

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.815 OF 2015

Santosh @ Satish Vasantrao More ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Shri A.R. Khedkar, Advocate for petitioner
Shri S.D. Kaldate, A.P.P. for respondents
.....

CORAM: S.S. SHINDE AND
 A.I.S. CHEEMA, JJ.

DATED: 13th August, 2015.

ORAL ORDER :

1. This petition is filed praying therein for quashing the case registered against the petitioner for late appearance by six days to Prison, Aurangabad. It appears that, the petitioner is undergoing sentence in Central prison, Aurangabad. The petitioner filed application for parole leave of 30 days to the Divisional Commissioner, Aurangabad on the ground of ill health of the mother of the applicant. Said application was allowed on 29.7.2011. The applicant was released on parole leave on 12.8.2011 and he was supposed to report back in the prison on 12.9.2011.

2. It is the case of the petitioner that, during the period on which the petitioner was on parole leave, health of petitioner's mother did not improve, therefore, petitioner filed application on 25.8.2011 addressed to the Divisional Commissioner, Aurangabad for extension of parole leave by 30 days. However, his application for extension of parole leave came to be rejected on 20.9.2011. It is the submission of the counsel appearing for the petitioner that, the petitioner waited response from the respondents/ authorities about his prayer for extension of parole leave and same was not received by him. He continued for 6 days over and above the period for which he was granted parole leave. It is the submission of the counsel appearing for the petitioner that the respondents/ authorities ought to have communicated the decision on the application of the petitioner for parole leave submitted on 25.8.2011 and, therefore, the delay of 6 days in surrendering ought to have been condoned by the respondents/ authorities.

3. In pursuance to notice issued to the respondents, the affidavit is filed on behalf of respondent No.1. The learned A.P.P. appearing for the State fairly conceded that the decision on the application for extension of parole leave was taken by the Divisional Commissioner on 20.9.2011 since report from the concerned Superintendent of Police was not received. It is fairly

conceded by the learned A.P.P. that, instead of sending copy of the order passed by the Divisional Commissioner on the address furnished by the petitioner, wrongly the said order was sent on the address which was not furnished by the petitioner. Learned A.P.P. has filed affidavit of one Vijay s/o Sahebrao Raut, working as Tahsildar in the office of Divisional Commissioner, Aurangabad. Same is taken on record.

4. We have considered the submissions of the counsel appearing for the petitioner and learned A.P.P. appearing for the State. It is undisputed position that the petitioner filed the application for extension of parole on 25.8.2011. There is also no dispute that said application was received by the office of Divisional Commissioner, Aurangabad Division, Aurangabad. It is also admitted position that before the expiry of earlier period of parole leave, decision was not taken by the competent authority. However, the real question which needs to be answered is that whether the petitioner was entitled to over stay over and above parole leave granted to him though he was supposed to report back on completion of parole leave on 12.9.2011. it is true that, the Divisional Commissioner, Aurangabad Division, Aurangabad has not taken the decision before 12.9.2011. however, it was for the petitioner to adhere to the relevant rules and procedure and report back in prison on 12.9.2011 though his application for

extension of parole was pending on that day. The counsel for the petitioner has not brought to the notice of this Court any provision or judgment of this Court or the Supreme Court which takes a view that, when the application for extension of parole leave is pending with the authorities, unless such application is decided and said decision is communicated, the convict is entitled to over stay beyond the period of parole leave granted to him. Therefore, it is not possible for us to accept the contention of the petitioner that the case registered against the petitioner for his late appearance by 6 days in central Prison, Aurangabad may be quashed. In that view of the matter, in absence of any legal provision to accept the case of the petitioner, the petition is devoid of any merits. Same stands rejected.

5. The Legal Services Authority to pay the fees of Mr. Khedkar, Advocate who was appointed, as per rules.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)