

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

CRIMINAL WRIT PETITION NO. 970 OF 2016

Vitthal Waman Bhole
(C-2794)

...Petitioner

VERSUS

The State of Maharashtra
and others

...Respondents

.....

Smt. B.B.Gunjale, advocate for the petitioner
Shri D.R.Kale, A.P.P. for respondents

.....

CORAM : S.S.SHINDE & SANGITRAO S.PATIL, JJ.

DATED : 19th SEPTEMBER, 2016

PER COURT :

This Petition under Article 226 of the Constitution of India is filed seeking directions to the respondents to release the petitioner on the ground that the petitioner has undergone more than 18 years of actual imprisonment.

2. The learned counsel appearing for the petitioner submits that since the petitioner has undergone actual imprisonment of more than 18 years, the petitioner deserves to be released. In

support of her contention that on actual undergoing 14 years imprisonment, discretion vests with the respondents/authorities and the respondents/authorities can release the petitioner, the learned counsel appearing for the petitioner placed reliance on the reported judgment of the Supreme Court in the case of **Ramraj alias Nanhoo alias Bihnu Vs State of Chhattisgarh [2010(1) Mh.L.J.(Cri.) 266]** and in particular paras 15 and 16 thereof. She further invites our attention to para 9 of the petition and submits that for the compelling reasons the petitioner stayed outside the jail over and above the period for which he was granted furlough by the respondents/authorities, and therefore, on the count of his overstayal outside the prison, remissions could not have been deducted. Therefore, the learned counsel appearing for the petitioner submits that the petition deserves to be allowed.

3. On the other hand, the learned A.P.P.

appearing for the State relying on the averments in the affidavit-in-reply filed by Ramesh V.Kamble, Superintendent, Nashik Road Central Prison, Nashik submits that when the petitioner was released on furlough, on two occasions he did not surrender within time, and therefore, he was required to be arrested for being lodged in jail. He submits that when the petitioner was released on furlough on 22.9.1999 and 23.7.2011, on each occasion he overstayed for 1146 days and 219 days, respectively. Therefore, as per the relevant procedure/rules, for overstaying the said period, his remissions are deducted. He categorized the petitioner as 3(d) of the Government Resolution dated 11.5.1992 i.e. the Guidelines for pre-mature release on completion of 14 years. He submits that it is true that the petitioner as on 31.7.2016 has completed period of imprisonment of 19 years 2 months and 21 days including the remission period, however, he would be entitled to be released from prison only on completion of 26 years imprisonment including the remissions.

4. Upon hearing the learned counsel appearing for the petitioner and the learned A.P.P. appearing for the State and on careful perusal of the pleadings in the petition, annexures thereto, and the reply filed by the respondent, it is abundantly clear that when the petitioner was released on furlough he overstayed for the period which is already mentioned in foregoing paragraphs, and on that count, the remissions are deducted. Apart from that, during the course of arguments, the learned A.P.P. submits that the petitioner committed other offences during the period of furlough and for that also crime has been registered against him.

5. Upon considering the case in its entirety, the prayer of the petitioner to release him on completion of more than 18 years imprisonment including remissions cannot be considered in the light of facts brought on record by the respondents by way of filing affidavit-in-reply. For the reasons afore said, we are not inclined to

grant relief as prayed for in the petition.

6. In the result, the Petition stands rejected.

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

dbm/crwp970.16