

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.209 of 2020

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

Yogendra Bhagat Son of Rajbanshi Bhagat Resident of Village - Basudeva,
P.S.- Bhore, Distt - Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Govt. Of Bihar, Patna Bihar
2. The State Sentence Remission Board through the Principal Secretary, Home Department, Government of Bihar.Patna.
3. The Joint Secretary - cum - Director (Administration) Home Department (Prison), Bihar, Patna. Bihar
4. The Secretary Law Department, Government of Bihar, Patna. Bihar
5. The Additional Director General of Police, Criminal Investigation Department, Bihar, Patna. Bihar
6. The Inspector General Prisons and Correctional Services, Bihar, Patna.
7. The Assistant Inspector General of Prisons and Correctional Services, Bihar, Patna.
8. The Jail Superintendent of Special Central Jail, Bhagalpur. Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Vijay Kumar Singh, Adv.
For the Respondent/s : Mr.Md. Nadim Seraj, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 16-08-2021

Heard the parties through virtual court proceeding.

This criminal writ petition has been filed for quashing the order of the State Remission Board dated 28.11.2018, whereby and whereunder the State Remission Board has been pleased to reject the proposal of the petitioner for his premature release on the ground that under clause (iv) (ka) of the Notification No. 3106 dated 10.12.2002, the petitioner is not eligible for consideration of his premature release, and also there



is no favourable report of Presiding Officer of the convicting court.

Short facts giving rise to this criminal writ petition is that petitioner and other accused persons were convicted for the offence punishable under Section 376 of the Indian Penal Code vide judgment dated 21.02.2006 and order of sentence dated 22.02.2006 to undergo RI for life by the learned Additional District and Sessions Judge, F.T.C. No. IV, Gopalganj.

It is submitted on behalf of the petitioner that petitioner has already completed more than 20 years of his physical incarceration and 24 years with remission and, therefore, he is entitled to grant of premature release, in view of 1984 policy, as contained in Letter No. 550 dated 21.01.1984, which was prevalent at the time of conviction of the petitioner on 21.02.2006 and order of sentence on 22.02.2006. It is further submitted that in view of the fact that the petitioner has been convicted in the year 2006 his case will be governed by 1984 policy as contained in Letter No. 550 dated 21.01.1984 which was issued under the signature of the Additional Secretary, Law Department, Government of Bihar, Patna. A copy of the Letter No. 550 dated 21.01.1984 is contained in Annexure-P/1 to the writ petition. Clause (2) of the 1984 policy clearly provides that



if the life conviction was awarded on or after 18.12.1978, the convict will be released from the jail on completion of 14 years of his physical incarceration and 20 years with remission.

Learned counsel for the petitioner submits that the issue is no more *res integra* as the same has also been decided by the Division Bench of this Court vide judgment dated 20.06.2017, passed in Cr.W.J.C. No. 748 of 2017 (Chandra Kant Kumar Vs. the State of Bihar and others) and the case of the petitioner cannot be considered in the light of Notification No. 3106 dated 10.12.2002, in view of the fact that the same has come into effect on 02.07.2007 and the petitioner has been convicted on 21.02.2006 and sentenced on 22.02.2006. He submits that the Hon'ble Division Bench has found that though the Notification dated 10.12.2002 was issued, but the same came to be implemented after 02.07.2007 and during the period, all categories of life imprisonment convicts were eligible for premature release by the jail superintendent himself after completion of 14 years of actual imprisonment and 20 years with remission in jail, as provided in the letter dated 25.05.1985.

However, learned State counsel opposes the writ petition and submits that clause (iv) (a) of Notification No. 3106 dated 10.12.2002 of the Home Department (Special) provides



that the life convicts which are convicted for rape, decoity and terrorist activity are not entitled for premature release. Learned counsel refers to the judgment of the Hon'ble Apex Court dated 23.07.2014, passed in Writ Petition (Crl.) No. 48 of 2014 (Union of Indian Vs. V. Sriharan @ Murugan and others) in which the Hon'ble Apex Court has restrained the State Government from exercising its power of remission and commutation where the life sentence is under any Central Law or with respect to offence punishable under Section 376 of the Indian Penal Code or any other similar offence. He submits that the recommendation of the Remission Board is in light of the aforesaid order. However, conspicuously the entire counter affidavit is silent on the point raised by the petitioner in the writ petition.

Having heard the submission of learned counsel for the parties, this Court is, prima facie, satisfied with the submission of learned counsel for the petitioner and is in agreement that the case of the petitioner is covered by a decision of Division Bench of this Court dated 20.06.2017 passed in Cr.W.J.C. No. 748 of 2017. In this case, petitioner has been convicted prior to 02.07.2007 and thus, his case is required to be considered in the light of 1984 policy, contained in Letter No. 550 dated 21.01.1984.



In the aforesaid facts and circumstances, the impugned order dated 28.11.2018 passed by the State Remission Board, Bihar is hereby set aside and this criminal writ petition is allowed with a direction to the State Remission Board to consider the case of the petitioner afresh in the light of various judgments of this Court referred hereinabove and take an appropriate view of the matter within a period of six weeks from the date of receipt/production of a copy of this order.

(Anjani Kumar Sharan, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.08.2021
Transmission Date	NA

