

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1128 of 2022

Arising Out of PS. Case No.-120 Year-2004 Thana- ASHTHAWAN District- Nalanda

1. Ajay Kumar Son of Late Bhuneshwar Prasad @ Muneshwar Prasad Resident of village - Benar, P.S.- Sare, District - Nalanda.
2. Vijay Prasad @ Vijay Prasad Singh Son of Late Bhuneshwar Prasad @ Muneshwar Prasad Resident of village - Benar, P.S.- Sare, District - Nalanda.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna, Old Secretariat, Patna.
2. The Principal Secretary, Ministry of Home, Government of Bihar, Patna.
3. The State Sentence Remission Board through its Chairman, Government of Bihar, Patna.
4. The Law Secretary-cum-Legal Remembrance, Department of Law, Govt. of Bihar, Patna.
5. The Director General of Police, Government of Bihar, Patna.
6. The Director, Probation Services, Government of Bihar, Patna.
7. The Inspector General (Prison) and Jail Reforms, Government of Bihar, Patna.
8. The Jail Superintendent, Adarsh Central Jail, Patna. Bihar

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Manish Kumar No . 2, Advocate
For the Respondent/s : Mr. P.N. Sharma, AC to AG

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

Date : 04-07-2025

Heard learned counsel for the petitioners and learned AC to AG for the State of Bihar.

2. The two petitioners in the present writ application are seeking a direction to the respondent authorities for their premature release from the custody as they have already served



their sentence of fourteen years physically and more than twenty years with remission.

3. During pendency of the writ application, the petitioners amended the writ application. By way of amendment, the petitioners prayed for setting aside the decision dated 28.12.2023 passed by the State Remission Board (hereinafter referred to as the 'Board') whereby and whereunder the application of the petitioners for premature release has been rejected.

Brief Facts of the Case

4. The petitioners are serving their sentence in connection with Asthawan (Sare) P.S. Case No. 120 of 2004. They faced trial for the charges under Sections 302/34, 307/34, 386/34 and 120B of the Indian Penal Code (in short 'IPC') as well as under Section 27 of the Arms Act. The petitioners were appellant in Cr. Appeal (DB) No. 1230 of 2006 which was heard with Death Reference No. 10 of 2006, they were awarded death sentence by the learned trial court for the offence under Section 302/34 IPC.

5. The Hon'ble Division Bench of this Court upheld the conviction of the appellants under Section 302/34 IPC but while considering the sentence which may be awarded to the appellants, the Hon'ble Division Bench observed interalia as under:-



“.... so far as choice of sentence is concerned it has to be kept in mind that the appellant Vijay and four others on account of their brick kiln being closed were under great frustration and their mental condition was also disturbed so whatever they did was done in frustration and due to business rivalry. No doubt it is a case of mass murder but in my considered view this case does not come within the category of "rarest of rare" cases. Moreover all the five appellants are from the same family. In the circumstances, I think that the ends of justice would be met if the sentence of death imposed on the appellants Bhuneshwar Prasad, Mahesh Prasad, Ajay Kumar, Vijay Prasad and Dhananjay Prasad are modified into the sentence of life imprisonment.”

6. It appears that the petitioners moved the Hon’ble Supreme Court in Cr. Appeal No. 769 of 2009. The appeal was taken up for hearing on October 10, 2018. By that time, appellant nos. 1 and 2 had died. So far as the other appellants were concerned, they were advised to withdraw the appeal with liberty to pursue remedy for premature release. The Hon’ble Supreme Court while allowing the remaining appellants to withdraw the appeal observed in the following words:-

“At the request of these appellants, the instant appeal is disposed of as withdrawn with the liberty as prayed. We make it clear that we are not expressing any opinion either way on the merits of the proposed remedy. The same will have to be considered on its own merits in accordance with law.”

7. It appears from Letter No. 2106 dated 09.04.2020 written by Superintendent of Police, Nalanda that an inquiry was conducted prior to recommendation of the case of the petitioner for premature release. In the said inquiry at the level of SDPO, Sadar, Biharsharif, it was found that there was no chance of any law and



order problem or internal dispute in case of release of these petitioners. The Superintendent of Police, Nalanda, therefore, recommended the case of the petitioners for premature release vide Annexure '4' to the writ application. Annexure '4' has two enclosures, first one is the report of the SDPO, Sadar, Biharsharif and the second one is the report of the Probation Officer, District Probation Office, Biharsharif. The report of the Probation Officer recorded on 01.02.2020 would show that the Probation Officer had inquired from the local people and he found that people are ready to assimilate him in the mainstream of the society.

8. An opinion was sought from the 1st Additional District and Sessions Judge, Nalanda in the context of Ajay Kumar. The opinion of the learned Judge interalia states "... So, if the conduct of the convict is good during his detention of serving out aforesaid sentence, he can be given benefit of early release or remission of sentence. The convict has been convicted under section 302/34 of the I.P.C. for life imprisonment. As per report of Jail authority attached with the letter, this convict petitioner has already undergone imprisonment for more than 16 years. Act of convict Ajay Kumar is of serious nature for which he had already served imprisonment for more than 17 years and surely should be change in him, gone through the remorse of his act. There may be natural



change of his mental status and if he is found so, in the light of reformatory theory, he should get chance to rehabilitate himself in society....”.

9. In this case after filing of the writ application, the petitioners brought on record the decision of the Board taken on 09.03.2022 whereby the application for premature release of the petitioners were rejected stating therein that since there is killing of ten persons, therefore, application for premature release is rejected.

10. In fact, in the counter affidavit filed on behalf of the State, a copy of the decision of the Remission Board was brought on record as Annexure ‘A’. A perusal of Annexure ‘A’ would show that Remission Board has recorded about all the reports being favourable but by applying paragraph (iv) (ख) of the Notification No. 3106 dated 10.12.2002 issued by the Home (Special) Department, Government of Bihar, the Board recorded that because of the killing of ten persons with pre-concert of mind, the request for premature release is rejected.

11. At this stage, this Court would point out what has been held by the Hon’ble Division Bench of this Court while awarding the sentence to the appellants seems to have been completely forgotten by the Board or not considered at all. The



Hon'ble Division Bench has in an unambiguous words recorded that the appellants were under great frustration and their mental condition was also disturbed because of the closure of their brick kiln and whatever they did was done in frustration. Further, this Court finds that the Notification dated 31.10.2002 was applied even as the case of the petitioners would be covered by the judgments by this Court holding that 2002 Notification came to be implemented only after 25.09.2007. Thus, on the date of conviction of the appellants, the policy contained in the Notification No. 3106 dated 10.12.2002 would not be applicable.

12. It is a matter of record that while the writ application was still pending, the Board once again considered the case of the petitioners on 28.12.2003 and this time again, the same decision was reiterated. A copy of the decision dated 28.12.2023 has been brought on record as Annexure 'R-1/A' of the supplementary counter affidavit filed on behalf of the State and the same has been challenged by the petitioners vide I.A. No. 2 of 2024. This I.A. No. 2 of 2024 was taken up for consideration on 05.10.2024. This Court passed the following order on the subject:-

“Mr. Vipin Kumar, learned AC to AG who had earlier appeared in this case is not present, however, Mr. P.N. Sharma, learned AC to AG is present.

2. By filing I.A. No.2 of 2024, the petitioners have assailed the decision of the Remission Board dated 28.12.2023 by which their prayer for premature release has been rejected.



3. Learned counsel for the petitioners submits that since the petitioners were convicted in the year 2006 and it has been settled by this Court that 2002 Policy came to be implemented only after 25.09.2007, the case of the petitioners would be covered by 1984 Policy. It is further pointed out from the minute of the Board's meeting which has been enclosed with the writ application as Annexure- '3' that till recent time the Board has granted premature release to the convicts of multiple murder case. The case of one Siyaram Yadav has been pointed out to this Court.

4. Learned counsel submits that the Board is acting on pick and choose basis and while in one case it is rejected on the ground that the case is of multiple murder, in another case the same is being allowed.

5. Mr. P.N. Sharma, learned AC to AG shall discuss this matter with the Chairman of the Board and shall file a suitable affidavit answering the issues raised by the petitioners.

6. List on 22.11.2024. ”

13. Learned counsel for the petitioners has, by filing a supplementary affidavit, stated that in the present case, both the petitioners are in custody for nearly about twenty years physically and with remission they are in custody for near about twenty years. There is a grievance that the respondent authorities are acting on pick and choose basis, while they have released several persons who were in custody for a period less than the petitioners, in the case of the petitioners they are not following their own precedents. In paragraph '4' and '5' the case of one Rabindra Kumar and Sujit Kumar @ Lathi Singh respectively have been mentioned and the copy of the orders passed by the Board in their cases have been brought on record. It is submitted that they were convicted in case of mass killing. Attention of this Court has been drawn towards the



decision of the Board in case of Siyaram Yadav who was convicted vide judgment dated 12.05.2005 in Sessions Trial No. 359 of 2019(R). He was convicted in a case in which five murders had taken place. Yet another case of one Sudama Chaudhary who was convicted vide judgment dated 14.01.2004 in Sessions Trial No. 342 of 1999 has been cited to show that Sudama Chaudhary was convicted for killing of eight persons and he was also granted the benefit of premature release. The specific statements of the petitioners in the writ petition as well as the supplementary affidavit showing discrimination in the matter of grant of premature release in similar circumstance have not been specifically answered by the respondent authorities. The supplementary counter affidavit filed on behalf of respondent nos. 1 to 3 and 6 to 8 does not answer even remotely the pleas raised by the petitioners.

14. This Court has earlier considered the notification dated 10.12.2002 in the case of **Surendra Mahato vs. The State of Bihar** reported in **2021 (4) PLJR 393**. This Court has held in paragraph '46' of the judgment as under.

“**46.**This Court comes to a considered opinion that given the kind of materials available on the record this issue must be put at rest by way of an adjudication in this case. Undisputed pleadings of the petitioner duly supported by the notifications which have been extracted hereinabove and complete inaction on the part of the respondents in not only sitting over the matter on this issue for four and half



years but by not producing any cogent material on the record of this case to take any other view, this Court unhesitatingly comes to a conclusion that the notification bearing no. 3106 dated 10.12.2002 was not acted upon immediately as it was not workable and the petitioner is correct in saying that for the first time the Remission Board was constituted vide Annexure 'P-9'. The case of the petitioner would thus not be covered under para (iv)(ka) of the notification dated 10.12.2002."

15. Further the issue of discrimination was also pleaded in the case of Tribhuwan Sharma (Cr.WJC No. 748 of 2017) reported in **2017 3 PLJR 528**, this Court held in paragraph '47' of the judgment in the case of **Surendra Mahato** (*supra*) as under:-

"**47.** The respondents have admitted the premature release of several life convicts during the period noticed by the Hon'ble Division Bench of this Court in Cr.WJC No. 748 of 2017 based on which the case of Tribhuwan Sharma was also considered and he has been released treating him in equal manner with those who were convicted in the year 2003. The case of the petitioner is, therefore, liable to be considered in similar manner as has been done in those cases which are discussed in the Hon'ble Division Bench Judgment."

16. In the case of **Anuj Kumar Gupta @ Sethi Gupta vs. State of Bihar and Ors.** reported in **2022 (1) BLJ 67**, this Court having found that the petitioner had spent twenty two years in jail, set aside the decision of the Remission Board and directed the Board to take a fresh decision for premature release of the petitioner in the very next meeting of the Board.

17. In the light of the discussions made hereinabove, this Court is of the considered opinion that rejection of the request of



the petitioners for their premature release despite all favorable reports is wholly arbitrary and bad in law. The petitioners have amply demonstrated with uncontroverted materials on the record that the convicts Siyaram Yadav and Sujit @ Lathi Singh who all were convicted during the year 2003-2005 were released and in their case the Notification No.3106 dated 10.12.2002 was not cited whereas in the case of these petitioners the Board has rejected the request of the petitioners. The Board has rejected their request by citing the said notification dated 10.12.2002, this is discriminatory. Despite binding precedent of this Court in case of **Surendra Mahato** (*supra*) with regard to the actual implementation of the notification dated 10.12.2002, repeated reliance on the same notification on pick and choose basis in the matters which would not be governed by the said notification is *prima facie* a case of disobedience and disregard shown to the judgment of this Court and if this practice continues, this Court would have to consider taking appropriate action. The Board cannot be allowed to discard the judgment of this Court on its own will and volition.

18. In result, this application is allowed. The decision of the Board as contained in the minutes dated 09.03.2022 and 28.12.2023 are hereby set aside.



19. The Board through its Chairman is directed to consider the case of these petitioners afresh and pass an appropriate order keeping in view the judicial pronouncements on the subject and the facts discussed by this Court hereinabove. The Board shall convene its meeting and take an appropriate decision as early as possible but not later than two months from the date of receipt/production of a copy of this judgment.

(Rajeev Ranjan Prasad, J)

Rishi/-

AFR/NAFR	
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