

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 446/2017

(DEVIDAS DASHRATH KHANDATE (IN JAIL) **VERSUS** THE D.I.G. OF PRISONS, NAGPUR & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms S.B. Khobragade, Counsel for the petitioner.
Mrs. N.R. Tripathi, Additional Public Prosecutor for the respondents.

CORAM : SMT. VASANTI A NAIK AND
M.G. GIRATKAR, JJ.

DATE : AUGUST 09, 2017.

By this criminal writ petition, the petitioner challenges the order of the District Judge-13 and Assistant Sessions Judge, Nagpur, dated 10.04.2017 depriving the petitioner of 105 days for calculating the period of remission.

According to the petitioner, since the petitioner had surrendered himself to the jail authorities 21 days after the expiry of the extended period of parole, item 3 of the table of the notification dated 02.08.2011 could have been applied to the case of the petitioner. It is stated that wrongfully, the entry at Serial Number 6 in the table was applied which could be applicable only if the prisoner surrenders belatedly on the second occasion. It is submitted that since the petitioner had surrendered belatedly only on the first occasion, when he was released on parole, entry-3 in the table ought to have been applied and the petitioner could have been deprived of only 63 days.

Ms Khan, the learned Additional Public Prosecutor appearing for the respondents, fairly admits that when the learned District Judge-13 and Assistant Sessions Judge,

Nagpur was considering the matter, the petitioner had surrendered late by 21 days when he was granted parole leave in the year 2013. It is submitted that the belated surrender of the petitioner on 07.10.2015 was not a matter that could have been considered by the learned District Judge-13 and Assistant Sessions Judge, Nagpur while passing the impugned order dated 10.04.2017 as the said matter would be considered subsequently.

In the circumstances of the case, since the learned District Judge-13 and Assistant Sessions Judge, Nagpur was considering the matter pertaining to the show cause notice dated 21.12.2013 and not about the parole leave of the petitioner of the year 2015, the learned District Judge ought not have applied entry at Serial Number 6 of the table by applying the multiplier of 5 and ought to have calculated the period by applying the entry at Serial Number 3 of the table as the petitioner had surrendered 21 days after the expiry of the first parole leave. As per the entry at Serial Number 3 of the table, the petitioner could have been deprived of only 63 days while calculating his remission. The impugned order is liable to be modified in the circumstances of the case.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order dated 10.04.2017 is modified. The petitioner would be deprived of 63 days of his remission in stead of 105 days.

Order accordingly. No costs.

JUDGE

JUDGE