

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

CRIMINAL WRIT PETITION NO.903 OF 2017

Dilip s/o.Kisan Wadkar,
[Convict No.4569],
R/o.Open District Prison, Paithan,
Dist. Aurangabad. **PETITIONER**

VERSUS

- 1] The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2] The Superintendent of Jail,
Central Prison, Solapur,
Dist. Solapur.
- 3] Deputy Inspector General,
Central Prison, Solapur,
Dist. Solapur. **RESPONDENTS**

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Mr.B.M.Dhanure [Appointed], Advocate for the
petitioner
Mr.M.M.Nerlikar, APP for the Respondent/
State

...

**CORAM: S.S.SHINDE &
MANGESH S.PATIL,JJ.**

Reserved on : 04.10.2017
Pronounced on : 12.10.2017

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

1] This Petition under Article 226 of the Constitution of India is filed by the convict undergoing life imprisonment for the offence punishable under Section 302 of the Indian Penal Code in the Open District Prison, Paithan, District Aurangabad, taking exception to the impugned judicial appraisal order dated 24th May, 2010, passed by the District Judge-I, Kolhapur.

2] Learned counsel appearing for the petitioner submits that the petitioner was released on parole for 30 days for the period from 14th February, 2009 to 15th March, 2009. He was supposed to surrender on due date i.e. on 16th March, 2009, however, he surrendered on 11th June, 2009.

It is submitted that when he was released on parole, respondent implicated him

in a false case, and he was arrested in crime No.11/2009 for the offence punishable under Section 394 r/w.34 of the Indian Penal Code, registered with Devrukh Police Station, District Ratnagiri. It is further submitted that the petitioner was falsely implicated and his arrest was illegal. When he was in the custody in the afore-mentioned crime registered with Devrukh Police Station, District Ratnagiri, he was assaulted by the police personnel, and due to the said atrocities by the police, he was required to be treated in the Civil Hospital at Ratnagiri for 15-16 days, and thereafter, he was taken to the Sayan Hospital at Mumbai wherein he was admitted in the Hospital till 28th May, 2009. He was discharged from the Sayan Hospital, Mumbai, and then the Police brought him at Ratnagiri and later on he was released on bail. He *suo motu* appeared before the Jail Administration on 11th June, 2009, and

submitted medical reports and papers of Sayan Hospital, Mumbai, and also submitted the said papers to the Central Prison Authority, Kolhapur. It is submitted that since the petitioner was arrested and treated in the Civil Hospital at Ratnagiri and in Sayan Hospital at Mumbai when he was in police custody, the deduction of remission of 261 days for his overstay of 87 days by the impugned order has caused injustice to the petitioner. Therefore, learned counsel appearing for the petitioner submits that the Petition may be allowed.

3] On the other hand, learned APP appearing for the respondent-State relying upon the averments in the affidavit filed by one Shri Sharad S.Shelake, Superintendent of Central Prison, Kolhapur, on 3rd August, 2017, and also further affidavit filed on 13th September, 2017, submits that there is no substance in the Petition. It is submitted

that the petitioner was supposed to surrender to the Jail Authority on 16th March, 2009, but he surrendered himself on 11th June, 2009 i.e. 87 days late, and therefore, his remission of 261 days have been deducted as per Rules. It is submitted that the petitioner has not mentioned correct factual position in the Petition as per the record maintained by the Devrukh Police Station, Ratnagiri. Learned APP further submits that he has received report from the Police Inspector, Devrukh Police Station, District Ratnagiri, by letter dated 28th September, 2017. He submits that the petitioner has not approached this Court with clean hands. It is submitted that the present petitioner filed Criminal Writ Petition No.1085/2009 with Criminal Application No.335/2009 [Dilip Kisan Wadkar Vs. The State of Maharashtra] alleging therein that he was tortured by the Police when he was in police custody during the

period when he was released on parole. However, the petitioner has not disclosed in his application about filing of the Criminal Writ Petition No.1085 of 2009 with Criminal Application No.335 of 2009 filed at Principal Seat of the Bombay High Court.

4] It is submitted that the afore-mentioned Criminal Writ Petition No.1085 of 2009 with Criminal Application No.335 of 2009 has been rejected by the Division Bench [Coram: V.M.Kanade & P.D.Kode, JJ.] on 12th June, 2014. Therefore, it is submitted that on same set of facts the present Petition is not maintainable, and same deserves to be dismissed for suppression of filing of the afore-mentioned Criminal Writ Petition No.1085/2009 with Criminal Application No. 335/2009. It is submitted that when the petitioner was on parole, on 27th February, 2009 he committed offence punishable under Section 394 r/w. 34 of the IPC and Crime

No.11/2009 came to be registered against him with the Devrukh Police Station, District Ratnagiri. The petitioner was arrested on 27th February, 2009, and was produced before the concerned Court on 28th February, 2009 and thereafter time to time. It is submitted that the Court granted police custody remand to the petitioner till 10th March, 2009, and thereafter on 9th March, 2009 and thereafter on 10th March, 2009 he was released on bail. Again the petitioner committed another offence punishable under Sections 406, 420 and 34 of the IPC and Crime No.18/2009 came to be registered with Devrukh Police Station, District Ratnagiri and again he was arrested on 10th March, 2009, and he was produced before the Court on 11th March, 2009 and he was released on bail on 11th March, 2009. It is submitted that the contention of the petitioner that he was in police custody till 28th May, 2009, is not correct. He was in the

police custody from 27th February, 2009 to 11th March, 2009, and thereafter, he was released on bail on 11th March, 2009. It is submitted that on 11th March, 2009, on his own he went to the Civil Hospital at Ratnagiri at about 21.30 hours and he was admitted in the said Hospital, and thereafter on 15th March, 2009 his relatives took him to the Sayan Hospital at Mumbai on 17th March, 2009, and he was discharged from the Hospital on 31st March, 2009. The petitioner was not admitted in the Hospital through Police, and therefore, the contentions of the petitioner that he was unnecessarily arrested and Police kept him in illegal custody, is a wrong statement made in the Petition. Therefore, the learned APP submits that the Petition may be dismissed.

5] We have heard learned counsel appearing for the petitioner, and learned APP appearing for the respondent-State at length. With their able assistance, we have perused

the grounds taken in the Petition, annexures thereto, affidavits filed by Shri Sharad S.Shelake, Superintendent of Kolhapur Central Prison, Kolhapur, and also report submitted by the Police Inspector, Devrukh Police Station, District Ratnagiri, with copies of the documents and the order passed by the Division Bench [Coram: V.M.Kanade & P.D.Kode, JJ.] in Criminal Writ Petition No.1085/2009 with Criminal Application No.335/2009. Upon careful perusal of the order passed by the Division Bench at Principal seat, it is abundantly clear that the present petitioner filed aforesaid Criminal Writ Petition wherein it was alleged that he was tortured by the Police when he was in custody and he was detained illegally for three days and thereafter shown to be arrested by the Devrukh Police Station, District Ratnagiri. It further appears that the Superintendent of Police, Ratnagiri, was directed by the Court

to hold an independent inquiry. Accordingly, inquiry was conducted and report was submitted before the Court. The said Criminal Writ Petition was decided on 12th June, 2014. Para 4 and 5 of the order dated 12th June, 2014, passed by the Division Bench of this Court [Coram: V.M.Kanade & P.D.Kode, JJ.] in Criminal Writ Petition No.1085 of 2009 with Criminal Application No.335/2009, reads thus:

4. Petitioner in this case was convicted for the offence punishable under Section 302 of Indian Penal Code and was in jail. However, he was released on parole and while he was on parole, it is alleged that he had stolen one truck and had committed robbery and also the offence punishable under Sections 406 and 420 of Indian Penal Code is registered against him.

5. We are of the view that since the Superintendent of Police, Ratnagiri has submitted a negative report, we do not propose to accept the version of the petitioner and therefore, the petition is dismissed.

Therefore, it is abundantly clear that the petitioner did raise grievance in the afore-mentioned Criminal Writ Petition that he was tortured by the police when he was in custody in Crime Nos.11/2009 and 18/2009 registered with Devrukh Police Station, District Ratnagiri. However, the said contention has been negated by the Court relying upon the report submitted by the Superintendent of Police, Ratnagiri.

6] The order impugned in this Petition is passed on 24th May, 2010. As already observed, it appears that the petitioner did raise grievance about his illegal

detention/arrest/custody by the Devrukh Police Station, District Ratnagiri. However, the said contention has been negated by the Division Bench of the High Court at Principal Seat by order dated 12th June, 2014 in Criminal Writ Petition No.1085 of 2009 with Criminal Application No.335 of 2009. In that view of the matter, it was incumbent on the part of the petitioner to disclose all true and correct facts about filing of the afore-mentioned Criminal Writ Petition, and rejection of the said Writ Petition. The petitioner has not approached this Court with clean hands and suppressed filing of the afore-mentioned Criminal Writ Petition, and the order passed in the said Writ Petition, which goes to the root of the matter. Therefore, on this ground alone, the Petition is liable to be dismissed.

7] The contention of the learned counsel appearing for the petitioner that

before passing the impugned order the petitioner was not heard, is also incorrect statement. Upon careful perusal of the contents of the order impugned in this Petition, it is abundantly clear that the learned District Judge-I, Kolhapur was on regular visit to the jail. It is mentioned in the impugned order that during said visit the petitioner was heard, and also the Superintendent of Central Prison, Kolhapur was also heard. In short, the submission of the petitioner is also recorded in the impugned order, and thereafter, the learned Judge has passed the impugned order. During the course of argument, learned APP has narrated sequence of events, which completely demolished the case of the petitioner that he was arrested or illegally detained and he was taken to the Hospital by the Devrukh Police Station, District Ratnagiri. The view taken by the District Judge-I, Kolhapur, is in

consonance with the record and also appears to be lenient inasmuch as he directed to deduct remission as 1:3, though the concerned respondent Authority submitted proposal for deduction of remission as 1:5.

8] In the light of the discussion herein above, we are not inclined to exercise our discretion in favour of the petitioner, and also he is not entitled for equitable relief for not approaching this Court with clean hands, thereby suppressing filing of the Criminal Writ Petition No.1085 of 2009 with Criminal Application No.335 of 2009 and the order dated 12th June, 2014, passed by the Division Bench at Principal seat at Mumbai. Hence the Writ Petition stands rejected.

9] Since, Mr.B.M.Dhanure, the learned counsel is appointed to prosecute the cause of the petitioner, he would be entitled for the fees, as per the schedule of fees

maintained by the High Court Legal Services
Sub-Committee, Aurangabad.

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE

DDC