

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4387 OF 2014

Waman Raghunath Shelke

..Petitioner.

Versus

The State of Maharashtra & Ors.

..Respondents.

Mr. Madhav J. Jamdar, advocate for petitioner.

Mr. S.K.SHinde, PP with Mr.K.V.Saste, APP for State.

Coram : RANJIT MORE &
R.G.KETKAR, JJ.

Date : **2nd September, 2015.**

P. C. :

Heard Mr. Jamdar the learned counsel for petitioner and Mr. Shinde the learned PP with Mr.Saste the learned APP for the State.

2 By this petition filed under Article 226 of the Constitution of India, petitioner seeks to quash and set aside order dated 15.7.2014 passed by the Respondent No.3-Superintendent, Yervada Central Prison, Yervada, Pune. He further seeks direction to respondents to grant him benefit of remission as per the order of the State Government dated 6.8.1997.

3 The incident in question took place on 17.11.1986. The petitioner was arrested on or about 10.12.1986 for the offence punishable under Section 302 of the Indian Penal Code, 1860. He was in judicial custody till 22.2.1987. On 15.4.1996 the petitioner was convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 by the learned Sessions Judge, Raigad, Alibag in Sessions Case No.20 of 1987 and he was sentenced to suffer imprisonment for life.

4 Petitioner was released on parole on 11.6.1997 for a period of one month and the same was extended till 9.9.1997. Petitioner, however, surrendered on 23.7.1999 i.e. 681 days late.

5 By the order dated 2.2.2000, petitioner was removed from the remission system for a period of 12 years by way of punishment by respondent no.3.

6 Petitioner made representation on 1.5.2014 to respondent no.3 that he is entitled to the benefit of remission as

per the order of the State Government dated 6.8.1997 (In short '**Said Order**'). This representation was rejected by respondent no.3 by the order dated 5.7.2014 which is the subject matter of the present petition.

7 The said order is issued by the Home Department, Government of Maharashtra giving state remission to the prisoners is annexed at Ex.'D' Page 32 of this petition. Perusal of the same reveals that on the occasion of Golden Jubilee year of Independence of India, State Government (Home Department) has resolved to give remission to prisoners falling in certain categories in exercise of the powers conferred under Section 432(1) of the Code of Criminal Procedure, 1973. There are several categories of prisoners mentioned in the said resolution. In the present petition, we are concerned with the category at Sr.No.15, which reads as under:

Category of the sentence	Period of Remission
Sentence of 11 years or more or life imprisonment	Two years

8 Mr. Shinde the learned PP opposed the petition. He submits that though the petitioner was on authorised parole leave as on 15.8.1997, however, thereafter he overstayed for a period of 681 days and he surrendered late to Yervada Central Prison, Pune on 23.7.1999. Therefore, petitioner cannot be given the benefit of remission granted under the said order. Mr. Shinde, alternatively, argued that by the order dated 2.2.2000, petitioner's name was removed from the remission system for a period of 12 years and thus, state remission is included in the same. Consequently, petitioner is not entitled for the benefit of remission granted under the said order.

9 The plain reading of the said order makes it unequivocally clear that prisoners who are undergoing sentence for a period of 11 years or more or life imprisonment are entitled for state remission for a period of two years on the occasion of Golden Jubilee year of Independence of India. The question is whether petitioner is entitled for this state remission in view of late surrender to the prison. Our answer is in affirmative.

10 Last line of paragraph 1 of the said order shows that

the order is to be implemented on or from **15.8.1997**.

Paragraph 4 of the said order makes it abundantly clear that prisoners, who are outside prison unauthorisedly on 15.8.1997 are not entitled for State Remission. However, prisoners who are on authorised furlough or parole leave on **15.8.1997** are entitled for the benefit thereof.

11 In the context of the G.R. if the facts of the present case are considered, then it is clear that petitioner as on 15.8.1997 was on authorised parol leave and, therefore, he is entitled for the benefit under the said order. Merely because petitioner thereafter overstayed and surrendered late to the prison, he cannot be deprived of the benefit under the said order especially when petitioner was separately punished for overstaying by separate order dated 2.2.2000 thereby removing him from the remission system for a period of 12 years.

12 In the light of discussion made here-in-above, impugned order cannot be sustained and the same is quashed and set aside. Petitioner is held entitled to the benefit of State

Remission granted under the order dated 6.8.1997. Petition is, accordingly, allowed in terms of prayer clauses (a) and (b).

[R.G.KETKAR, J.]

[RANJIT MORE, J.]

Certified to be true and correct copy of the original signed judgment/order.