

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.216 OF 2013

Kishor Jairam Vaity

Age: 47 years.

Prisoner No.-C-7263,

Open Jail Yerawada Central Prison,

Yerawada, Pune - 411006

... Petitioner

V/s.

1. The State of Maharashtra,
through Secretary, Home Department,
Mantralaya, Mumbai 400 032.

2. Inspector General of Prisons,
Maharashtra State, Pune

3. The Superintendent,
Yerawada Central Prison,
Pune - 411 006.

... Respondents

CORAM : A.S. OKA & S.C. GUPTE, JJ.

JUDGMENT RESERVED ON : 4th DECEMBER, 2013

JUDGMENT PRONOUNCED ON : 24th DECEMBER, 2013

JUDGMENT (PER A.S. OKA, J.):

. By this petition under Article 226 of the Constitution of India, the Petitioner is challenging the order dated 3rd December, 2002 (Exhibit "F" to the Petition). The Petitioner was convicted by Judgment and order dated 15th May, 1992 for the offence punishable under Section 302 of the Indian Penal Code, 1806 and was sentenced to suffer imprisonment for life. The Appeal preferred by the Petitioner to this

Court was dismissed on 7th December, 1994.

2. On 21st January, 1997, the Petitioner was released on parole. According to the case of the Petitioner, the period of parole was extended from time to time which expired on 20th April, 1997. According to the case of the Petitioner, he could not surrender as he was required to look after his ailing father who was suffering from paralysis. On 8th December, 2001, the Petitioner was arrested and taken to the prison. A show cause notice was issued on 11th December, 2001 by which the Petitioner was called upon to show cause as to why he should not be penalised for committing breach of the terms and conditions on which parole was granted. The Petitioner replied to the show cause notice on 18th December, 2001. By order dated 3rd December, 2002, the Petitioner was penalised by cancelling his remission for 515 days and the Petitioner was ordered to be removed from remission system for a period of ten years. The challenge in this Petition is to the said order dated 3rd December, 2002.

3. The first submission of the learned counsel appearing for the Petitioner is that the impugned order has been passed in a ready-made format after filling in gaps left therein. He submitted that this Court has repeatedly deprecated the practice of passing such orders. He

placed reliance on a decision of this Court dated 15th February, 2013 in ***Criminal Writ Petition No.2491 of 2012 (Shafi Vazruddin Qureshi Vs. State of Maharashtra and others)***. This Court has deprecated the practice of use of ready-made printed proformas. He urged that the order of appraisal passed by the learned Sessions Judge must be a speaking order. The learned APP submitted that there is a gross delay in approaching this Court inasmuch as the orders passed in 2002 are sought to be challenged after 10 or more years. He, therefore, submitted that no case for interference is made out.

4. We have carefully considered the submissions. It is true that there is a delay in approaching the Court. However, the Petitioner is a prisoner undergoing life sentence. The impugned order is an order of drastic nature by which not only his remission for 515 days has been cancelled, but he has been removed from the remission system for a period of 10 years. The impugned order affects the rights of the Petitioner inasmuch as the said order will adversely affect the Petitioner when his case is considered for a premature release. There is one more reason why this is a fit case to interfere. The impugned order has been passed by using a ready-made printed proforma with blank spaces. While passing order, only blanks have been filled in. The practice of passing such orders is repeatedly deprecated by this Court. There was a detailed reply filed by the Petitioner to the show cause notice. There is

only a passing reference to the said reply in the order. In the said order, there is no consideration of the reply. Such a drastic order passed affecting the Petitioner suffers from non-application of mind. The order has been passed in a causal manner affecting liberty of an individual. Therefore, the impugned order deserves to be set aside only on these grounds.

5. In terms of the judgment and order dated 5th September, 2008 passed by the Division Bench of this Court at Nagpur Bench in Criminal *Writ Petition No.283 of 2006 (Sk. Jakir Shaikh Babu Vs. State of Maharashtra)*, guidelines for imposing the punishment have been laid down which read thus :-

- “(1). Sufficient notice preferably of at least seven days' duration be given to the prisoner for submitting reply to the notice of showing cause to proposed higher punishment.
- (2). Cause shown be considered. If no sufficient cause is shown, reasoned order be passed for not accepting the contentions/cause shown by prisoner.
- (3). If higher punishment is proposed against the prisoner, then the proposal be submitted to the higher prison authority competent to grant sanction for higher punishment for the prison offence committed in the case.
- (4). After receipt of sanction order from the competent sanctioning authority and judicial appraisal from the

Sessions Judge concerned, an order imposing higher punishment may be passed and communicated to the prisoner.

- (5). The order of higher punishment may be implemented after following steps (1) to (4).”

6. We must note here that when the learned Sessions Judge makes judicial appraisal of the proposed penalty to be inflicted on the prisoner, the learned Sessions Judge is expected to apply his mind to the material on record. He must record brief reasons after consideration of the record. Only after a reasoned order of appraisal is passed by the learned Sessions Judge that the punishment can be imposed.

7. In the present case, non-application of mind is writ large on the face of the impugned order. We, therefore, set aside the impugned order with a direction to the Competent Authority to pass a fresh order after a fresh judicial appraisal by the learned Sessions Judge. Accordingly, we pass the following order :

ORDER

- (i) The impugned order at Exhibit “F” is quashed and set aside;
- (ii) Fresh order shall be passed by the concerned authorities in the light of observations made in this Judgment and

Order. While sending the file to the learned Sessions Judge for judicial appraisal, a copy of this Judgment and Order shall be also forwarded to the learned Sessions Judge;

(iii) A fresh order shall be passed by the concerned authorities within a period of three months from today;

(iv) All contentions on merits are kept open.

(S.C. GUPTE, J)

(A.S. OKA, J)