

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.738 of 2022

Arising Out of PS. Case No.-147 Year-2006 Thana- RAJPUR District- Buxar

Krishna Bihari Singh @ Krishna Singh, Son of Late Lalmohar Singh,
Resident of Village - Gopalpur, P.S.- Itardhi, Distt.- Buxar.

... .. Petitioner

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar Patna.
2. The Inspector General (Prison), Govt. of Bihar, Patna.
3. The Assistant Inspector General (Region), Prison and Reforms Services,
Bihar, Patna.
4. The District Magistrate, Buxar.
5. The Superintendent of Police, Buxar.
6. The Probation Officer, Buxar.
7. The Superintendent, Central Jail, Buxar.

... .. Respondents

with

Criminal Writ Jurisdiction Case No. 1324 of 2022

Arising Out of PS. Case No.-147 Year-2006 Thana- RAJPUR District- Buxar

Birbal Chaudhary @ Mukhiya Jee, S/O Ram Ekbal Choudhary, Resident of
village- Ganjbharasara, P.S.- Dinara, District- Rohtas (Bihar).

... .. Petitioner

Versus

1. The State of Bihar through the Home Secretary, Government of Bihar, Patna
2. The Inspector General (Prison), Govt. of Bihar, Patna.
3. The Assistant Inspector General (Region), Prison and Reforms Services,
Bihar, Patna
4. The District Magistrate, Buxar
5. The Superintendent of Police, Buxar.
6. The Probation Officer, Buxar.
7. The Superintendent, Central Jail, Buxar.

... .. Respondents

Appearance :

(In Criminal Writ Jurisdiction Case No. 738 of 2022)

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rakesh Kumar Sharma, Advocate
Mr. Arnesh Kumar, Advocate

For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG
(In Criminal Writ Jurisdiction Case No. 1324 of 2022)

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rakesh Kumar Sharma, Advocate
Mr. Arnesh Kumar, Advocate

For the Respondent/s : Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 15-07-2024

Heard Mr. Ramakant Sharma, learned Senior Counsel assisted by Mr. Rakesh Kumar Sharma, learned counsel for the petitioners and Mr. Prabhu Narayan Sharma, learned AC to AG for the State in both the writ applications.

2. Both the writ applications have been preferred for a direction to the respondent authorities, particularly, the Inspector General (Prison) to consider the request of the petitioners for premature release. Petitioners pray for quashing the letter by which it has been communicated that the proposal sent for grant of remission to the petitioners was placed before the Scrutiny Committee in its meeting held on 04.02.2022 but the Scrutiny Committee decided that the case of the petitioners for remission can only be placed before the State Sentence Remission Board (hereinafter referred to as the 'Board/Remission Board') after they complete 20 years in judicial custody.

3. The petitioners have been convicted in Sessions Trial No. 120 of 2008 / 241 of 2007 arising out of Rajpur P.S. Case No. 147 of 2006 corresponding to G.R. No. 1898 of 2006 by learned District and Sessions Judge, F.T.C. Vth, Buxar *vide* judgment dated 11th June, 2008. They have been held guilty for the offences

punishable under Sections 364A, 34 and 395 of the Indian Penal Code and the petitioner in Cr.WJC No. 738 of 2022 has also been held guilty for the offence under Section 412 of the Indian Penal Code.

4. It appears from the record that learned Sessions Judge made a reference to this Court for confirmation of death sentence of the petitioner, Krishna Bihari Singh @ Krishna Singh (Cr.WJC No. 738 of 2022) and one Jawahar Koiry @ Jawahar Singh @ Netaji which was numbered as Death Reference Case No. 10 of 2008. The petitioner in Cr.WJC No. 738 of 2022, namely, Krishna Bihari Singh @ Krishna Singh preferred an appeal being Cr. Appeal (DB) No. 716 of 2008. The petitioner in Cr.WJC No. 1324 of 2022, namely, Birbal Chaudhary @ Mukhiya Jee was awarded life imprisonment, he preferred an appeal being Cr. Appeal (DB) No. 648 of 2008. Subsequently, this Court considered the Death Reference as well as the Appeals preferred by the appellants and finally held in paragraphs '78' and '79' of its judgment dated 30.03.2010 as under:-

“78. The insertion of Section 364A I.P.C. in 1993 was but the response of the society to the changing scenario of crime. Law must be dynamic and measure up to the new challenges faced. Kidnapping for ransom is a phenomena of modern crime with quick lure for good easy money without labour and investment by the sweat of the brow. The Section provides for life imprisonment for threat to cause hurt and apprehension of hurt apart from real hurt. The word hurt cannot be read confined to section 319 of

the Penal Code, as it would result in absurdity to award death or life imprisonment for the same. This Court is, therefore, satisfied on the facts and circumstances of the present case to impose rigorous imprisonment of 20 years. Justice shall then be done both to the victims and perpetrators of the crime.

79. In the result, the death sentence of the two appellants in Criminal Appeal Nos. 716 of 2008 and 761 of 2008 is not confirmed by this Court. They are awarded the alternative punishment of imprisonment for 20 years. It has been held that their actions are in common with the other appellants. Even otherwise this Court is satisfied that imprisonment for 14 years to the others is not sustainable and is fit to be enhanced to 20 years which this Court orders.”

5. In its counter affidavit, the State took a specific plea that the Hon’ble High Court modified the sentence of the petitioners to an alternative sentence of 20 years which was also affirmed by the Hon’ble Supreme Court in Cr. Appeal No. 707 of 2012 and Cr. Appeal No. 701 of 2012 in respect of the petitioners. According to the State, since the petitioners have not completed 20 years of actual custody and the petitioner in Cr.WJC No. 738 of 2022 had completed only 14 years 7 months 3 days of actual custody till 01.07.2022 and petitioner in Cr.WJC No. 1324 of 2022 had completed only 15 years 3 months 17 days of actual custody till 09.12.2022, so the proposal of the petitioners for premature release could not be sent to the Remission Board for consideration.

6. A written submission has been filed on behalf of the petitioner in Cr.WJC No. 738 of 2022. In paragraph '2' of the written submissions, it is admitted that the petitioner has completed 17 years 3 months 28 days on 19.12.2023.

7. In course of hearing, Mr. Ramakant Sharma, learned Senior Counsel has placed before this Court the judgment of the Hon'ble Supreme Court in the case of **Union of India versus V. Sriharan @ Murugan and Others** reported in (2016) 7 SCC 191. It is his submission that notwithstanding the imprisonment of 20 years of sentence by the Hon'ble Supreme Court, since the Hon'ble Supreme Court has not said that the benefit of remission would not be allowed to the petitioners, the Government's policy for consideration of a case for premature release on completion of 14 years of actual custody would apply to these petitioners as well. It is further submitted that there is no stipulation in the judgment of the Hon'ble Supreme Court that the benefit of remission would not be available to the petitioners. Learned Senior Counsel took this Court through the case of **V. Sriharan @ Murugan** (supra) and paragraph '5' thereof has been read out to this Court.

8. Mr. Prabhu Narayan Sharma, learned AC to AG for the State has opposed the submissions of learned Senior Counsel for the petitioners. It is submitted that by no means these writ applications may be entertained at this stage when the petitioners have yet not

completed 20 years of actual physical incarceration. Learned counsel submits that in fact paragraph '5' of the judgment in the case of **V. Sriharan @ Murugan** (supra) cited above would go against the petitioners.

9. Having regard to the aforesaid submissions, this Court has once again considered the matter but unfortunately, finds no force in the submissions of learned Senior Counsel for the petitioners. Paragraph '5' of the judgment of the Hon'ble Supreme Court in **V. Sriharan @ Murugan** (supra) reads as under:-

“5. After hearing the arguments advanced by the learned counsel for the respective State Governments for some time, we are of the considered view that our order dated 9-7-2014¹ requires to be modified. Accordingly, we modify our order dated 9-7-2014¹, whereby we had restrained the State Governments from exercising their power of remission or commutation to life convicts. The said order dated 9-7-2014¹ shall only apply to cases:

(i) where life sentence has been awarded specifying that:

(a) the convict shall undergo life sentence till the end of his life without remission or commutation;

(b) the convict shall not be released by granting remission or commutation till he completes a fixed term such as 20 years or 25 years or the like;

(ii) where no application for remission or commutation was preferred, or considered suo motu by the State Governments/authorities concerned;

(iii) where the investigation was not conducted by any central investigating agency like the Central Bureau of Investigation;

1. Union of India v. V. Srihara, (2016) 7 SCC 1, 50 (footnote 5)

(iv) where the life sentence is under any Central law or under Section 376 of the Penal Code, 1860 or any other similar offence.”

10. To this Court, there would be no hesitation in recording that in fact the judgment of the Hon’ble Supreme Court would go against the petitioners inasmuch as they would not be entitled to be considered for release by granting remission till they complete the fixed term of 20 years sentence which has been awarded by the Hon’ble Division Bench of this Court and has been affirmed by the Hon’ble Supreme Court.

11. This Court finds no merit in these writ applications.
Both the writ applications are dismissed.

(Rajeev Ranjan Prasad, J)

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