Ordinary) hereinabove it would transpire that the same categorically states that the amendments were being made by the State Government in the Bihar Jail Manual in exercise of powers conferred by section 59 of the Prisoners Act, 1894 and the same were with immediate effect. Thus, in view of the decisions of the Hon'ble Supreme Court in the case of S.K. Shukla (supra) and ITC Ltd (supra) together with the contents of the notification quoted herein above, there remains no doubt that the notification no.3106 of the Home (Special) Department, Government of Bihar came into immediate effect from the date of its publication in the Bihar Gazette (Extra Ordinary) ie on 10.12.2002.

The next contention of learned counsel for the petitioner was that the notification no.3106 dated 10.12.2002 was for the first time given effect to with retrospective effect vide memo no. 2214 dated 9.4.2018 and before that it was not workable. Although it is true that pursuant to the notification no.3106 dated 10.12.2002 the Remission Board was for the first time constituted by notification dated 9.4.2018, however, the same would not have any effect so far as the case of the petitioner is



concerned as would be evident from the facts stated herein after. So far as the notification no.3106 dated 10.12.2002 is concerned, the same came into effect with immediate effect on the date of its publication in the Bihar Gazette (Extra Ordinary) on 10.12.2002. Clause 529(iv) introduced by the said notification provides the category of prisoners who are ineligible for premature release. The words used in Clause (a) of Clause 529(iv) is that convicted prisoners mentioned therein who are undergoing life sentence may not be considered eligible for premature release in case of 'prisoners convicted of heinous offences such as rape, dacoity, terrorist crime etc.'. The very fact that the crimes described in the newly introduced Clause (iv) (ka) is 'heinous offences such as rape.....etc', there remains no doubt that the list of crimes given therein are only by way of illustration and not exhaustive.

In the instant case the petitioner has been convicted for abduction and kidnapping for ransom under sections 365, 364A, 34 and 120B of the Indian Penal Code and sentenced to undergo R.I. for life. The Remission Board in its order dated 19.11.2021 has taken the crime of abduction and kidnapping for ransom to fall in the category of heinous offences described in Clause 529(iv)(ka) of the notification dated 10.12.2002 and thus



rejected the case of the petitioner for his premature release.

The Court finds no error nor illegality in the decision of the Remission Board.

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

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

