

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 966 OF 2016

(Rambharose @ Ranga Pannalal Malviya (in Jail) vs. DIG of Prison, Central Prison, Nagpur & Ors.)

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

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.
MARCH 29, 2017.**

Heard finally Ms. S.B. Khobragade, learned counsel (appointed) for the petitioner and Shri S.D. Shirpurkar, learned APP for the respondents.

2. Ms. Khobragade, learned counsel submits that the defence of the petitioner has not been evaluated while passing the impugned order.

3. Shri Shirpurkar, learned APP relies upon the show cause notice, reply submitted thereto by the petitioner, proposal placed before the Additional Sessions Judge – 6, Nagpur and approval granted by that authority. He contends that there is no jurisdictional error or perversity.

4. The fact that the petitioner was absconding for 1055 days is not in dispute. In reply to show cause notice, he has pointed out that his father was required to be hospitalized and operated for heart. His mother was also unwell. In this situation, there was no family member to look after them. He, therefore, could not report back.

5. At this stage, we are not concerned with the correctness of this story. However, the facts show that the

petitioner was arrested by the police in the hospital only. The impugned order does not note correctness or otherwise of the defence. If the defence as raised is factually correct then other questions arise. The respondents do not point out that as he did not report back, the police visited his residence and he was found absent there. They also do not state that he was found missing. If in this background the defence as raised is correct, the punishment of removal of his name from the remission register permanently, may be shockingly disproportionate.

6. In this situation, we quash and set aside the impugned order dated 11.02.2016. The authorities shall consider the facts mentioned supra, the correctness or otherwise of the defence raised and thereafter pass fresh orders within four months from the date of receipt of this order.

7. Criminal Writ Petition is disposed of accordingly.

8. The charges of counsel appointed for the petitioner are fixed at Rs.1,500/- (Rs. One thousand five hundred only).

JUDGE

JUDGE

*GS.