

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1204 of 2023

Arising Out of PS. Case No.-13 Year-2002 Thana- BIBHUTIPUR District- Samastipur

Madan Singh @ Madan Kumar Singh, son of Late Ram Sewak Singh Village-
Sakh Mohan PS- Bibhutipur Dist- Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Govt. of Bihar
2. The Inspector General (Prison), Govt. of Bihar
3. The District Magistrate, Bihar
4. The Superintendent of Police, Bihar
5. The Jail Superintendent, Sub Jail, Rosera, Bihar
6. The Bihar State Sentence Remission Review Board through its Chairman,
Home Secretary, Govt. of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rama Kant Sharma, Sr. Advocate Mr. Mayank Ranjan, Advocate Mr. Sushant Kishore, Advocate Mr. Rajesh Kumar, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 08-05-2024

1. The Petitioner was convicted in Sessions Trial No. 627A of 2003, arising out of Bibhutipur P. S. Case No. 13 of 2002, G. R. No. 52 of 2002, for the offences punishable under Sections 302, 364/149 and 148 of the Indian Penal Code and Section 27(a) of the Arms Act, 1959, by the learned Additional Sessions Judge, Samastipur, by his judgement and order of conviction, dated 5th of July, 2012. He was sentenced to suffer imprisonment for life and fine of Rs. 10,000/- for the offence

punishable under Section 302 of the Indian Penal Code. He was further sentenced to suffer imprisonment for a term of 10 years for the offence punishable under Sections 364/149 of the Indian Penal Code. Both the sentences were directed to run concurrently. The Judgement and Order of conviction and sentence passed by the learned Additional Sessions Judge was affirmed in Cr. Appeal (DB) No. 802 of 2012 with Cr. Appeal (DB) 804 of 2012 by the Division Bench of this Court *vide* judgement and order of conviction and sentence, dated 29th of September, 2015.

2. It is submitted on behalf of the Petitioner that the Petitioner has completed 20 years of rigorous imprisonment with remission. He filed an application before the Sentence Remission Board for his release on remission of his sentence. The Superintendent of Correctional Home, Superintendent of Police and other recommending authorities duly recommended the case of the Petitioner for favourable consideration before the Sentence Remission Board, but by order dated 20th of April, 2023, the proposal for remission of sentence of the Petitioner was rejected by the Sentence Remission Board, Bihar.

3. The instant revision is for quashing of the order passed by the Sentence Remission Board on 20th of April, 2023,

whereby and whereunder, the prayer of the Petitioner was rejected.

4. Mr. Rama Kant Sharma, learned Sr. Counsel on behalf of the Petitioner submits before this Court that in a case where a detenue was 17 years of actual incarceration and 20 years with remission after having been convicted under Sections 364 (A) / 34, 302/24 and 201/34 of the Indian Penal Code in Sessions Trial No. 183 of 2003, arising out of Brahmpura (Muzaffarpur) P. S. Case No. 20 of 2003, made an application before the Sentence Remission Board for remission of his sentence. The said application having been rejected, the Petitioner preferred a writ petition before this Court, which was registered as Cr.W.J.C. No. 1195 of 2021 before a Co-ordinate Bench. The Co-ordinate Bench observed in the aforesaid case (Ajit Kumar Mishra v. The State of Bihar & Ors.) that the Remission Board not only rejected the proposal for premature release of the Petitioner without providing any cogent reason, the decision is also in the teeth of the judgements of the Hon'ble Supreme Court and this Court, which were to be looked into as precedents. Rule 478 of the Manual of 2012 clearly casts a duty upon the Board to keep in view the general principles of remission of sentences as laid down by the State Government or

by the Courts, as also the earlier precedents in the matter and 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 had not recommended his/her release. In this case even that ground was not available because the authorities, who had submitted their respective reports, had recommended for the premature release of the Petitioner. Thus, the Co-ordinate Bench quashed the decision of the Remission Board in so far as it relates to the Petitioner of Cr.W.J.C. No. 1195 of 2021. The Co-ordinate Bench observed in paragraphs 40 and 41 as follows:-

“40. Before this Court would part with this judgment, this Court must express it’s anguish/concern on the manner in which the Remission Board is rejecting the proposals for premature release. The Board is giving least attention to not only the provisions of the Manual of 2012 but also the judgment of the Courts. In one or two lines, the proposals are being rejected which do not indicate a proper judicious application of mind by the Board. The decision-making process of the Board must have potential to generate faith in the public at large. It is a high-powered body headed by the Home Secretary of the State, in absence of the Home Secretary, it is the Law Secretary-cum-

Legal Remembrancer who will chair the meeting, Inspector General, Prisons and Correctional Services is the Member Secretary. The District and Sessions Judge nominated by the High Court, Inspector General of Police nominated by the Director General of Police and the Director Probation Services are the other members. They are learned people who are occupying the highest position in their respective services and that is why they have been conferred with huge responsibility to consider the cases of premature release. The Law Secretary and the District and Sessions Judge are from the Superior Judicial services and they have been trained to examine the decisions taken by the executives as well as by its own court of law in the hierarchy of courts, therefore, their duty to ensure that the decision of the Board be well informed by reasons and in accordance with the statutory provisions as also the law laid down by the Hon'ble Supreme Court and the High Court is at greater echelon. This Court would expect that while all the members of the Board shall play significant role in the decision-making process, the Law Secretary and the District Sessions Judge must take upon themselves to ensure that the decisions to which they are parties are well-reasoned, supported by law and precedents. With these words and with due respect to each

and every one in the Board, this Court would request them to rise to the occasion and take care of the spirit of our Constitution's vision in the light of which these provisions for grant of premature release are to be looked into.

41. This Court finds that the Hon'ble Supreme Court while parting with its' judgment in the case of Rajo @ Rajwa @ Rajendra Mandal (supra) has directed to mark a copy of this judgment by the Registry of this Court to the Home Secretary, Government of Bihar who is the Chairperson of the Remission Board as well as the concerned Presiding Judge through the Registrar, High Court of Judicature at Patna."

5. The learned Sr. Counsel on behalf of the Petitioner also refers to an unreported decision of this Court in ***Munna Singh @ Ajay Sharma v. The State of Bihar & Ors.*** (Cr. Writ Jurisdiction Case No. 752 of 2023). The above-mentioned writ petition was referred to the Division Bench in view of the contradictory decision in the case of ***Ajit Kumar Mishra*** (supra) and ***Pradeep Kumar Srivastava v. The State of Bihar & Ors.*** The Division Bench concluded by observing as follows:-

"8.1. Thus, in view of the aforesaid discussions, we are of the view that the view

taken by the learned Single Judge in the case of Pradeep Kumar Srivastava @ Pradip Kumar Srivastava (supra) as well as Ajit Kumar Mishra (supra) is a correct view and in fact the respondent State has implemented the said decision. Thus, the said decisions have attained finality.

8.2 In view of the aforesaid discussion, the impugned decision dated 09.09.2022 taken by the State Sentence Remission Board is hereby quashed and set aside. The matter is remitted to the Board for a fresh consideration of the proposal of the Petitioner for premature release keeping in view the reports which have been taken note of hereinabove and the discussions made by this Court in this judgement citing the precedents. The respondent Board shall take fresh decision and pass a final order within a period of two months from the date of receipt/production of a copy of this judgement and order.”

6. The learned Sr. Counsel on behalf of the Petitioner also refers to a decision of the Hon'ble Supreme Court in the case of ***Rajo @ Rajwa @ Rajendra Mandal v. The State of Bihar & Ors.***, reported in ***AIR 2023 SC 4084***. The Hon'ble Supreme Court held:

“25. It would be appropriate if

the Remission Board reconsidered the Petitioner's application for remission afresh, considering the reports of the police and other authorities, the post-prison record of the Petitioner, the remissions earned (including that which is earned for good conduct) his age, health condition, family circumstances, and his potential for social engagement, in a positive manner. The concerned presiding judge is hereby directed to provide an opinion on the Petitioner's application for premature release, by examining the judicial record, and provide adequate reasoning, taking into account the factors laid down in Laxman Naskar (supra) within one month from the date of this judgement. With the benefit of this new report, the Remission Board may reconsider the application – without entirely or solely relying on it, but treating it as valuable (may be weighty) advice that is based on the judicial record. Given the long period of incarceration already suffered by the writ Petitioner and his age, the Remission Board should endeavour to consider the application at the earliest and render its decision, preferably within three months from the date of this judgement."

7. In the instant case, I have already recorded that the Petitioner was convicted under Sections 302, 364/149 of the Indian Penal Code.

8. The recommending authority and other authorities reports are required to be considered by the Remission Board submitting favourable report of premature release of the Petitioner. However, the Remission Board equated the criminal wrong committed by the Petitioner with heinous offences such as rape, Dacoity, terrorist crimes etc. The Board was also of the view that the offence committed by the Petitioner was an organized murder in a premeditated an organized manner.

9. This Court, considering the ratio of the judgements passed by a Co-ordinate Bench in *Ajit Kumar Mishra* (supra) as well as the Division Bench in *Munna Singh* (supra) and the decision of the Hon'ble Supreme Court in *Rajo @ Rajwa @ Rajendra Mandal* (supra) is of the view that the wrongful act committed by the Petitioner cannot be equated with a case of murder caused in organized and premeditated manner.

10. For the reasons stated above, the impugned order, dated 20th of April, 2023, passed by the Sentence Remission Board is quashed and set aside.

11. The Sentence Remission Board is directed to take fresh decision with regard to the Petitioner on his prayer for

premature release positively within a period of two months from the date of communication/receipt of a copy of this order, considering the afore-mentioned decisions of this Court and the Hon'ble Supreme Court and pass a reasoned order.

12. A copy of this order be sent to the Chairman, Sentence Remission Board for information and necessary action.

13. With the aforesaid observation / direction, this petition stands allowed.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	NAFR
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