
(2012) 02 PAT CK 0033

In the Patna High Court

Case No : Criminal Writ No. 258 of 2011

Rama Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 433(A)

Penal Code, 1860 (IPC) — Section 147, 148, 149, 171B, 302

Citation : (2012) 2 PLJR 749

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Amish Kumar, for the Appellant; P.K. Verma, for the State, for the Respondent

Final Decision : Allowed

Judgement

Aditya Kr. Trivedi

1. Petitioners, Rama Singh, Nagina Sharma, Ram Bilas Sharma, Jay Ram Sharma, Brij Nandan Singh, Rajendra Sharma have preferred instant writ seeking issuance of writs/direction in the nature of certiorari for quashing the part of decision dated 8.1.2010 passed by Bihar State Sentence Remission Board, Patna so far it relates to the petitioner, by which the petitioners prayer for remissions by way of premature release in accordance with Section 433 of the Cr. P.C. has been rejected. Before coming to the points involved in this writ petition, salient features of the facts is to be noted down which would enable its appreciation in its right perspective.

2. Petitioners alongwith others stood arrayed as an accused of Goh P.S. Case No. 3/1977 registered under Sections 147, 148, 149, 302, 307, 326, 171B, 34 of the IPC and 27 of the Arms Act. Investigation thereafter commenced followed with submission of charge-sheet and accordingly, they face trial and ultimately convicted by the Court of First Additional District and Sessions Judge,

Aurangabad, in Sessions Trial Nos. 45/1978, 26/1980, vide judgment dated 31.8.1987 u/s 302/149 of the IPC and were sentenced to undergo R.I. for life. No sooner than they were taken into custody to serve out sentences. Subsequently thereof, so many criminal appeals were filed against the aforesaid judgment of conviction and sentence before the Hon''ble Court and so far petitioners are concerned, it happens to be Cr. Appeal No. 462/87 which was dismissed vide judgment dated 10.7.1990. The aforesaid finding was upheld in criminal appeal filed before the Hon''ble Apex Court. Accordingly, petitioner who were let of on bail by the Hon''ble High Court during pendency of Cr. Appeal No. 462/87 surrendered and since 1995 are in custody and so they have remained under custody consecutively for 21 years including the period of remission as provided. To support the same Annexures-3 & 4 has been annexed so obtained under Right to Information Act. Then it has been submitted that the case of the petitioners for premature release in accordance with Section 433 of the Cr. P.C. after granting remission, so provided, was taken into consideration and as per Annexure-5, their case was ultimately rejected. The sole ground for rejection happens to be that petitioners were involved in a ghasty crime relating to murder of seven persons over dispute of right to franchise. Although, some of the co-accused were released on the eve of golden jubilee of independence.

3. Some of accused, namely, Bhukamp Sharma, Dinesh Sharma, Ramadhar Sharma, Raj Kishore Sharma, Naval Sharma, Dudheshwar Sharma were released in the year 2005-2007 (at different stages) after completion of 14 years of custody. So, a grievance has been made by putting an allegation that Bihar State Sentence Remission Board was not fair in its action. Hence, accordingly be directed to reconsider petitioners case after striking down the decision dated 8.1.2010 in part affecting right of petitioners.

4. To support the plea the learned counsel for the petitioners submitted that in the background of introduction of Section 433(A) of the Cr. P.C. so being clutched by Section 432 as well as 433 of the Cr. P.C. the Government took decision and formulated certain guidelines for the purpose of providing remission and the same was issued by the Government of Bihar, Law Department No. 3/81-55/dt. 21.1.1984 where under certain points were formulated for attracting application of remission in favour of convict having under incarceration.

5. At the initial stage, the period already undergone during course of investigation as well as during trial was not taken up into consideration for counting the period of incarceration. However, the matter was taken up and decided by the constitutional bench of the Hon''ble Apex Court in case of Bhagirath vs. Delhi Administration and as per direction, the previous notification so circulated vide letter No. 3/81-55/dt. 21.1.84 was amended vide notification No. 3/81-3115 dated 25.5.1985 permitting inclusion of under trial period of incarceration for calculation. Subsequently, the State Government made amendment in the earlier notification of year 1984 vide notification No. 63/01-3106/dated 10th December, 2002 and In the aforesaid background as it

appears, the case of the petitioner has been rejected. Furthermore submitted that the Hon"ble Apex Court in another decision reported in State of Haryana and Others Vs. Jagdish and Harpal, has held that the policy which was existing on the date of conviction of accused will govern his case for remission and therefore, the amended policy of the Government implemented in the year 2002 is not at all applicable in the facts and circumstances of the case. Hence, it has been submitted that after setting aside the resolution dated 8.1.2010 to the extent of petitioner's interest, the case of the petitioners should be directed to be reconsidered by the Bihar State Sentence Remission Board, Patna.

6. At the other hand, the learned AC to SC-26 submitted that submission raised on behalf of petitioners happens to be hoodwink in the background of 1984, 1985 notification issued by the Govt. as the aforesaid notifications stood replaced by notification of the year 2002 wherein there appears drastic change so far eligibility criteria is concerned. There is no controversy that the day on which the case of the petitioners' plea were considered, the new remission policy of the year 2002 happens to be in operation. That means to say, the case of the petitioners was to be considered in accordance with the new policy wherein they are not at all found to be entitled for remissions of their sentences consequent thereupon their case has rightly been rejected.

7. At an earlier occasion on account of divergent view of the Hon"ble Apex Court on this score, State may have a genuine stand to challenge the plea of petitioners. But, the same has been plugged in subsequent decision as reported in State of Haryana and Others Vs. Jagdish and Harpal, wherein at para-4 of the judgment, the question has been formulated as:-

The question that has been posed before us is as to whether the policy which makes a provision for remission of sentence should be that which was existing on the date of the conviction of the accused or should it be the policy that exists on the date of consideration of his case for premature release by the appropriate authority?

8. The aforesaid point squarely covers the point in issue and the answer of that very question has been by way of observing that a convict at least has a human ultimate of expectation that he would have remissions as per the guidelines on the date of his conviction for consideration of his premature release. More elaborately, at para-54 it has been held:-

The State authority is under an obligation to at least exercise its discretion-in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power to remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal

policy prevails on the date of consideration of the case of a lifer for premature release, he should be given benefit thereof.

9. As such, the State policy so formulated and promulgated in the year 1984/1985 is the policy which could be found to be operative and which is found to be applicable so far, case of the petitioners are concerned. In spite of having the conclusive judicial pronouncement on this score in the background of State of Haryana and Others Vs. Jagdish and Harpal, , such as Cr. W.J.C. No. 619 of 2009, Cr. W.J.C. No. 886/09, Cr. W.J.C. No. 942/2010, Cr. W.J.C. No. 1106/2010, Cr. W.J.C. No. 933/2010, Cr. W.J.C. No. 1090/09, Cr. W.J.C. No. 476/2010, Cr. W.J.C. No. 775/2011 it is unfortunate that even then the State is not taking sincere effort to construe that the policy which was prevailing on the date of conviction of an accused, is the policy to be adopted and applied for with regard to remission of sentence so far that particular accused is concerned and that happens to be reason behind, that series of litigation is still going to germinate on this score, as the Bihar State Sentence Remission Board is keeping deaf ear. Consequent thereupon, the decision of the Bihar State Sentence Remission Board dated 8.1.2010 to the extent of affecting interest of petitioners are (sic) the same is found to be against (sic) of law and as such could very safely be identified as illegal, arbitrary as well as suffering from non-applicable of judicial mind. Hence, the same is quashed. Consequent thereupon petition is allowed. The matter is remitted back to the State as well as State Sentence Remission Board to consider the case of the petitioner for remission in accordance with the circulars which were already in application on the date of conviction of the petitioners, within a month from the date of receipt-production of a copy of this order.