

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO.1611 OF 2015

Tukaram Datta Potare,
age: 30 years, C/6434,
Nasik Road Central Jail,
District Nasik.

Petitioner

Versus

1 State of Maharashtra,
through the Principal Secretary,
Home Department, Mantralaya,
Mumbai – 400 032.

2 Inspector General of Prisons,
Maharashtra State, Pune.

3 Deputy Inspector General of
Prisons, Central Department
Aurangabad.

4 The Superintendent,
Nasik Road Central Jail,
Nasik, District Nasik.

Respondents

Mr.A.A.Salve, advocate (appointed) for the petitioner.
Mr.K.S.Patil, APP for Respondents.

**CORAM : R.M.BORDE &
K.L.WADANE, JJ.
DATE : 04th April, 2016**

ORAL JUDGMENT (Per R.M.Borde, J.):

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 The petitioner is convicted by the Sessions Judge,
Nanded in Sessions Case No.05 of 2007 for the offences punishable

under Sections 302, 323, 324, 504 read with Section 34 of the Indian Penal Code and is undergoing sentence to suffer life imprisonment and is presently lodged in Nasik Road Central Jail.

3 The petitioner moved an application for furlough which was forwarded to Respondent No.2 for sanction vide letter dated 22.01.2015. The petitioner was released on furlough for a period of two weeks. However, as mother of the petitioner was not keeping well, he tendered an application on 08.06.2015 for extension of furlough for further fifteen days. The application tendered by the petitioner for extension of furlough was not decided for quite some time and same was decided only after surrender of the petitioner to Central Jail. Petitioner surrendered himself on 04.07.2015, belatedly after 15 days of sanctioned furlough period. As a consequence of his late surrender, the jail authorities i.e. Superintendent of Central Jail, Nasik, directed fifteen days cut in the remission as a matter of penalty.

4 The petitioner contends that since his mother was not keeping well and he had tendered an application for extension of furlough, he was hoping that his application would be considered favourably and he would be allowed to continue to remain on furlough for further fifteen days. According to the petitioner, action of late surrender was not intentional, but was for the reason that his mother was sick and he was required to take her care. In the circumstances, petitioner placed reliance on the judgment delivered by the Gujarat High Court in the matter of **Bhipat Vira Vs. State of Gujarat and others**, reported in 1987 (1) GLH 578. Relying upon earlier Full Bench judgment of the Gujarat High

Court, the Division Bench of Gujarat High Court has laid down certain parameters for consideration of issue of imposition of penalty in the matter of late surrender by the prisoners. It is laid down by the Division Bench of High Court that the authorities has to consider, *inter alia*, whether:

- (i) His late surrender was voluntary;
- (ii) lateness in surrender was for unduly long period;
- (iii) Prisoner escaped and police authorities had arrested him after chase;
- (iv) There is any sufficient cause for his late surrender;
- (v) The cause is insufficient or if there is no cause, what is the gravity of the offence.

5 It is observed by the Full Bench of the Gujarat High Court in paragraph no.21 of the judgment in the matter of **Bhikhabhai Devshi Vs. State of Gujarat & others**, reported in 1987 (Special Criminal Application No.795 decided on 03.08.1986, reported in 1987 (1) GLH 139:

"In every case of late surrender, the authority has to take a conscious decision under Section 48-A after duly applying its mind as to what particular punishment or punishments should be awarded. it is open to the authority to impose a cut of remission for a particular number of days and the authority may or may not combine the punishments, but whatever punishment the authority ultimately imposes is to be suffered."

6 In the instant matter, it has not been demonstrated that the authorities have considered sufficiency of the cause

shown by the petitioner for his late surrender and in the circumstances, we quash the order passed by the Respondent imposing a penalty to cut period of 15 days in the remission and direct the concerned authorities to reconsider the issue in the light of observations made in the judgment.

7 Rule is made absolute to the extent specified above.

K.L.WADANE
JUDGE
adb/crwp161115

R.M.BORDE
JUDGE