

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.622 of 2023

Arising Out of PS. Case No.-78 Year-1982 Thana- NARKATIYAGANJ RAIL P.S. District-
West Champaran

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ABDULLAH ANSARI Son of Sadik Ansari Resident of village-Deulia, P.S.-
Shikarpur, District-West Champaran

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
PATNA
2. The State Sentence Remission Board through the Principal Secretary, Home
Department, Govt. of Bihar Patna
3. The Joint Secretary-cum-Director (Administration), Home Department
(Prison), Bihar, Patna Patna
4. The Secretary, Law Department, Government 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, Shahid Khudiram Bose Central Jail, Muzaffarpur
Muzaffarpur

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate
For the Respondent/s : Mr. Md. Nadim Seraj, GP-5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 09-11-2023 Heard learned counsel for the petitioner and learned
G.P.-5 for the State.

2. Petitioner in the present writ application is questioning the decision of the State Sentence Remission Board (hereinafter referred to as the 'Board') taken on 09.09.2022 and communicated to all concerned *vide* Letter No. 13900 dated 23.12.2022 insofar as it relates to the petitioner. By the impugned order as contained in Annexure 'P/2', as regards this petitioner, the



Board has rejected the proposal for premature release on the ground that the learned Presiding Officer of the trial court from where the petitioner was convicted has given an adverse report. Learned counsel for the petitioner submits that this is yet another case in which this Court may easily find that the Board has not at all applied its mind while considering the proposal for premature release of the petitioner. At the same time, the Board has not followed the judgment of the Hon'ble Apex Court recently rendered in the case of **Rajo @ Rajwa @ Rajendra Mandal Vs. the State of Bihar & Ors.** reported in **(2023) SCC Online SC 1068:2023 (6) BLJ SC-13**. It is submitted that there is nothing to show that the learned Presiding Officer's report confirms the parameters laid down by the Hon'ble Supreme Court which are required to be looked into by the learned Presiding Officer. Reference in this regard has been made to the judgment of the Hon'ble Supreme Court in the case of **Sangeet Vs. State of Haryana** reported in **(2013) 2 SCC 452** and **Laxman Naskar v. State of W.B.**, reported in **(2000) 7 SCC 626**.

3. It is submitted that Rule 478 of the Bihar Prison Manual, 2002 specifically states that the paramount consideration before the Board being the welfare of the society at large, the Board shall not ordinarily decline a premature release of a prisoner merely on the ground that the police has not recommended his/her



release. It is submitted that the same analogy applies in respect of the report of the learned Presiding Officer of the court as well. Referring to the Hon'ble Division Bench judgment of this Court in the case of **Ravi Pratap Mishra Vs. State of Bihar and Ors. in Cr.WJC No. 272 of 2017** which has been recently noticed by this Court and relied upon in **Cr.WJC No. 1590 of 2023 (Kanhaiya Patel @ Kanhaiya Prasad Patel vs. The State of Bihar and Ors.)**, learned counsel submits that despite a non-favourable report of the learned Presiding Officer, the Remission Board was obliged to apply its own mind.

4. Learned counsel for the State has though taken efforts to defend the impugned order by submitting that the report of the learned Presiding Officer is a valuable piece of document and it is required to be looked into giving some weight.

5. On going through the impugned order, this Court finds that the Board has not at all applied its own mind while rejecting the proposal for premature release of the petitioner. In the counter affidavit, the State has not even brought on record the report of the learned Presiding Officer of the learned trial court so as to throw any light as to whether the learned Presiding Officer has submitted a report considering all the parameters which have been laid down by the Hon'ble Supreme Court in its various judicial pronouncements.



6. In the case of **Rajo @ Rajwa @ Rajendra Mandal Vs. the State of Bihar & Ors.** reported in **(2023) SCC Online SC 1068=2023 (6) BLJ SC-13** the Hon'ble Supreme Court referred V. Sriharan on the role of the report submitted by the Presiding Officer and further took note of a recent judgment of Hon'ble Apex Court in **Ram Chander vs. State of Chhattisgarh** reported in (2022) 4 SCR 1103. In Ram Chander it has been observed as under:-

“21. However, this is not to say that the appropriate Government should mechanically follow the opinion of the Presiding Judge. If the opinion of the Presiding Judge does not comply with the requirements of Section 432(2) or if the Judge does not consider the relevant factors for grant of remission that have been laid down in *Laxman Naskar vs. Union of India* [*Laxman Naskar vs. Union of India*, (2000) 2 SCC 595 : 2000 SCC (Cri) 509], the Government may request the Presiding Judge to consider the matter afresh.

22. In the present case, there is nothing to indicate that the Presiding Judge took into account the factors which have been laid down in *Laxman Naskar vs. Union of India* [*Laxman Naskar vs. Union of India*, (2000) 2 SCC 595 : 2000 SCC (Cri) 509]. These factors include assessing:

- (i) whether the offence affects the society at large;
- (ii) the probability of the crime being repeated;
- (iii) the potential of the convict to commit crimes in future;
- (iv) if any fruitful purpose is being served by keeping the convict in prison; and
- (v) the socio-economic condition of the convict's family.

In *Laxman Naskar vs. State of W.B.* [*Laxman Naskar vs. State of W.B.*, (2000) 7 SCC 626 : 2000 SCC (Cri) 1431] and *State of Haryana vs. Jagdish* [*State of Haryana vs. Jagdish*, (2010) 4 SCC 216 : (2010) 2 SCC (Cri) 806], this Court has reiterated that these factors will be



considered while deciding the application of a convict for premature release.”

7. For all these reasons, this Court is of the considered opinion that the impugned order/decision of the Board cannot sustain the test of reasonableness and is liable to be set aside. Accordingly, the impugned order as contained in Annexure ‘P/2’ insofar as it relates to the petitioner is hereby set aside. The Board (respondent no.2) is directed to reconsider the case of premature release of the petitioner within a period of two months from the date of receipt/communication of a copy of this order and pass a reasoned order in accordance with law and the judicial pronouncements on the subject.

8. This Court has noticed in this case that the Board’s decision was communicated to all concerned after more than three months. This is an inordinate delay on the part of the Board in communicating its decision to the stakeholders. This Court, therefore directs that the reasoned order shall be communicated to the petitioner within a period of two weeks from the date of the order.

9. This application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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