

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

CRIMINAL WRIT PETITION NO. 188 OF 2016

Masna Satwa Shirgire

.. Applicant

Versus

The State of Maharashtra

.. Respondent

Mr. D.M. Hange, Advocate (appointed) for applicant.
Mrs.A.V. Gondhalekar, A.P.P. for respondent/State.

**CORAM : A.V.NIRGUDE &
INDIRA K.JAIN, JJ.**

DATED : 24.02.2016

P.C. :-

1. Heard. The applicant was convicted for offence punishable under section 302 r/w 34 of the Indian Penal Code in Sessions Case No.131 of 1993. Since 11.07.2003, the applicant is in custody. The judgment of the Sessions Court, however, did not mention that the applicant was entitled to set off for the period during which he was in custody. Such order was necessary in view of section 428 of the Code of Criminal Procedure. This provision compels the Trial Court to direct set off for the period which is undergone in the custody, from the substantive sentence. Unfortunately for the applicant, the Trial Court did not mention this. This was an error on the part of the Trial Court. We are inclined to correct this error. We hold that the applicant is entitled to set off for the period

already undergone in the custody. As per record of the Sessions Court, it is clear that the applicant was in police custody between 08.01.1993 to 15.01.1993 (8 days) and from 17.01.1993 till 06.02.1993, he was in Magistrate custody (21 days). The applicant is entitled for set off of 29 days (8 days + 21 days). Respondent No.2 shall take note of this and act accordingly.

2. Mr. D.M. Hange, Advocate (appointed) for the petitioner shall be paid Rs.1500/- (Rupees One Thousand Five Hundred) as professional fees.

[INDIRA K.JAIN,J.]

[A.V.NIRGUDE,J.]