

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1208 of 2016**

Arun Shankar Ramalingam Naidu

..Petitioner

v/s.

The State of Maharashtra .

..Respondents

Ms. Rohini Dandekar for the Petitioner.

Smt. V.R.Bhonsale, APP for the Respondent/State.

**CORAM : SMT. V.K.TAHILRAMANI &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : APRIL 21, 2016.**

ORAL ORDER (PER SMT. V.K.TAHILRAMANI, J.)

1. Rule. Rule made returnable forthwith.
2. The petitioner Arun Shankar Ramlingam Naidu is in Nashik Road Central Prison. It is the case of the petitioner that on three occasions he was released from prison and on all three occasions he reported back to the prison in time. Hence, he is eligible for being sent to the open prison, however, he is not being sent to the open prison.
3. The affidavit of Shri Agay, Superintendent of Nashik Road

Central Prison shows that when the petitioner was released on parole leave on 27.3.2006, he did not surrender back to the prison in time. Thereafter, the petitioner was released on furlough leave on 1.11.2007. The petitioner did not report back in time and he was late by 94 days. Thereafter, the petitioner was granted parole leave on 28.12.2007 for a period of 30 days. The petitioner preferred an application for extension of parole of 30 days. The said application came to be rejected. However, the petitioner did not report back to the prison. On 2.1.2009 the Jail authorities sent a letter by speed post to the petitioner informing him to surrender immediately before the jail authorities as he had overstayed from 21.3.2008. The petitioner was further informed that if he does not surrender after receipt of this notice, an offence under Section 172 of IPC will be registered against him and he will be declared as absconder. In spite of receipt of the notice dated 2.1.2009, the petitioner did not surrender. Therefore, on 17.4.2009 non-cognizable offence under Section 172 of Cr.PC. was lodged against the petitioner at Shivaji Nagar Police Station, Mumbai. On 26.06.2009, Deonar Police Station arrested the petitioner and brought him back to the prison on

27.6.2009. There was overstay on the part of the petitioner of 464 days. Due to these facts, show cause notice was issued to the petitioner on 29.6.2009 asking him to show cause why his name should not be removed permanently from remission system. The petitioner filed his reply. The DIG, Prisons, granted sanction to the punishment imposed of removing the petitioner from remission system permanently. The Addl. Sessions Judge, Nashik approved the punishment imposed by the DIG, Prisons by order dated 31.10.2009.

4. As per the Maharashtra Prison Manual, 1972, Chapter II open Prison, Section 1, the Open Jail Selection Committee meeting was held at Nashik Road Central Prison on 21.10.2010. The petitioner-prisoner was produced before the Committee and he was disqualified for being sent to the Open Jail as he had absconded when he was on leave and he was permanently removed from the remission register. The case of the petitioner was again put up before the Open Jail Selection Committee held on 25.6.2013 at Nashik Road Central Prison. The petitioner was produced before the Committee. However, inadvertantly the fact that the petitioner was permanently removed from remission register was not mentioned in the

information. Hence the petitioner was selected for open jail.

5. Once the Open Jail Selection Committee passes an order that the prisoner has to be sent to open prison, overall seniority list is prepared for the State of Maharashtra. As the space in the open jail is limited, as per seniority the prisoners are sent to the open jail. As there was no place in the open jail, the petitioner could not be sent to the open jail. However, in the meantime, it came to the notice of the authorities that the fact remained to be put before the Open Jail Selection Committee meeting which was held on 25.6.2013. This fact was brought to the notice of the Open Jail Selection Committee that the petitioner had absconded for 464 days hence the petitioner was permanently removed from the remission register, and the Selection Committee in its next meeting disqualified the petitioner from being sent to open prison.

6. Looking to the above facts no case is made out for interference. Rule is discharged.

7. Copy of this order be communicated to the petitioner who is undergoing sentence in Nashik Road Central Prison, Nashik.

(ANUJA PRABHUDESSAI, J.)

(SMT. V.K.TAHILRAMANI, J.)