IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.417 of 2019

Arising Out of PS. Case No.-148 Year-1998 Thana- KARAKAT District- Rohtas

==========

1. Uma Shankar Tiwary, Son of Late Ramlagan Tiwary,
2. Pramod Tiwary, Son of Umashankar Tiwary,
   Both Resident of Village- Mangara, P.S.- Karakat, (Gorari), District- Rohtas at Sasaram.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar at Patna.
2. The Secretary, Home Department cum Chairman State Sentence Remission Board, Bihar, Patna.
3. The Commissioner, Home Special Government of Bihar, Patna.
4. The Inspector General (Prison) Government of Bihar, Patna.
5. The Jail Superintendent, Open Jail Buxar.
6. The Jailor, Open Jail Buxar.

... ... Respondent/s

==========

Appearance :

For the Petitioner/s : Mr. Pramod Kumar Singh, Advocate
Mr. Umesh Prasad, Advocate
Mr. Suraj Kumar, Advocate

For the Respondent/s : Mr. Manish Kumar, Advocate

==========

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-02-2019

Heard Shri Pramod Kumar Singh, learned counsel for the petitioners and Shri Manish Kumar, learned counsel for the State of Bihar.

2. Both the petitioners were awarded life sentence after having been convicted in a criminal case. They have filed this petition only for consideration of their release on parole from 25th

WEB COPY

of February, 2019 to 11th of March, 2019 on the ground that the marriage of the daughter of petitioner No.1 and the sister of petitioner No.2 is to take place on 2nd of March, 2019.

3. The application seeking parole from the State Government is stated to have been moved on 14th of February, 2019. This petition has been filed immediately thereafter for a mandamus directing the State Government to consider the said application keeping in view the provisions of Section 31-B of the Prisoners Act, 1900.

4. Section 31-B of the Prisoners Act, 1900 is extracted hereinunder:-

> "31-B. *Release of prisoners on parole.* – (1) The State Government, or any authority to which the State Government may delegate its powers in this behalf, may, on recommendation of the District Parole Board, direct that a prisoner may be released, either without conditions or upon such conditions as may be specified in the direction, for any period not exceeding thirty days at a time, excluding the time required for journeys and the days of departure from, and the arrival at, the prison:
>
> Provided that no prisoner shall be released under this sub- section, unless –
>
> (a) he has served a period of not less than one year excluding remissions of his sentence;
>
> (b) his conduct in prison has been, in the opinion of the District Parole Board, uniformly good;

WEB COPY

(c) there is, in the opinion of the District Parole Board, reasonable probability that during the period of this release he shall not commit any crime; and

(d) in the case of a second or subsequent release, not less than six months have elapsed from the date of the expiry of his previous release:

Provided further that no prisoner shall be released under this sub-section more than three times.

(2) The provisions of sub-section (1) shall not apply to a prisoner, –

(i) who has been convicted of an offence specified in the Schedule annexed to this part; or

(ii) who has been classified as a habitual criminal under the rules made under the Prisons Act, 1894, and has had more than three previous convictions.

(3) The period of release of a prisoner under sub-section (1) shall count towards the total period of his sentence, provided that he surrenders on the due date and his conduct has been satisfactory during the period he was outside the jail on parole."

5. It has been pointed out by the learned counsel for the State that the exercise of power by the State Government or by the authority concerned is guided by the Bihar Prisoners (Parole) Rules, 1973. Parole can be granted for special reasons which also includes the marriage of the son or daughter of the concerned convict undergoing incarceration. The power is to be exercised either by the State Government or an authority nominated by the State Government on the recommendation of the District Parole

WEB COPY

Board. The District Parole Board consists of the District Magistrate, the Superintendent of Police, two members of the State Legislature to be nominated by the State Government and the Superintendent of the District Jail or the Central Jail, as the case may be. The order for such release has to be passed after completing this exercise and the date of release, according to Rule 8 of the 1973 Rules, should ordinarily not be beyond the period of 4 months from the date of order of release.

6. Thus, there is a complete procedure provided for such consideration by the State Government or by the authority nominated by the State Government to consider the grant of parole or otherwise to a prisoner.

7. As noted above, in the present case, both the petitioners are in prison on whose behalf the application was moved on 14th of February, 2019. The petition has been filed immediately thereafter seeking release on parole on the ground of the marriage of the daughter of petitioner No.1 and the sister of petitioner No.2, which according to them, is scheduled to be performed on 2nd of March, 2019.

8. Having considered the submissions raised, even though such an application can be disposed of by the State Government on its own, but to issue a mandamus for its

WEB COPY

compliance within 7 days may be curtailing the time of assessment which has to be made by the District Parole Board in order to make a recommendation before such a release is considered.

9. We are, therefore, not inclined to issue a mandamus without prejudice to the rights of the petitioner to approach the State Government for an early decision in the matter and it will be open to the State Government to pass appropriate orders after complying with the procedure in accordance with law.

10. Consigned to records with the said observations.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.02.2019
Transmission Date	26.02.2019

WEB COPY