

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1543 of 2023

Arising Out of PS. Case No.-226 Year-1984 Thana- LAKHISARAI District- Lakhisarai

Ghanshyam Singh S/O Late Kitar Singh Presently Under In Judicial Custody
At Special Central Jail, Bhagalpur, R/O Village- Ramchandrapur, PS.
Pipariya, Dist. Lakhisarai

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Home Deptt., Govt. of Bihar, Patna Bihar
2. The Secretary, Law Deptt., Govt. of Bihar, Patna Bihar
3. The Inspector General, Home Improvement Services, Govt. of Bihar, Patna Bihar,
4. The Inspector General (Modernisation), Govt. of Bihar, Patna.
5. The Director , Remission Board, Govt. of Bihar, Patna.
6. The Superintendent of Police, Lakhisarai, PS. And Distt. Lakhisarai Bihar

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Dr. Anjani Pd. Singh, Advocate Mr. Sunny Kumar, Advocate
For the Respondent/s	:	Mr. Saroj Kumar Sharma, AC to AAG-III

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 18-10-2024

Heard learned counsel for the petitioner and Mr. Saroj

Kumar Sharma, learned AC to learned AAG-III for the State

2. This writ application has been filed seeking a direction to the State Sentence Remission Board (hereinafter referred to as the ‘Board’/‘Remission Board’) to consider the case of the petitioner for grant of remission and his premature release in connection with G.R. Case No. 543 of 1984 arising out of Lakhisarai P.S. Case No. 226 of 1984 in Sessions Case No. 160 of 1985. In the said Session Case, the petitioner has been convicted

for the offences punishable under Section 302/34 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act. He has been ordered to undergo imprisonment for life under Section 302/34 IPC and rigorous imprisonment for a period of five years for the offence under Section 27 of the Arms Act. Both the sentences are to run concurrently.

3. It appears that during pendency of the writ application, the petitioner came across a decision of the Remission Board taken in its meeting held on 20.04.2023 in which the request of the petitioner for premature release has been rejected.

4. The decision of the Remission Board has been challenged by the petitioner by filing I.A. No. 1 of 2023 which is on the record.

5. With the consent of learned counsel for the petitioner and the State, the I.A. has been allowed and the same is taken as part and parcel of the writ application.

Submissions on behalf of the petitioner

6. Learned counsel for the petitioner submits that the reasons assigned in the minutes of the meeting of the Remission Board are completely vague and they do not conform to the parameters governing the case of the petitioner. The petitioner was convicted *vide* judgment dated 28.11.1986, therefore, in view of

the judgment of the Hon'ble Supreme Court in the case of **State of Haryana and Others vs. Jagdish** reported in **(2010) 4 SCC 216**, this case would be liable to be considered keeping in view the policy decision of the Government which was applicable on the date of conviction.

7. Learned counsel submits that the Remission Board has passed a completely vague kind of order and a bare reading of the same would show that no factual aspect which has impressed the mind of the Committee has been disclosed in its decision. For example, the Board says that there is an adverse report of the Presiding Officer and on that basis, the request of the petitioner for premature release is being rejected. The Committee has failed to appreciate that the Officer-in-Charge of the concerned Police Station and the Superintendent of Police, Lakhisarai had recommended for premature release of the petitioner. Similarly, the Probation Officer had also recommended for premature release of the petitioner.

8. Learned counsel submits that in case of **Rajo @ Rajwa @ Rajendra Mandal Vs. The State of Bihar and others** reported in **2023 SCC OnLine SC 1068** the Hon'ble Supreme Court has laid down the guidelines for consideration of such cases in which the reports are called for from the Presiding Officer. Such

guidelines have not at all been considered. It is not the case of the State that they are not granting premature release to a convict of an offence under Section 302 IPC. The petitioner has only one criminal antecedent, however, the final outcome of the same is not known to learned counsel, at this stage.

Stand of the State

9. Learned counsel for the State after going through the impugned order submits that *prima-facie* the reasons shown in the minutes of the meeting of the Remission Board is not very clear. Therefore, this Court may pass an appropriate order keeping in view the judgments of the Hon'ble Supreme Court on the subject.

Consideration

10. Having heard learned counsel for the petitioner and learned A.C. to learned AAG-III for the State as also on perusal of the records, this Court finds that the decision of the Remission Board is not conforming to the judicial pronouncements on the subject by the Hon'ble Supreme Court in the case of **Jagdish** (supra) and **Rajo @ Rajwa @ Rajendra Mandal** (supra). The reasons assigned in the impugned order reads as under:-

“i पीठासीन न्यायाधीश का प्रतिकूल प्रतिवेदन:- उपरोक्त तथ्यों, अपराध की गम्भीरता, अभियुक्त का अपराधिक इतिहास को ध्यान में रखते हुए न्यायालय अभियुक्त को परिहार का लाभ प्राप्त करने योग्य नहीं पाता है ।

2 सम्यक् विचारोपरान्त असमय कारामुक्ति का प्रस्ताव अस्वीकृत किया जाता है । ”

This Court further finds that the Superintendent of Police, Lakhisarai as well as the Probation Officer both had recommended the case of the petitioner for premature release but the same has been ignored by the Board.

11. In the case of **Rajo @ Rajwa @ Rajendra Mandal** (supra), the Hon'ble Supreme Court has laid down the guidelines for purpose of consideration of the cases of premature release. The relevant paragraph of the judgment of the Hon'ble Supreme Court are being extracted hereunder for a ready reference:-

“**23.** Another aspect of note in this case, is the report submitted by the Superintendent of Police in the second round (which is diametrically different from that which was submitted in the first round), was adverse. Without casting aspersions on the veracity of it, or questioning it on merits, it is appropriate to flag another concern in such a context. In each case, the appropriate government has to be cognizant of the latent (not always) prejudices of the crime, that the police as well as the investigating agency, may be citing - especially in a case such as the present one, where the slain victims were police personnel themselves, i.e., members of the police force. These biases may inform the report, and cannot be given determinative value. Doing so will potentially deflect the appropriate government from the facts relevant for consideration for premature release, and instead, focus almost entirely upon facts which evoke a retributive response.

24. Apart from the other considerations (on the nature of the crime, whether it affected the society at large, the chance of its recurrence, etc.), the appropriate government should while considering the potential of the convict to commit crimes in the future, whether there remains any fruitful purpose of continued incarceration, and the socio-economic conditions, review : the convict's age, state of health, familial relationships and possibility of reintegration, extent of earned remission, and the post-conviction conduct including, but not limited to - whether the convict has attained any educational qualification whilst in custody, volunteer services offered, job/work done, jail conduct, whether they were engaged in any socially aimed or productive activity, and the overall development as a human being. The Board thus should not entirely rely either on the presiding judge, or the report prepared by the police. In this court's considered view, it would also serve the ends of justice if the appropriate government had the benefit of a report contemporaneously prepared by a qualified psychologist after interacting/interviewing the convict that has applied for premature release. The Bihar Prison Manual, 2012 enables a convict to earn remissions, which are limited to one third of the total sentence imposed. Special remission for good conduct, in addition, is granted by the rules¹⁹. If a stereotypical approach in denying the benefit of remission, which ultimately results in premature release, is repeatedly adopted, the entire idea of limiting incarceration for long periods (sometimes spanning a third or more of a convict's lifetime and in others, result in an indefinite sentence), would be defeated. This could result in a sense of despair and frustration among inmates, who might consider themselves reformed-but continue to be condemned in prison."

12. In the light of the discussions hereinabove, this

Court finds that the reasons assigned by the Remission Board are not cogent reasons, they are vague and in the teeth of the judgment

19. See Rules 405 and 413 of the Bihar Prison Manual, 2012.

of the Hon’ble Supreme Court as well as this Court. Hence, the decision of the State Sentence Remission Board in its’ meeting on 20.04.2023 as regards this petitioner is set aside.

13. This Court directs the State Sentence Remission Board to consider the case of the petitioner afresh without being prejudiced by the opinion of the Presiding Officer. The decision of the Board must be taken keeping in view all aspects of the matter including the policy which was in force at the time of conviction of the petitioner as well as the precedents. The decision of the Board is always expected in accordance with law and in conformity with the judgment of the Hon’ble Supreme Court and that of this Court.

14. The Chairman of the Board shall convene a meeting as early as possible and in any case decision must be taken and duly communicated to the petitioner/his family within a period of two months from the date of receipt/communication of this order.

15. This application stands allowed.

(Rajeev Ranjan Prasad, J)

Rishi/-

AFR/NAFR	AFR
CAV DATE	
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