IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.146 of 2022

Arising Out of PS. Case No.-101 Year-1995 Thana- RAGHOPUR District- Supaul

==

Md Azimuddin @ Ajimuddin, Son of Late Hazi Lal Mohammad, Resident of Village - Gaddi , P.S.- Raghopur, Distt.- Supaul.

... ... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bhar, Patna.
2. The State Sentence Remission Board, through the Principal Secretary, Home Deptt. Govt. of Bihar, Patna,
3. The Joint Secretary Cum director (Admin.), Home Deptt. (Prision), Bihar, Patna. Bihar
4. The Secretary , Low Deptt. Bihar, Patna. Bihar
5. The Additional director General of police, Criminal Investigation Deptt., Bihar, Patna. Bihar
6. The Inspector General Jail and Reforms Services, Bihar, Patna. Bihar
7. The Assistant Inspector General , Jail and Reforms Services, Bihar Patna. Bihar
8. The Principal Probation Officer, Supaul. Bihar
9. The Superintendent of Police, Supaul. Bihar
10. The Jail Superintendent Supaul. Bihar

... ... Respondents

==

Appearance :

For the Petitioner/s : Mr. Anuj Kumar, Advocate

For the Respondent/s : Mr. P.N. Sharma, AC to AG

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date : 20-03-2024

This writ application has been filed seeking quashing of the order dated 27.08.2021 passed by the Bihar State Sentence Remission Board (hereinafter referred to as the 'Board') rejecting the premature release application of the petitioner on the ground of adverse report of the Sub-Divisional Probation Officer, the Superintendent of Police, Supaul and the Presiding Officer of the learned trial court.

Brief facts of the case

2. The petitioner in the present case having been convicted for the offence punishable under Section 302 of the Indian Penal Code (in short 'IPC') and was sentenced to death by the learned Additional Sessions Judge-cum-Fast Track Court No.1, Supaul by judgment dated 18.11.2006 passed in Session Trial No.165 of 1996 arising out of Raghopur P.S. Case No.101 of 1995.

3. It is stated that sentence awarded to the petitioner was commuted/converted into a life imprisonment by Hon'ble High Court at Patna in Cr. Appeal (DB) No.1225 of 2006. A copy of the judgment of the Hon'ble High Court has been placed on the record as Annexure- '1'.

Submissions on behalf of the Petitioner

4. Learned counsel for the petitioner submits that the petitioner is in custody since 31.07.2001 i.e. more than 22 years. The case of the petitioner is covered by Section 433-A of the Code of Criminal Procedure and considering the object of the premature release, the petitioner deserves proper consideration of his application for premature release.

5. Learned counsel submits that a proposal for

premature release of the petitioner was submitted before the Superintendent, Divisional Jail, Supaul who vide his letter no.46/Jail dated 11.01.2020 forwarded the application of the petitioner to the Board. The petitioner filed a Criminal Writ Application being Cr.WJC No.324 of 2020 in which a learned coordinate Bench of this Court vide order dated 22.11.2021 granted liberty to the petitioner to challenge the order dated 27.08.2021 passed by the Board during pendency of the writ application by which the application of the petitioner for premature release was rejected. Hence, the present application has been filed.

6. Learned counsel for the petitioner has placed before this Court the order dated 27.08.2021 passed by the Board in respect of the petitioner. It is submitted that the Superintendent of Police report and the report of the learned Presiding Officer of the Court have been found adverse and that is the reason for rejection of the application of the petitioner.

Stand of the State

7. A counter affidavit has been filed on behalf of the respondent nos.2, 3, 6, 7 and 10 which is sworn by the Superintendent, District Jail, Supaul. Learned counsel for the State submits that Superintendent of Police had recorded his

opinion vide memo no.236 dated 21.06.2021 from which it would appear that the petitioner has a criminal antecedent and there are 17 cases of heinous offences pending against him. Pointing out to the enclosures to the report of the Superintendent of Police which are parts of Annexure- ‘6’ series to the writ application, learned counsel submits that there is a serious threat to the people if this petitioner is released premature. The report of the S.D.P.O., Supaul and the report of the Officer In-charge of the police station as also the various materials available on the record would show that in Session Trial No.19/82 while undergoing the punishment of life imprisonment this petitioner fled away from Supaul jail and committed the murder of his neighbour Md. Shamshad Khan for which S.T. No.165/1996 is going on. He had been able to abscond once from Saharsa jail and twice from Supaul jail.

8. Learned counsel submits that the learned Additional District and Sessions Judge-1st Court, Supaul has recorded in his opinion that premature release of the appellant is likely to create a serious law and order problem. The Probation Officer report is also adverse.

9. The main contention of the learned counsel for the petitioner is that the report of the Probation Officer is

completely general in terms and the other reports such as report of the Superintendent of Police, Supaul and the report of the learned Presiding Officer are not in consonance with the decision of the Hon'ble Supreme Court in the case of **Rajo @ Rajwa @ Rajendra Mandal Vs. The State of Bihar and others** reported in **2023 SCC Online SC 1068** and in the case of **Ram Chander Vs. The State of Chhattisgarh & Anr.** reported in **(2022) 12 SCC 52**.

10. In the aforementioned background of the submissions, this Court has to examine as to whether the reports submitted by the Superintendent of Police and the learned Presiding Officer of the court are in consonance with the views expressed by the Hon'ble Supreme Court in the aforementioned cases.

11. In the case of **Rajo alias Rajwa alias Rajendra Mandal** (supra), the Hon'ble Supreme Court has held in paragraphs '19' and '20' as under:-

> "**19.** In this court's considered view, overemphasis on the presiding judge's opinion and complete disregard of comments of other authorities, while arriving at its conclusion, would render the appropriate government's decision on a remission application, unsustainable. The discretion that the executive is empowered

with in *executing* a sentence, would be denuded of its content, if the presiding judge's view - which is formed in all likelihood, largely (if not solely) on the basis of the *judicial* record - is mechanically followed by the concerned authority. Such an approach has the potential to strikes at the heart, and subvert the concept of remission - *as a reward and incentive encouraging actions and behaviour geared towards reformation* - in a modern legal system.

20. All this is not to say that the presiding judge's view is *only* one of the factors that has no real weight; but instead that if the presiding judge's report is only reflective of the facts and circumstances that led to the conclusion of the convict's guilt, and is merely a reiteration of those circumstances available to the judge at the time of sentencing (some 14 or more years earlier, as the case may be), then the appropriate government should attach weight to this finding, *accordingly*. Such a report, cannot be relied on as carrying predominance, if it focusses on the crime, with little or no attention to the *criminal.* The appropriate government, should take a holistic view of all the opinions received (in terms of the relevant rules), including the *judicial view* of the presiding judge of the concerned court, keeping in mind the purpose and objective, of remission.

12. In the case of **Ram Chander** (supra), the Hon'ble Supreme Court has observed in paragraphs '21' and '22' as under:-

> **21.** In *Sriharan*[13] a Constitution Bench of this Court held that the procedure stipulated in Section 432(2) is mandatory. The Court did not specifically hold that the opinion of the Presiding Judge would be binding, but it held that the decision of the Government on remission should be guided by the opinion of the Presiding Officer of the court concerned. The Court had framed the following question : (SCC p. 118, para 143)
>
> "*143*. … Question (*vi*) : Whether suo motu exercise of power of remission under Section 432(1) is permissible in the scheme of the section, if yes, whether the procedure prescribed in sub-section (2) of the same section is mandatory or not?"
>
> **22.** Answering the above question, the Court held as follows : (*Sriharan case*[13], SCC pp. 120-21, paras 148-50)
>
> "*148*. Keeping the above principles in mind, when we analyse Section 432(1)CrPC, it must be held that the power to suspend or remit any sentence will have to be considered and ordered with much more care and caution, in particular the interest of the public at large. In this background, when we analyse Section

13. Union of India v. V. Sriharan, (2016) 7 SCC 1: (2016) 2 SCC (Cri) 695

432(1)CrPC, we find that it only refers to the nature of power available to the appropriate Government as regards the suspension of sentence or remission to be granted at any length. Extent of power is one thing and the procedure to be followed for the exercise of the power is different thing. There is no indication in Section 432(1) that such power can be exercised based on any application. What is not prescribed in the statute cannot be imagined or inferred. Therefore, when there is no reference to any application being made by the offender, that cannot be taken to mean that such power can be exercised by the authority concerned on its own. More so, when a detailed procedure to be followed is clearly set out in Section 432(2). It is not as if by exercising such power under Section 432(1), the appropriate Government will be involving itself in any great welfare measures to the public or the society at large. It can never be held that such power being exercised suo motu any great development act would be the result. After all, such exercise of power of suspension or remission is only going to grant some relief to the offender who has been found to have committed either a heinous crime or at least a crime affecting the society at large. Therefore, when in the course of exercise of larger constitutional powers of similar kind under Articles 72 and 161 of the Constitution it has been opined by this Court to be exercised with great care and caution, the one exercisable under a statute, namely, under Section

432(1)CrPC which is lesser in degree should necessarily be held to be exercisable in tune with the adjunct provision contained in the same section. Viewed in that respect, we find that the procedure to be followed whenever any application for remission is moved, the safeguard provided under Section 432(2)CrPC should be the sine qua non for the ultimate power to be exercised under Section 432(1)CrPC.

149. By following the said procedure prescribed under Section 432(2), the action of the appropriate Government is bound to survive and stand the scrutiny of all concerned, including the judicial forum. It must be remembered, barring minor offences, in cases involving heinous crimes like, murder, kidnapping, rape, robbery, dacoity, etc. and such other offences of such magnitude, the verdict of the trial court is invariably dealt with and considered by the High Court and in many cases by the Supreme Court. Thus, having regard to the nature of opinion to be rendered by the Presiding Officer of the court concerned will throw much light on the nature of crime committed, the record of the convict himself, his background and other relevant factors which will enable the appropriate Government to take the right decision as to whether or not suspension or remission of sentence should be granted. It must also be borne in mind that while for the exercise of the constitutional power under Articles 72 and 161, the Executive

Head will have the benefit of act and advice of the Council of Ministers, for the exercise of power under Section 432(1)CrPC, the appropriate Government will get the valuable opinion of the judicial forum, which will definitely throw much light on the issue relating to grant of suspension or remission.

150. Therefore, it can safely be held that the exercise of power under Section 432(1) should always be based on an application of the person concerned as provided under Section 432(2) and after duly following the procedure prescribed under Section 432(2). We, therefore, fully approve the declaration of law made by this Court in *Sangeet*[7] in para 61 that the power of appropriate Government under Section 432(1) of the Criminal Procedure Code cannot be suo motu for the simple reason that this section is only an enabling provision. *We also hold that such a procedure to be followed under Section 432(2) is mandatory. The manner in which the opinion is to be rendered by the Presiding Officer can always be regulated and settled by the High Court concerned and the Supreme Court by stipulating the required procedure to be followed as and when any such application is forwarded by the appropriate Government. We, therefore, answer the said question to the effect that the suo motu power of remission cannot be exercised under Section 432(1), that it can only be initiated based on an application of the*

7. [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611]

> *persons convicted as provided under Section 432(2) and that ultimate order of suspension or remission should be guided by the opinion to be rendered by the Presiding Officer of the court concerned.*"
>
> (emphasis supplied)

13. At this stage, this Court would briefly notice Rule 478 and Rule 481 of the Bihar Prison Manual as under:-

> "478. While considering the case of premature release of a particular prisoner the Board shall 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. 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 have not recommended his/her release. The Board shall take into account the circumstances in which the offence was committed by the prisoner; whether he/she has the propensity to commit similar or other offences again; socio-economic condition of the convict's family and possibility of further violence or offence on his/her release, progress in victim reconciliation programmes and chances of reclaiming the convict as a useful member of the society"
>
> "481. The following categories of prisoners shall be eligible to be considered for a review of sentences and premature release by the Board:
>
> i. Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A CrPC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment i.e. without the remissions. 2 [The following categories of convicted prisoner covered under Section 433A Cr.P.C. undergoing life sentence would not be entitled to be

considered for premature release even after undergoing imprisonment for 20 years including remission:]

[1][(a) Such convicts who have been imprisoned for life for rape, rape with murder, dacoity with murder, murder involving offence under the Protection of Civil Rights Act, 1955, murder for dowry, murder of a child below 14 years of age, multiple murder, murder committed after conviction while inside the prison, murder during parole, murder in terrorist incident, murder in smuggling operation,

[2][xxx]]

(b) Gangsters, contract killers, smugglers, drug traffickers,racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-meditation and with exceptional violence or perversity.

c) Convicts whose death sentence has been commuted to life imprisonment.

ii. All other convicted male prisoners not covered by section 433A Cr.PC undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 14 years of imprisonment inclusive of remission but only after completion of 10 years actual imprisonment i.e. without remissions.

iii. The female prisoners not covered by section 433A Cr.PC undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 10 years of imprisonment inclusive of remissions but only after completion of 7 years actual imprisonment i.e. without remissions.

[3][(iv) In such cases in which life sentence has been awarded by specifying that the convict shall undergo life sentence till the end of his life without remission or commutation, benefit of remission or commutation shall not be given to convict.]

[3][(v) In such cases in which life sentence has been

1. Ins. by Amdt. Notifn. No. 3194, dated 25.06.2016.
2. Subs. by ibid
3. Ins. by Admdt. Notifn. no. 3194 dated 26.5.2016

awarded by specifying that the convict shall not be released by granting remission or commutation till he completes a fixed term of 20 years or 25 years or like, remission or commutation shall not be granted to a convict until he completes the fixed term as prescribed in the sentence.]"

14. On a bare perusal of the aforementioned rules, it would appear that while considering an application for premature release, the Board has to keep in mind the general principles of remission of sentences as laid down by the State Government or by the Courts, as also the precedence in the matter.

15. Coming to the facts of the present case, it is evident from the impugned order that the Board has not at all applied its own mind as is required in view of the judgment of the Hon'ble Supreme Court in the case of **Rajo alias Rajwa alias Rajendra Mandal** (supra). The Board is not supposed to act mechanically as such approach, according to the Hon'ble Supreme Court, has the potential to strike at the heart and subvert the concept of remission. It is likely to defeat the purpose behind the premature release i.e. reformation. What has been done by the Superintendent of Police, Supaul may be found from his report as contained in Annexure '6' series to the writ application. Memo No. 236 dated 21.06.2021 issued from the office of the Superintendent of Police, Supaul addressed to

the Superintendent, Divisional Jail, Supal vaguely states that there is a talk among the local people that after his premature release, the dreaded criminal Md. Azimuddin would again build his gang and he can again give effect to the occurrences such as murder, loot, dacoiti and kidnapping. There is a general statement that the people from business class were also of the view that after his release from jail, there would be a situation of fear. It is noted that this petitioner had absconded from Supaul Jail during undergoing life imprisonment and had committed murder of Md. Sabtad Khan and the rural public of Supaul had given representation to the Senior Officers that this petitioner who is undergoing life imprisonment is sending threat to the people that whenever he will come out from jail he would kill them.

16. The learned Presiding Officer has in his report simply reiterated all those facts which are part of the report of the Superintendent of Police.

17. The report of the Sub-Divisional Probation Officer, Birpur is available on the record and according to this report, one of the divorced wife and children of the petitioner expressed their apprehension that there may be law and order problem and insecurity to them if the petitioner is granted

premature release but the brothers of the petitioner and his relatives expressed happiness on the information that the petitioner may be granted premature release.

18. On going through the entire records which are available before this Court, this Court is of the considered opinion that the case of the petitioner for grant of premature release is required to be considered afresh by applying the parameters which have been pointed out by the Hon'ble Supreme Court in the case of **Rajo alias Rajwa alias Rajendra Mandal** and **Ram Chander** (Supra). The reports of the authorities which are on the record seem to be stereotype reports for purpose of denying the benefit of remission. Even though the petitioner has remained in incarceration for about twenty-two years, the competent authority has not considered the potential of the petitioner to commit crimes in future, his age, state of health, familial relationships and the possibility of reintegration. The competent authority has not taken into consideration as to whether while in custody the petitioner has engaged in any socially aimed or productive activity and what has been his overall development as a human being. The Hon'ble Supreme Court has observed that the Board should not entirely rely either on the learned Presiding Judge or the report

prepared by the police and benefit of a report contemporaneously prepared by a qualified psychiatrist after interacting or interviewing the convict would serve the ends of justice. In this case, this Court finds that no effort has been made to consider the aforesaid aspects of the matter. The directions of the Hon'ble Supreme Court that the appropriate government may have the benefit of a report of a qualified psychiatrist has not at all been complied with.

19. This Court is, therefore, of the considered view that the impugned order has been passed by the Board in a routine and mechanical manner by just referring to the reports of the Superintendent of Police and the Presiding Officer of the court which is not in consonance with the judgment of the Hon'ble Supreme Court.

20. In result, the impugned order is set aside. The matter is remitted to the competent authority for a fresh consideration of the application seeking premature release.

21. The Board shall obtain fresh report from the S.D.P.O./Superintendent of Police, Supaul and the learned Presiding Officer of the court on all the parameters which have been recorded by the Hon'ble Supreme Court in the case of **Rajo alias Rajwa alias Rajendra Mandal** (Supra) and **Ram**

Chander (Supra). The Board shall also obtain report of a psychiatrist who may conduct an interview of the petitioner.

22. Let such reports be obtained within a period of three months from the date of receipt/production of a copy of this order and thereafter appropriate decision be taken in accordance with law/policy decision/Prison Manual within a period of one month. A reasoned order which must reflect independent exercise of mind by the Board shall be communicated to the petitioner within an overall period of four months from the date of receipt/communication of a copy of this order.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	
CAV DATE	01.03.2024
Uploading Date	20.03.2024
Transmission Date	20.03.2024