
(1999) 02 PAT CK 0074

In the Patna High Court

Case No : Criminal W.J.C. No. 723 of 1998

Surajdeo Koeri @ Surajdeo Mahto

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 395, 396

Citation : (1999) 2 BLJR 1318 : (1999) 9 PLJR 143

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this application under Article 226 of the Constitution of India, the petitioner has prayed for quashing Memo No. 1950 dated 8.6.98 as contained in Annexure-5 to the writ petition passed by respondent No. 2, the Inspector-General of Police (Prison), Bihar, Patna and further prayed for release of the petitioner from illegal detention.

2. The petitioner was sentenced to undergo rigorous imprisonment for life in Imamganj P.S. Case No. 43/81 giving rise to Sessions Trial No. 367/82 and the same was confirmed by the judgment and order dated 18.2.1987 passed by this Court in Criminal Appeal No. 391/85. The petitioner was also convicted in Nawadah P.S. Case No. 14/73 giving rise to Sessions Trial No. 18/79 and was sentenced to undergo R.I. for ten years and this sentence was modified in Cr. Appeal No. 527/83 to the extent that the petitioner suffered five years in jail and that imposition of fine for the remaining period of imprisonment mean meets the ends of justice and as such the sentence is reduced to the period of imprisonment already undergone. The petitioner moved this Court in Cr.W.J.C. No. 700 of 1997 making a grievance that he has completed sentence after grant of remission in accordance with the provision of law and, therefore, he is entitled

to be released forthwith. The said writ petition was disposed of on 6.11.97 giving liberty to the petitioner to move before respondent No. 2 who will look into the matter and pass necessary order within two months from the date of production of a copy of this order. In pursuance of that direction, respondent No. 2 passed the order which is impugned in this application as contained in Annexure-5 to this petition. The petitioner's case is that he was in jail from 29.12.73 to 3.2.79 which has not been set off as required u/s 428 of the Code of Criminal Procedure. According to the petitioner, he remained in jail for five years one month two days in Nawadah P.S. Case No. 14/73. Again he remained in jail for about 17 years, 2 months 25 days in Imamganj P.S. Case No. 43/81. A counter-affidavit has been filed in this case on behalf of respondent No. 2. The respondent's case is that the petitioner was convicted firstly in Sessions Trial No. 18/79 u/s 395 of the Indian Penal Code and sentenced to undergo R.I. for ten years by the Court of 3rd Additional Sessions Judge, Gaya on 19.7.83. He was also convicted in another Sessions Trial No. 367/82 u/s 396 of the Indian Penal Code and sentenced to undergo R.I. for life by the Court of 1st Additional Sessions Judge, Gaya on 14.10.85. The respondent's further case is that both the sentences run consecutively. It is contended that the first sentence was reduced to the period of imprisonment already undergone and a payment of fine of Rs. 1,000/- and in default thereof to suffer further imprisonment for one year. The amount of fine was not deposited by the petitioner as such the petitioner must have undergone the period of his sentence for one year in default of fine. It is also stated that the petitioner was to serve another sentence of life imprisonment on counting as 20 years as per order of the Government since 4.8.88 on the expiry of the first sentence on 3.8.88. The under trial period of one year 10 months 20 days from 29.8.81 to 18.7.83 before the date of conviction of the first sentence imposed upon the petitioner was set off against the term of imprisonment in Sessions Trial No. 367/82 and remission was also awarded to him as admissible. According to the respondent, the petitioner has not served the minimum period of sentence of 14 years.

3. I have heard learned Counsel appearing for the petitioner and the learned Government Advocate appearing for the State and also perused the petition and the counter-affidavit. It has not been disputed by the respondent that the petitioner remained in jail from 29.12.73 to 3.2.79 i.e. five years one month two days in Nawadah P.S. Case No. 14/73. It is also not disputed that the petitioner further remained in jail from 29.8.81 to 24.11.98 i.e. 17 years 2 months 25 days in Imamganj P.S. case No. 43/81. In this way after one year sub-straction in payment of fine of Rs. 1,000/-, the petitioner's period in jail will be 16 years two months 25 days till 24.11.97. From paragraph 8 of the writ petition, it is evident that the petitioner altogether remained in jail for about 22 1/2 years till date. Even if the two sentences run consecutively the petitioner has completed about 14 years in jail after remission as against the sentence of life imprisonment. Moreover having regard to the fact that the petitioner has already remained in jail for about 22 1/2 years, it is desirable for the ends of justice to give relief to

the petitioner so that he would live his remaining period of life in open sky.

4. Having regard to the aforesaid fact this application is allowed and the respondents are directed to release the petitioner forthwith.