

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

CRIMINAL WRIT PETITION NO.309 OF 2017

Shaikh Razzak Shaikh Salim
(C-8125) (Convict)
Central Prison, Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Home Department (Prison),
Mantralaya, Mumbai.
2. The State of Maharashtra
Through D.I.G. (Prisons),
Aurangabad.
3. The Superintendent,
Central Jail, Aurangabad (Harsool),
Tq. & Dist. Aurangabad.

RESPONDENTS

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Mr.V.N.Shelke [Appointed] Advocate for the
Petitioner

Ms.P.V.Diggikar, APP for the Respondent Nos.1
to 3 / State

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 28.04.2017.

Pronounced on : 04.05.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This Petition under Article 226 of the Constitution of India seeks directions to the respondents to restore all the jail facilities and include the name of the petitioner in the register of remission.

4. It is the case of the petitioner that, in the year 1997, the petitioner has been convicted under Section 302 r/w. 34 of the Indian Penal Code and he is directed to undergo imprisonment for life. Thereafter, the petitioner preferred Criminal Appeal No. 04/1998 before this Court and the same came to be dismissed, confirming the conviction of life imprisonment. At present, he is undergoing imprisonment in Central Jail at Aurangabad.

5. It is further the case of the

petitioner that, thereafter, the petitioner was granted furlough / parole leave and after availing the said leave on completion of period for which he was granted, the petitioner has remained outside the jail for 1335 days on account of his family problems. Therefore, due to late reporting, the petitioner was duly punished by the jail authorities by curtailing his remission and other facilities. However, the jail authorities have permanently removed his name from the remission register and thereby caused injustice. It is submitted that, on 10th January, 2017, the petitioner made application to the registry of the High Court, requesting therein to issue directions to the jail authorities to grant him all jail facilities such as remission and facilities available to other convicts.

6. It is submitted that, the petitioner overstayed outside the jail after completion

of period for which leave was granted to him because of his mother is old and suffering from ailment of kidney. Both the kidney of mother of the petitioner are not properly functioning, and therefore, she was required to take medical treatment regularly. The father of the petitioner died, and therefore, there is no male member in the family to look after family members. The petitioner is also having children. Therefore, it is necessary to grant all the jail facilities and to restore the name of the petitioner in remission register. Hence this petition.

7. Learned counsel appearing for the petitioner at the cost of repetition submits that, on every occasion the petitioner himself surrendered after completion of period of parole / furlough leave. It is submitted that, overstay of the petitioner after completion of the furlough / parole leave granted in his favour was not

intentional and due to unavoidable circumstances, and therefore, the same deserves to be condoned, thereby restoring the name of the petitioner in remission register. It is submitted that, the mother of the petitioner is suffering from ailment of kidney. The father of the petitioner is no more and there are small children dependent upon him. He has already undergone period of imprisonment more than 23 years including remission. Therefore, he submits that, the petition may be allowed.

8. On the other hand, the learned APP appearing for respondent – State relying upon the affidavit-in-reply filed on behalf of respondents made following submissions. The petitioner is convicted by the Sessions Court, Aurangabad in Crime No.349/1995 and Sessions Case No.136/1996 on 19th September, 1997, for the offence under Section 302 of the IPC and ordered to undergo life

imprisonment and total fine of Rs.1,500/- in default 5 months imprisonment. The petitioner's under trial period is from 1st February, 1996 to 18th September, 1997, i.e. 1 year, 7 months and 18 days. The petitioner is also convicted by the Sessions Court, Aurangabad on 31st March, 2000 in Crime No. 6010/1999, and Sessions Case No.453/1999 under Section 27 of the NDPS Act and ordered to undergo imprisonment of 6 months. The petitioner is undergoing imprisonment in Central Prison at Aurangabad and till date, the prisoner has not paid the fine amount. The petitioner is released on furlough leave on 10th April, 2009, as per the order dated 27th March, 2008 issued by the Deputy Inspector General of Prison, Central Region, Aurangabad. The petitioner was supposed to surrender on 25th April, 2009, but the petitioner did not surrender on due date i.e. on 25th April, 2009, and was arrested by the

police authority on 20th December, 2012, and thus the petitioner has illegally over stayed for 1335 days.

9. It is submitted that, as per the provisions contained in the Government Resolution dated 2nd October, 2011, if any prisoner is released on furlough / parole leave, and if he does not surrender even after the completion of his leave period, then the jail authority has to deduct the remission of the concerned prisoner depending on number of days he surrendered late. It is also relevant consideration that, the prisoner surrendered on his own or is to be brought back in jail by police authority. In the present case, as the petitioner is arrested by the police authority and as he surrendered late by 1335 days, therefore, as per Regulation 8 of the Government Resolution dated 2nd October, 2011, the prisoner's name is permanently removed from the remission

register. Accordingly, the Superintendent, Aurangabad Central Prison, submitted the proposal for removal of the prisoner's name from remission register and for judicial appraisal to Sessions Court, Aurangabad. The same was approved by Sessions Court, Aurangabad, on 23rd March, 2016. Therefore, the learned APP submits that, the petition may be rejected.

10. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and the learned APP appearing for the respondent – State. With their able assistance, we have perused the grounds taken in the petition, annexures thereto and also the reply filed by the respondents and annexures thereto. Upon careful perusal of the Notification issued by the Department of Home, Government of Maharashtra, dated 2nd August, 2011, the said Notification provides for amendment in the

Jail Manual, 1894. By way of said amendment Regulation No.23 has been added. By way of said amendment, the convicts who are released on furlough leave, and if they do not report back on expiry of the period for which they are granted such leave, in that case, the manner in which there should be deduction of remission, depending upon length of delay in reporting back to the jail, has been provided. As per the relevant provision, the convict / convicts who are released on furlough leave and after completion of the period of such furlough leave granted in their favour, if they unauthorizedly / illegally stayed outside the jail for more than 6 months period, in that case, his name will be struck off from the remission register and also he will not be entitled for remission. The relevant provisions reads thus:

कैदी 6 महिने किंवा त्यापेक्षा जास्त कालावधीत अनधिकृतपणे तुरुंगाच्या बाहेर राहिल्यास,	कैद्यांच्या माफीत कायमस्वरूपी कपात करण्यात येईल.
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11. Since the said Notification is in force, and being uniformly applied in all such cases, applying the said provision in the case of the petitioner, respondents have taken decision / action against the petitioner. It is admitted position that, the petitioner was released on furlough leave from 07.05.2003 to 01.04.2004, however, he did not report back and overstayed illegally for more than 315 days. Even when he was released on furlough leave for the period of 18th March, 2009 to 20th December, 2012, he overstayed for the period of 1335 days. Therefore, the police authorities have arrested the petitioner on 20th December, 2012 and he was brought back to the jail. The respondent authorities invoked aforesaid provisions from the Notification dated 2nd

August, 2011, issued by the Department of Home of which reference is already made and his name is permanently removed from the remission register.

12. Therefore, we do not find any infirmity or illegality in the decision taken by the respondents to permanently remove the name of the petitioner from the remission register. Said decision is in conformity with provision in Notification dated 2nd August, 2011, extensively referred herein above. In that view of the matter, we are unable to persuade ourselves to grant any relief in favour of the petitioner. Hence, the Writ Petition stands rejected. Rule stands discharged.

[K . K . SONAWANE]
JUDGE

[S . S . SHINDE]
JUDGE