

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

CRIMINAL WRIT PETITION NO. 903 OF 2016

Shivaji S/o Shrimant Mandale

Age : 40 years, Occ : Convic No.13679,

At present : Prisoner (Open Prison),

At Paithan, Dist. Aurangabad.

..PETITIONER

-VERSUS-

1. The State of Maharashtra

2. Divisional Commissioner,
Pune Region, Pune.

3. The Superintendent of Prison,
Yerwada Central Jail,
Pune.

4. The Superintendent of Open Prison,
Paithan, Dist. Aurangabad.

..RESPONDENTS

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Mr.D.M. Hange, advocate for petitioner

Mr.D.R. Kale, APP for Respondent/State

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CORAM : S.S. SHINDE &

SANGITRAO S. PATIL, JJ.

Dated: October 18, 2016

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ORAL JUDGMENT (SANGITRAO S. PATIL, J):-

Rule. Rule made returnable
forthwith. Heard finally with the consent of
the learned counsel appearing for the
parties.

2. The petitioner has challenged the order dated 10th June, 2008 passed by respondent no.3, whereby due to overstay of the petitioner for 127 days after expiry of parole, he was punished by way of deduction of 422 days of his remission period.

3. The learned counsel appearing for the petitioner submits that after reporting back to the prison, the petitioner filed application on 29th January, 2008 before respondent no.3 explaining that two days prior to 29th August, 2007, when he was proposed to report back to suffer his sentence in prison, his wife sustained injuries in an accident in a flour-mill. She was required to undergo medical treatment. Since there was nobody to look after her in the house of the petitioner, he was required to stay there. In that emergent and inevitable circumstances, he could not report back to the prison immediately after the period of parole was over. He attended the prison immediately after recovery of his wife. The learned counsel for the petitioner submits that as per the circular dated 7th September, 2013, and more particularly, clause (4) thereof, it was necessary for

respondent no.3 to verify the ground that was shown by the petitioner for the delay in reporting back to the prison after expiry of the period of parole. However, no such verification was done by respondent no.3 and his remission period has been wrongly reduced by 422 days. He, therefore, submits that the impugned order may be quashed and set aside.

4. As against this, the learned A.P.P. appearing for the respondent/State on the basis of the contents of the reply filed on behalf of respondent no.3, submits that the period of parole granted to the petitioner had come to an end on 29th August, 2007. He was supposed to attend the prison on 29th August, 2007. The alleged incident in which the wife of the petitioner is stated to have sustained injuries took place on 27th August, 2007. He submits that the circular dated 7th September 2013 cannot be given retrospective effect to extend the benefit thereof to the petitioner in respect of his unauthorized absence of the year 2008. He submits that the period of remission has been rightly deducted by respondent no.3, because of his wrongful overstay after the period of parole was over, as per the Rules prevailing at the relevant

time. He, therefore, submits that the petition may be dismissed.

5. We have considered the contents of the application dated 29th January, 2008 filed by the petitioner after reporting back to prison belatedly as well as the circular dated 7th September, 2013. The remission period of the petitioner has been reduced by respondent no.3 by 422 days vide the impugned order dated 10th June, 2008, as per the Rules which were prevailing at the relevant time. The circular dated 7th September, 2013 does not show that it was to be made applicable with retrospective effect. In the circumstances, the petitioner is not entitled to get the benefits of the said circular. Consequently, we do not find any reason to interfere with the impugned order. Hence the following order :-

ORDER

- (i) The Criminal Writ Petition is dismissed.
- (ii) The Rule stands discharged accordingly.
- (iii) Since Mr. D.M. Hange, the learned

counsel is appointed as Amicus Curie to prosecute the cause of the petitioner, his fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

(SANGITRAO S. PATIL, J.) (S.S. SHINDE, J.)