

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2226 of 2024

In
Criminal Writ Jurisdiction Case No.499 of 2022

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Ravinder Kumar @ Ravinder Kumar Singh @ Ravinder Singh, Son of
Ramnath Singh, Resident of Village- Adarsh Colony, Road No.2, Police
Station - Phulwarisharif, District - Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Home Department (Police Branch),
Government of Bihar, Old Secretariat, Patna- 800001.
2. Arvind Kumar Chaudhary, Son of not known, the Principal Secretary, Home
Department (Police Branch), Government of Bihar, Old Secretariat, Patna -
800001.
3. Girish Mohan Thakur, the Under Secretary the Home Department (Police
Branch), Government of Bihar, Old Secretariat, Patna- 800001.
4. Chandrashekhar Singh, Son of not known, the District Magistrate, Patna.
(Wrongly typed the District Magistrate, Vaishali in the Criminal Writ
Petition).
5. Abhinav Dhiman, Son of not known, City Superintendent of Police (West),
Patna.
6. Md. Sameer Khan, Son of not known, the Officer in Charge, Phulwarisharif,
Police Station.

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Rakesh Kumar Sharma, Advocate
For the Opposite Party/s :		Mr. Suman Kumar Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 05-10-2024 Heard Mr. Ramakant Sharma, learned Senior Counsel

assisted by Mr. Rakesh Kumar Sharma, learned counsel for the

petitioner and Mr. Suman Kumar Jha, learned AC to AAG-3 for

the State.

2. The petitioner in this case is seeking initiation of a

proceeding of contempt and imposing of suitable punishment

upon the opposite parties for their willful disobedience and

disregard shown to the judgment of this Court passed on 26.04.2024 in Cr.WJC No. 499 of 2022.

3. Learned Senior Counsel submits that from the judgment of this Court which is enclosed as Annexure 'P/1', it would appear that the petitioner had moved this Court in the writ application seeking a direction to the Respondents to consider his case for premature release on completion of 14 years of actual incarceration and 20 years with remission. He was convicted under Section 302/34 of the Indian Penal Code (in short 'IPC'). The learned trial court sentenced him to death vide judgment dated 07.08.2007 in Sessions Trial No. 1602 of 2005 but the Death Reference made to this Court by the learned Sessions Court was not affirmed and this Court modified the sentence to award of imprisonment for life.

4. It is pointed out that from the judgment of the Hon'ble High Court in Death Reference No. 7 of 2007, it would appear that the Hon'ble Division Bench had categorically recorded that the charge under Section 364 A IPC could not be proved against the appellant and another convict, namely, Sunny Deol. The appeal preferred by them were allowed in part. Except the charge under Section 302 read with Section 34 IPC, no other charge was held proved against them. Accordingly, the

death penalty awarded to them by the learned Sessions Judge was commuted to one of life imprisonment.

5. It is submitted that when the request of the petitioner and Sunny Deol was being considered for their premature release in terms of the Government's policy, their request was rejected by the Bihar State Sentence Remission Board (hereinafter referred to as the 'Remission Board/Board') on the ground inter-alia that they had been convicted for the offence under Section 364 A IPC. This was a result of non-application of judicious mind on the part of the competent authority. Since there was no conviction under Section 364 A IPC, when the co-convict Sunny Deol moved this Court in Cr.WJC No. 190 of 2022, this Court vide its order dated 22.12.2022 set aside the decision of the Board and directed the Board to consider the case of Sunny Deol for premature release. This Court observed that the Board committed grave error in rejecting the case of the said petitioner for premature release on the ground that his case would be covered under clause (iv) (क) of the Notification No. 3106 dated 10.12.2002. It is submitted that despite the fact that the judgment of this Court in the case of Sunny Deol was not challenged and the same attained finality, the Board rejected his prayer for premature release on

the ground that in an another case of another accused in another trial, the learned Co-ordinate Bench had taken a view otherwise. The Board never considered the fact that in the case of Sunny Deol, the conviction was not under Section 364 A IPC whereas in the case decided by the learned Co-ordinate Bench, there was a conviction under Section 364 A IPC and even the said judgment was rendered because the earlier view of this Court in another case governing that issue i.e. the case of **Pradeep Kumar Srivastava @ Pradip Kumar Srivastava vs. the State of Bihar and Ors.** reported in **2022 (1) PLJR 217** was not brought to the notice of the learned Co-ordinate Bench.

6. The submission is that when Sunny Deol moved this Court once again in another Writ being CrWJC No. 190 of 2022 questioning the order of the Board passed on 27.08.2021 which was communicated vide Letter No. 9555 dated 17.11.2021, this Court set aside the said decision of the Board and observed that the Board was required to consider the case of the said petitioner for premature release. It was held that the Board had committed grave error in rejecting the case of the said petitioner. Despite such directions when the Board kept on sitting over the matter, the said Sunny Deol had to once again move this Court in a contempt petition being MJC No. 989 of

2023 which was heard on 15.09.2023. This Court was informed that the proposal of the premature release of Sunny Deol was considered by the Board on 12.09.2023 and a fresh report of the Probation Officer was called for, which was received and upon consideration of the same, the Board had recommended for his premature release. Subsequently, this Court was informed that despite the said order of the Board granting premature release, Sunny Deol was released only after about 11 months from 22.12.2022 which was the date of the judgment in his case.

7. The background of the case of Sunny Deol gains importance because it is a matter of record that this petitioner and said Sunny Deol both were convicted in the same trial and were punished for the same and one offence. The case of the petitioner, therefore, stood at similar footing with that of the case of Sunny Deol.

8. The petitioner moved this Court in Cr.WJC No. 499 of 2022 wherein it was pointed out that despite the judgment of the Hon'ble Division Bench holding that the charge under Section 364A IPC was not proved, the Board had rejected his prayer for premature release on the ground that he was convicted under Section 364A IPC. This Court, like the case of Sunny Deol, set aside the decision of the Board dated

23.12.2020 and directed the Board to consider the case of the petitioner for premature release within a period of two months from the date of the order keeping in view the judicial pronouncements of this Court as well as that of the Hon'ble Supreme Court. This Court reminded the Board in paragraph '9' of its order dated 26.04.2024 in the case of this petitioner as under:-

“9. This Court would observe that it is just unfortunate that despite the order of this Court passed as back as on 22.12.2022 in the case of Sunny Deol it took 11 months to the Board in taking a decision in this case and he was released only after a contempt proceeding was brought before this Court. This Court expects that the Board will not repeat the same inaction on its part.”

9. In its said order, this Court has taken note of the fact that Sunny Deol was released only on 02.11.2023.

10. Despite the direction of this Court in the case of this petitioner to consider his case for premature release within a period of two months, even though the Board seems to have held its meeting on 16.05.2024 and after due consideration recommended the case of the petitioner for premature release, the information in this regard was sent to the Prison Inspectorate, Bihar vide Letter No. 12637 dated 02.10.2024. This has happened only after this petitioner was compelled to

file the present contempt application on 08.07.2024 and this Court called upon the IG, Prison to be present online for interaction and to ensure that the order of this Court be complied with. In this connection the order passed by this Court on 27.09.2024 in the present case is being extracted hereunder for a ready reference:-

“This is yet another unfortunate occasion when this Court thought of initiating a contempt proceeding against the competent authority/Board for not complying with the order of this Court passed as back as on 26.04.2024. Only on 21.09.2024 in Cr.WJC No. 763 of 2023, this Court was given to understand by the learned Advocate General that now the orders of the Courts are being complied with and the issue of pendency has been resolved but this Court finds that unless and until the authorities find themselves in trouble by way of contempt proceeding before this Court, they are not paying heed to the order of this Court. This observation is being made by this Court under compelling circumstances where one after another, the Court is being moved by learned counsel for the petitioner in different cases that despite the order of this Court to consider the matter within an appropriate period and within the time-frame provided by the Court, the authorities are not acting upon the same.

2. Mr. Pranav Kumar, the I.G., Prison is present online. He has assured this Court that the order of this Court will be complied with within a week's time.

3. List this matter on 04.10.2024 at 02:15 PM as the first case.

4. A compliance affidavit must be placed on the record on or before the said date, failing which the Court would be passing an appropriate order to proceed with the contempt and framing of charge.”

11. Today, a compliance affidavit has been filed saying that after the communication to the Prison Inspectorate, the petitioner has been released from prison on 02.10.2024. In

the affidavit, however, no explanation at all has been furnished to show as to why the petitioner was kept in jail despite the recommendation of the Board and what action has been taken to find out as to who is responsible for this delay.

12. Mr. Ramakant Sharma, learned Senior Counsel for the petitioner has made repeated requests to this Court to take cognizance of the fact that the Remission Board is not acting unless a contempt application is filed before this Court and the Chairman and Members of the Board are called upon to appear online or physically to answer the contempt. Several examples have been placed before this Court. It has been submitted that in paragraph '9' of the order of which contempt has been alleged, this Court has taken pain to point out the unfortunate part of the fact that the prisoners who were entitled for premature release were being kept in prison despite being found eligible for release.

13. This Court has observed that it took 11 months to Sunny Deol to get release despite the judgment of this Court in the writ petition. This Court expected that the Board will not repeat the same inaction on its part but no heed has been paid to the request of this Court and the expectation has fallen flat on the face of the inaction once again repeated by the Board.

14. It is submitted that it is a case of inaction on the part of the Executives who are responsible to comply with the orders of the Court. The litigants such as the prisoners who are facing incarceration for more than 14 years are the sufferer at the end. For example, in this case, the petitioner has remained in actual incarceration for more than 20 years even though he had become eligible for consideration and was well within the ambit of the provision for premature release. It is submitted that this Court being a Constitutional Court has to ensure that the life and liberty of a person be not curtailed unless it is in accordance with law, the Court may take note of these conditions which are causing harassment to the citizens who are suffering injustice in the hands of the State.

15. Learned Senior Counsel has submitted that his statement may be taken on the record that in this case alone, the petitioner who is in incarceration for about 20 years has been compelled to spend over a lakh of rupees in fighting litigation and moving this Court again and again to vindicate his grievances. A submission has been made that even though the petitioner has been released from jail, he would be entitled for the cost of litigation keeping his option open to seek compensation from the State for his confinement in jail even

after the grant of premature release by the Board.

16. Mr. Suman Kumar Jha, learned AC to AAG-3 for the State submits that even as the show cause filed today does not contain any explanation for the delay but because the order of this Court has already been complied with, the contempt proceeding be dropped.

17. Having heard learned Senior Counsel for the petitioner and learned AC to AAG-3 for the State as also taking note of the facts of the case which this Court has recorded hereinabove, this Court is constrained to observe that the competent authority did not take care of the observations of this Court made in paragraph '9' of the order dated 26.04.2024 in Cr.WJC No. 499 of 2022. The authorities seem to have remained indifferent towards the plight of the prisoners who have though become eligible to be considered for premature release, have been kept confined for several months despite the order of this Court. Much has been said by the Constitutional Courts of this country about the life and liberty of the citizens and the bounden duty of the Constitutional Court to preserve the fundamental rights of the citizens conferred by the Constitution of India but it seems that the Board and its authorities are not getting sensitized on this issue.

18. This Court is at pain to observe that because of such indifferent attitude shown by the Board and its authorities, the petitioner in this case has suffered in his life and his liberty has been curtailed to a great extent. Since this Court is not sitting in writ jurisdiction, this Court refrains from proceeding further towards awarding compensation to the petitioner and leave it open for him to seek his remedy for compensation in an appropriate proceeding before a competent court of law.

19. This Court, however, finds that the petitioner was compelled to move this Court by filing a contempt application, he had to engage a Senior Advocate and an Advocate on Record and the learned Senior Counsel has stated at the Bar that the petitioner had to spend over a lakh of rupees in fighting this case, this Court is of the considered opinion that the State must pay the cost of litigation to the petitioner. Considering that for the last two years, the petitioner is fighting cases before this Court to secure his release which he was being deprived of because of the illegal orders being passed by the Board, this Court is of the considered opinion that the State would be liable to pay at least a sum of Rupees Two lakhs as cost of litigation to the petitioner.

20. It is left open for the State to realise this money, if

so advised, from the erring officials in accordance with law.

21. The cost amount be paid to the petitioner within one month from the date of communication of a copy of this order.

22. Mr. Suman Kumar Jha, learned AC to AAG-3 shall communicate this order to the competent authority at the earliest.

23. This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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