

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.843 of 2021

Arising Out of PS. Case No.-182 Year-1998 Thana- EKCHARI District- Bhagalpur

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FULDHAR MANDAL Son of Late Luri Mandal Resident of Village- Ekchari
Diyara, P.S.- Ekchari (Pirpinti), District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The State Sentence Remission Board through the Principal Secretary, Home Department. Government of Bihar, Patna.
3. The Joint Secretary- Cum- Director (Administration) Home Department (Prison), Bihar, Patna.
4. The Secretary, Law Department, Government of Bihar, Patna.
5. The Additional Director General of Police, Criminal Investigation Department, Bihar, Patna.
6. The Inspector General Jail and Reforms Services, Bihar, Patna.
7. The Assistant Inspector General, Jail and Reforms Services Bihar, Patna
8. The Jail Superintendent Divisional Jail, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh
For the Respondent/s : Mr. Prabhat Kumar Verma
Mr. Suman Kumar Jha AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 6 24-07-2023 1. Learned counsel for the petitioner submits that
- petitioner was convicted vide the judgment and order
- dt- 30.04.2010 / 06.05.2010 passed by learned Additional
- Sessions Judge, Fast Track Court No.-2, Bhagalpur in Sessions
- Trial No. 878 of 2008 / Trial No. 09 of 2009 by which he was
- convicted for life under Section 302 / 149 of the IPC and was
- also convicted for two years under Section 148 I.P.C. and three
- years year for the offence under Section 27 of the Arms Act. All



the sentences were directed to run concurrently. The aforesaid conviction has been upheld by the Hon'ble High Court in Cr. Appeal (DB) No. 768 / 2010 vide judgment dt: 08.09.2015. The petitioner was earlier convicted for 10 years in connection with Sessions Trial No. 1233 of 2007 arising out of Pirpainti PS Case No. 171 of 1997 by Additional District Judge -IV, Bhagalpur on 11.02.2010 and according to learned counsel for the petitioner the petitioner has now completed the period of sentence in the said case.

2. By order dt: 09/05/2023 this court had directed the State to inform this court regarding any policy being framed by the State Government for the purpose of referring the matter for pardon under Article 161 of the Constitution of India in the light of the judgment of the Hon'ble Supreme Court reported in **(2021) 9 SCC 292 The State of Haryana & Ors. versus Raj Kumar @ Bittu.**

3. Learned counsel for the petitioner submits that petitioner is willing to seek pardon from the Hon'ble Governor under Article 161 of the Constitution of India but in absence of any policy in this regard, the petitioner is feeling helpless in order to place his request for pardon.

4. A supplementary counter affidavit has been filed by



the State stating therein that in the light of the order passed by Hon'ble Supreme Court in Raj Kumar @ Bittu Case (Supra), no policy regarding pardon under Article 161 of the Constitution of India has been framed in the State of Bihar. However, he submits that Bihar Prison Manual- 2012 has provision under Rule- 344 for submission of petition to the Governor for mercy, which states as follows:-

“A prisoner whose appeal is rejected by the High Court may if he / she desires file a petition before the Governor for pardon or mitigation of sentence, but if once such a petition has been rejected by the Governor, a second petition either to the Governor or to the President shall not be forwarded by the Government”.

5. Accordingly, submission is that in the light of the aforesaid prison rule, the petitioner can submit his application before the Superintendent of Jail where he is confined and the Superintendent of Jail will send the application to the I.G. (Prison) with relevant documents. After scrutiny of the documents, the I.G. (Prison) has to send the application to the Law Department for obtaining the approval of the Government and thereafter the same shall be forward to the Hon'ble Governor.



6. Learned counsel for the State submits that till date the petitioner has not submitted any application for pardon under Article 161 of the Constitution of India and if such an application is submitted by the petitioner, it shall be considered in accordance with the aforesaid provision.

7. After having heard learned counsel for the parties and taking into consideration the stand taken by the respondent / State, this writ application is disposed of with liberty to the petitioner to submit request / petition for pardon before the Superintendent of Bhagalpur Jail where at present the petitioner is serving the sentence and if such a petition / request is submitted by the petitioner, the Superintendent of Jail shall take necessary steps in accordance with the provision of the Bihar Prison Manual, 2012 as referred to hereinabove within a reasonable time period.

8. Accordingly, with the aforesaid observation and direction, the present writ application is disposed of.

(Anil Kumar Sinha, J)

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