

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.103 of 2022

Arising Out of PS. Case No.-1 Year-2006 Thana- PHULWARIYA District- Gopalganj

ASHOK YADAV Son of Late Bachcha Yadav Resident of Village-
Songadhwa, P.S.- Fulwaria, District- Gopalganj. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Law Secretary Bihar, Patna.
3. The Home Secretary, Govt. of Bihar, Patna.
4. The Joint Secretary cum Director (Administration), Home Deptt. (Prison), Bihar, Patna.
5. The Director General of Police, Bihar, Patna.
6. The Inspector General, Bihar, Patna.
7. The District Magistrate, Gopalganj.
8. The Superintendent of Police (Jail), Gopalganj.
9. The Superintendent of Police, Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rakesh Chandra Jha Mr. Bijay Prakash Singh
For the Respondent/s	:	Mr. Prabhu Nr. Sharma

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

9 18-07-2023 Heard learned counsel for the parties concerned.

2. The present writ application has been filed for quashing the order of Bihar State Sentence Remission Board (hereinafter referred as “the Board”) dated 19.05.2021 by which the Board has rejected the premature release of the petitioner under the Sentence Remission Policy of the State.

3. Learned counsel for the petitioner submits that the petitioner along with two other accused persons was involved as accused in Fulwaria Police Station Case No. 01 of 2006 (G. R. Case No. 10 of 2006) for the offences punishable under Sections



364, 302 and 201 of the Indian Penal. During the course of trial, the petitioner was sentenced to death under Sections 364, 302 and 201 of the of the Indian Penal Code *vide* judgment, dated 05.04.2006, passed by the Session Judge, Gopalganj. In Death Reference Case No. 03 of 2006, along with Criminal Appeal No. 329 of 2009, filed by the petitioner-appellant, death sentence was commuted by the Division Bench of this Court to life imprisonment taking into account the young age of the petitioner-appellant.

4. It has further been submitted by learned counsel for the petitioner that as per the Resolution No. 3106 dated 10.12.2022 and Sections 432 and 433 of the Criminal Procedure Code, the case of the petitioner was referred before the State Remission Board inasmuch as the petitioner has completed the custody of 20 years 02 months and 21 days with remission as on 07.12.2012. The State Remission Board has rejected the proposal for premature release of the petitioner from custody quoting Clause IV (क) of the Remission Policy, which connotes that those who committed rape, dacoity and terrorism etc. are not entitled to have the benefit of Remission Policy.

5. Learned counsel refers to the order of rejection of premature release of the petitioner and submits that the proposal



of the premature release of the petitioner has wrongly been rejected under Clause IV (क) of the Remission Policy, which does not include the nature of offence committed by the petitioner and talks about the offences of rape, dacoity and terrorist activities.

6. On the other hand, learned counsel for the State submits that upon bare perusal of the aforesaid provision of Clause IV (क) of the Remission Policy, it would be apparent that the nature of the offences has been described as rape, dacoity and terrorism activities “etc.” and since offences described under Clause IV (क) of the Remission Policy are not exhaustive, accordingly, the proposal of premature release of the petitioner has rightly been rejected. He relies upon the judgment of this Court in Cr.W.J.C. No. 201 of 2020 (*Munilal Sharma vs. The State of Bihar and other.*)

7. I have heard learned counsel for the parties.

8. From perusal of the impugned order of the State Remission Board dated 19.05.2021 so far as it relates to the petitioner, it transpires that the proposal of premature release of the petitioner has been rejected by merely quoting the provisions of Clause IV (क) of the Remission Policy and no further reasons have been assigned by the Board as to how the



nature of offences committed by the petitioner comes under the purview of any other offence having similar effect of rape, dacoity and terrorist activities and as such is covered under Clause IV (क) of the Remission Policy. The impugned order is cryptic and non-speaking in nature, as such, in my opinion, the same is not sustainable under the law.

9. Accordingly, the impugned order of State Remission Board dated 19.05.2021 so far as it relates to the petitioner is set aside and the matter is remanded back to the State Remission Board for reconsideration of the proposal of premature release of the petitioner, in accordance with law.

10. It is made clear that the proposal of premature release of the petitioner shall be considered and disposed by a reasoned order by the State Remission Board within a period of six months from the date of receipt/production of a copy of this order.

11. In view of the aforesaid observation and direction, this application is disposed.

(Anil Kumar Sinha, J)

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