

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2995 OF 2015

Ehsan Mohammad Tufel Mohammad Qureshi ..Petitioner.
Versus
State of Maharashtra & Others. ..Respondents.

Ms. Farhana Shah, advocate for the Petitioner.

Mrs. U.V.Kejriwal, Public Prosecutor for the Respondent-State.

Coram : RANJIT MORE &
V. L. ACHLIYA, JJ.
Date : **28th AUGUST, 2015.**

P. C. :

1 Heard.

2 By this petition, the Petitioner has sought to direct the respondent nos.2 and 3 to grant 42 days of ordinary remission to the Petitioner for the period from 13-11-2006 to 29-05-2007.

3 The Petitioner herein was convicted on 13th November 2006 by the designated Court under various provisions of the Indian Penal Code, 1860 and the Terrorist and Disruptive Activities (Prevention) Act, 1985 and he was sentenced on 29th May 2007 to undergo R.I. for 5 years and to pay fine of Rs.25,000/- i/d. R.I. for 6

months.

4 The petitioner has been granted ordinary remission from the date of sentence.

5 The petitioner, who was on bail was taken in custody on 14th November 2006 and sentence was awarded on 29th May 2007 ie about six months from the date of conviction. The petitioner has been granted ordinary remission from the date of the sentence. The grievance of the petitioner is that he is entitled for remission for the period from the date of conviction till the date of sentence. In the light of this contention, the only point falling for our consideration is whether the petitioner is entitled for remission from the date of conviction.

6 In exercise by powers conferred by sub clause 5 of Section 59 of the Prisons Act, 1894, the Government of Maharashtra has framed the Maharashtra Prisons (Remission System) Rules, 1962. Rule specifies the classes of prisoners who are eligible for ordinary remission while Rule 8 provides the scale of ordinary

remission. Rule 9 prescribes the procedure for calculating ordinary remission and provides that ordinary remission shall be calculated from the first day of the calendar month if a prisoner was sentenced on that day, and in any other case, from the first day of the calendar month next following the date of his sentence.

7 In the present case, the accused was convicted on 13th November, 2006. It is not in dispute that till the date of his conviction the accused was on bail and he was taken in custody on the date of his conviction that is he surrendered on 14th November, 2006. Though the accused was sentenced on 29th May, 2007, he was admitted in jail on the date of the conviction. As fairly conceded by learned APP Mrs. Kejriwal, the accused being a convict, could not be considered as an under trial prisoner from the said period of detention between the date of conviction till the date of sentence. Consequently, the said period of detention cannot be equated with under trial detention. Since the accused was admitted in the prison from the date of conviction, in our view the sentence would relate to the date of conviction and the accused would be entitled for remission from the date of the admission in prison.

8 At this stage, we would like to refer to Rule 10 of Maharashtra Prisons Remission System Rules, which deals with ordinary remission in case of habitual prisoners. This rule provides that a habitual prisoner shall not be entitled to any ordinary remission during the period of six months commencing from the date of his first admission into the prison. This rule gives an indication that the period of remission has to be calculated from the date of first admission into the prison upon conviction.

9 As stated earlier, the Petitioner in the present case was convicted and was taken into custody on 14th November 2006. The said period cannot be construed as under trial detention and the same is also not excluded in terms of Rule 7 of Remission System Rules. Hence, in our considered view the petitioner would be entitled for remission from the date of his admission into the prison upon conviction.

10 We, therefore, direct the Respondent – Authorities to calculate the ordinary remission to which the Petitioner is entitled

taking into consideration the Petitioner's date of admission into prison.

11 With above directions, writ petition is disposed.
Parties to act on an authenticated copy of this order.

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]