

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

CRIMINAL WRIT PETITION NO. 4469 OF 2013

Chandra Kariya Devadiga
Aged 33 years, Occ. Nil.
R/at Kundapur, Tal. Kundapur,
Dist. Udipi
Karnataka State.

(Then confined at Kolhapur Central
Prison, Kalamba, Kolhapur now
transferred to Mysore Central
Prison, Karnataka

.. Petitioner

v/s.

1. The State of Maharashtra
2. The Superintendent,
Kolhapur Central Prison,
Kalamba, Kolhapur
3. The Dy. Inspector General of
Prisons, Western Region,
Yerawada, Pune – 411 006
4. The Superintendent,
Mysore Central Prison,
Mysore, Karnataka State

.. Respondents

Mr. N.N. Gavankar a/w M.N. Gavankar i/b Ms. Sharon Patole for
the petitioner
Mr. Y.P. Yagnik, APP for respondent State

**CORAM : R.V. MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
RESERVED ON : 7th APRIL, 2015
PRONOUNCED ON : 6th MAY, 2015**

JUDGMENT :- (PER R.V. MORE, J).

1. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner is challenging the orders dated 31.05.2011, 27.09.2013 and 19.10.2013 passed by respondent no.2, respondent no.3 and learned Additional Sessions Judge, Kolhapur respectively. The petitioner also seeks direction to respondent no.2 to restore 605 and 912 days of forfeited remission on the remission register of the petitioner. Further direction are also sought to the respondent no.4 to release the petitioner from the prison forthwith.

2. The petitioner was initially arrested on 26.06.1995 in connection with C.R. No.61 of 1995 registered with Jogeshwari Police Station and later on tried in Sessions Case No.115 of 1994

for the offence punishable under Section 302 of the IPC. By the judgment and order dated 27.07.1998, the petitioner was sentenced to suffer imprisonment for life. The Criminal Appeal No.734 of 1998 filed by the petitioner was dismissed by this Court on 09.12.2013.

3. After completion of 14 years of actual imprisonment, the Government considered the petitioner's 14 years report and by its order dated 08.04.2011 directed the petitioner to serve 20 years of imprisonment with remission.

4. Meanwhile, on 01.01.2004, the petitioner was escaped from Kolhapur Central Prison. Accordingly, the offence was registered against the petitioner by Rajwada Police Station, Kolhapur under Section 224 of the IPC. Thereafter the petitioner was tried and convicted by the learned J.M.F.C. 2nd Court, Kolhapur for the offence punishable under Section 224 of the I.P.C. by its judgment and order dated 27.02.2006 and sentenced him to suffer rigorous

imprisonment for two years.

5. The respondent no.2 thereafter issued show-cause notice to the petitioner on 11.05.2011 to show cause as to why remission earned by the petitioner upto 01.01.2004 should not be forfeited and he should not be removed permanently from the remission system. After giving an opportunity of hearing to the petitioner, the respondent no.2 passed an order dated 31.05.2011 under Rule 22 and 23 of the Maharashtra Prison, Rule, 1979 (herein after referred to as the said Rule), whereby his remission earned till 01.01.2004 was forfeited and he was permanently removed from the remission system. This order was approved by respondent no.3 and Additional Sessions Court at Kolhapur on 08.06.2011 and 28.06.2011.

6. The petitioner thereafter filed Writ Petition No.608 of 2013. At the time of hearing of this petition, the learned AGP made a statement that the competent Authority will decide with regard to

the petitioner's request for remission and pass requisite order expeditiously within a period of 4 weeks. The statement was accepted as undertaking to the Court and contentions of respective parties were kept open and the petition was disposed of. The respondent no.2 thereafter readmitted the petitioner to the remission system and this proposal was approved by respondent no.3 by an order 27.09.2013. The learned ad-hoc Sessions Judge, Kolhapur by his order dated 19.10.2013 further approved re-admission of the petitioner on remission system.

7. As stated above, the petitioner by filing this petition is challenging the validity of the initial order i.e. order dated 31.05.2011 passed by the respondent no.2 and consequent order passed by respondent no.3 and Ad-hoc Sessions Judge, Kolhapur on 27.09.2013 and 19.10.2013 respectively.

8. Mr. Gavankar, learned Counsel for the petitioner, at the outset, submitted that he is not pressing challenge to the

impugned order dated 31.05.2011 passed by respondent no.2, so far it relates to forfeiture of the petitioner's remission till 01.01.2004. However, he submitted that the respondent no.2 could not have removed the petitioner permanently from remission system as the permanent removal from remission system is higher punishment and while awarding this punishment, the competent Authority is obliged to record the opinion as to why higher punishment is necessary. Mr. Gavankar, learned Counsel for the petitioner also submitted that the respondent no.2 was not justified in imposing higher punishment on petitioner as the offence from escaping from the prison is not classified as major offence. In this regard, he relied upon the decision of the Division Bench, dated 21.10.1988 in the case of *Yusuf Badshah Abdul Hamid Vs. State of Maharashtra*, in Criminal Writ Petition No.990 of 1988.

9. Mr. Yagnik, learned APP opposed the petitioner's submission vehemently. He supported the impugned order. Learned APP

submitted that the petitioner is escaped from lawful custody and respondent no.2, therefore, was justified in passing the impugned order, in the light of the provisions of Rule 22 and 23 of the said Rule. He lastly submitted that the petition is devoid of any merit and the same be dismissed.

10. Having considered the rival submissions and having gone through the impugned orders, we find merit in the petition. Undisputedly, the petitioner had escaped from the custody, which is an offence under Section 224 of the IPC. The petitioner was tried for the said offence and convicted to undergo imprisonment for a period of one year.

11. Rule 22 of the Rules relates to forfeiture of the remission. Clause (iii) of Rule 22 of the said Rules provides that the Superintendent shall with the previous sanction of the Inspector General to forfeit any remission earned by the prisoner. Clause (iii) of Rule 22 reads thus :-

“22. (iii) Where a prisoner, after his admission into the prison, is convicted of an offence under Sections 147, 148, 152, 224, 302, 304, 304-A, 306, 307, 308, 323, 324, 325, 326, 327, 332, 333, 352, 353, or 377 of the Indian Penal Code, the Superintendent shall, with the previous sanction of the Inspector General, forfeit any remission earned by such prisoner.”

12. Rule 23 of the said Rules deals with powers of Superintendent to forfeit the remission by way of punishment etc.

Rule 23 of the said Rules reads thus :-

“23. Subject to the provisions of rule 22, a Superintendent may punish any prison-offence under (Section 46 of the Act, the either of both the following methods, that is to say, by).

*(a) *forfeiting* any ordinary or special remission for a period not exceeding 60 days.*

(b) removing any prisoner from the remission system for a period not exceeding one year.

Provided that where the Superintendent is of opinion that higher punishment by way of forfeiture of remission or removal from the remission system (or both) is necessary in the case of any prisoner, he may, with the previous sanction of the Inspector General, award such higher punishment (including permanent removal from the remission system).

13. A perusal of this Rule makes it clear that the Superintendent

is empowered to punish any prison-offence under Section 46 of the Prisons Act. It further shows that the Superintendent can forfeit any ordinary or special remission for a period not exceeding 60 days or remove any prisoner from the remission system for a period of not exceeding one year. Under the proviso, the Superintendent has power to award higher punishment including permanent removal from the remission system. The proviso however, makes it abundantly clear that before awarding higher punishment, the Superintendent has to form an opinion as to why higher punishment is necessary.

14. In the instant case, a perusal of the impugned order reveals that the respondent no.2 has not recorded any reasons as to why higher punishment was required to be imposed on the petitioner. As a matter of fact, there is absolutely no reason for forming an opinion that it was necessary to remove the petitioner permanently from the remission system. The respondent no.2 in its order has only stated that the petitioner has been convicted

under Section 224 of the IPC and, therefore, his guilt has been proved. This would not be sufficient to impose higher punishment of permanent removal from the remission system. On this short ground, the impugned order passed by respondent no.2 dated 31.05.2011 so far it removes the petitioner permanently from the remission system, cannot be sustained. The same is accordingly quashed and set aside.

15. So far Mr. Gavankar's argument that higher punishment cannot be awarded in the absence of any classification of offence into major and minor, the same need not be gone into in the above peculiar facts and circumstances.

16. The petitioner has completed 19 years, 6 months and 20 days imprisonment till 31.05.2011. In view of the impugned order passed by the respondent no.2 dated 31.05.2011, the petitioner does not have even single day ordinary remission to his credit as his entire earned remission of 605 days was forfeited and

the petitioner was permanently removed from the remission system. Since we have quashed the later part of the order namely; permanently removing the petitioner from the remission system, the petitioner is entitled to be released forthwith.

17. The Writ Petition is disposed of in the aforesaid directions.

(ANUJA PRABHUDESSAI, J.)

(R.V. MORE, J.)