

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

Criminal Writ Petition No. 0060 of 2018

District : Aurangabad

Ambarishi s/o. Shripadrao Patil
(C-4679),
Central Prison, Aurangabad.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Superintendent
of Jail,
Central Prison, Aurangabad.

2. The State of Maharashtra,
Through Secretary,
Home Department (Prison),
Mumbai - 400 005.

.. Respondents.

.....

Mr. Rupesh A. Jaiswal, Advocate, for the petitioner.

*Mr. S.W. Munde, Addl. Public Prosecutor, for
respondent nos.01 and 02.*

.....

**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 03RD APRIL 2018

ORAL JUDGMENT [Per Prasanna B. Varale, J.] :

Heard learned Advocate for the petitioner
and the learned Addl. Public Prosecutor for the
respondents.

02. Rule. Rule made returnable forthwith. By

consent, heard finally.

03. Learned Advocate for the petitioner submits that the petitioner is convict lodged at Central Prison, Aurangabad. The petitioner was awarded conviction by the judgment and order of the learned Sessions Judge, Solapur. Learned Advocate for the petitioner submitted that the petitioner completed his actual imprisonment of 14 years and 05 months. He invited our attention to the prayers in the petition which read as under :-

(A) To allow the petition and thereby direct the respondent no.01 to release petitioner in view of Government Resolution dated 10.01.2006, and

(B) To direct the respondent no.01 to produce petitioner before the Medical Committee as provided in Government Resolution dated 10.01.2006.

Learned Advocate for the petitioner also placed heavy reliance on the resolution of the State Government placed on record, issued by its Home Department, dated 10.01.2006. Learned Advocate for the petitioner fairly submitted that the prayer "A" is an ultimate prayer and the prerequisite of prayer "A" is the compliance of prayer "B". Thus, learned Advocate for the petitioner prayed for directions in terms of prayer "B".

04. On perusal of the Government Resolution

dated 10.01.2006, we find that the State Government with a laudable object, issued the resolution to grant benefit to the convicts who are in the prison and are of 65 years' age and above as well female convicts aged 60 years and above, who are infirm. The resolution makes it clear that the benefits are granted subject to certain conditions. The resolution also makes it clear, that a class of prisoners are not entitled for grant of these benefits and the details are at clause 3 of the resolution. Then there is a reference which can be termed as a prerequisite for grant of benefits. It reads thus :-

" In view of the earlier Government Resolution dated 31.12.1999, the convicts above 65 years of age and in view of the Government Resolution dated 21.03.2005, the female convicts of the age above 60 years are entitled for the release if necessary certificate is issued by a duly constituted Medical Committee. "

Aforesaid clause further refers to the constitution of Medical Committee. The Committee consists of five members. The District Civil Surgeon seems to be the *ex officio* Chairman of the Committee. Other members include, District Health Officer, Jail Superintendent and Medical Officer of the Prison. The Additional Senior Prison Officer is the Member Secretary of the Committee. Then it refers to a situation namely, if the Civil Surgeon is unable to attend the meeting of the Committee, the Committee would conduct the

meeting under the Chairmanship of the District Health Officer. It then also refers to the mandatory attendance of either the District Civil Surgeon or the District Medical Officer and then it states that the Committee in addition may take into consideration other medical certificate, to take a decision of the release of the prisoners who are male above 65 years and above 60 years of age female and infirm. Then the resolution states that the resolution is issued by the State Government by exercising powers under Section 432(1) of the Code of Criminal Procedure. It may not be out of place to state that the resolution is a complete streamlined procedure giving guidance to the authorities to arrive at a conclusion.

05. Now, turning to the case of the petitioner, learned Addl. Public Prosecutor, on instructions, submitted before us, that the petitioner completed actual imprisonment of 14 years, 03 months and 19 days. Thus, there cannot be any dispute regarding compliance of first condition of the resolution dated 10.01.2006. Learned Addl. Public Prosecutor then invited our attention to the certificate issued by the Medical Board. The certificate is of 29.05.2017. This is the Medical Board consisting of three Medical Officers and this Medical Board is at Government Medical College & Hospital at Aurangabad. The certificate reads that on conducting careful clinical and radiological examination, the approximate bone age of the petitioner is above 60 years. Then it refers to providing treatment for some ailment being

suffered by the petitioner. It may not be necessary for us to refer here, the ailment suffered by the petitioner. Even taking the certificate as it is, it only refers that the petitioner is a person of above 60 years of age.

06. Learned Addl. Public Prosecutor made an attempt to submit before this Court, that as the Medical Board issued certificate to the petitioner, that he is above 60 years of age and is a physically fit person, the petitioner is not entitled for his premature release. The communication of 04.02.2018 is relied on by the learned Addl. Public Prosecutor in support of his submissions. The said communication then refers that the orders from the State Government of premature release of the petitioner are awaited.

07. We fail to understand the opposition of the learned Addl. Public Prosecutor. In case of the petitioner, the document which is relied on by the learned Addl. Public Prosecutor is a certificate by the Medical Board. It is not an opinion formed by the Committee as constituted under the Government Resolution dated 10.01.2006. As we have referred to the constitution of the Medical Committee in detail, it may not be necessary for us to reiterate the same. Suffice it to say, that the constitution of the Committee expects not only the Medical Officers as like in the certificate issued by the Medical Board, but it consists of three Medical Officers plus two

other Members and the Committee is expected to form an opinion on appreciation of the material. Any certificate, if provided by the convict or called for by the prison authorities would be an additional material for the decision to be arrived at by the Medical Committee. In case of the petitioner, no such opinion is expressed by the Medical Committee as referred to in the Government Resolution dated 10.01.2006.

08. When we put a query to the learned Addl. Public Prosecutor, that whether the Medical Committee as per the Government Resolution dated 10.01.2006, formed at each region, conducts its periodical meetings for deciding the cases of prisoners, learned Addl. Public Prosecutor informed us, that as and when Medical Committee is called upon, the Committee takes decision. In our opinion, this is not the object of the Government Resolution dated 10.01.2006. If the Committee is constituted for taking decision for premature release of the prisoners who are old and infirm, then such cases must be kept before the Committee at periodical intervals. The Medical Committee also consists of a Member Secretary who is the Additional Senior Prison Officer. Then Superintendent of Prison is one of the Member of the Medical Committee. If these two persons are integral part of the Committee, nothing prevents the prison authorities to collect data which is available with them in the respective prisons and put such cases periodically before the Medical Committee so that the

Committee can take decision timely in such cases. If the Medical Committee waits for an invitation from the prison authorities and if the prison authorities are left at their will, to call the Medical Committee meetings, in our opinion, the object of the Government Resolution is frustrated. Considering this fact, we are of the opinion that the prison authorities and more particularly, two members of the Medical Committee namely, Superintendent of Prison and Additional Senior Prison Officer, who are members of the Medical Committee, to collect necessary information or data and to put up such cases before the Medical Committee periodically, at least, once in three months. Thus, at least four meetings of the Medical Committee in each calendar year are required to be held.

09. Now, with these factual aspects, if we turn to the petition, we see no impediment for allowing the petition in terms of prayer clause "B". The petitioner is coming with a case, that he is above 65 years of age and to support his contention, the petitioner is relying on the copy of the school leaving certificate which is placed on record at Exhibit "B". In the said school leaving certificate, the birth date of the petitioner is shown as 01st April 1952. Even the Medical Board states that the petitioner is above 60 years of age.

10. In view of the foregoing discussion, the criminal writ petition is allowed.

The petitioner - convict is directed to be produced before the Medical Committee as provided in the Government Resolution dated 10.01.2006, as expeditiously as possible, and the Committee shall take its decision. In turn, the decision taken by the Medical Committee shall be forwarded with the; proposal of premature release to the State Government and the State Government shall decide the proposal with the requisite material, as expeditiously as possible.

11. Before parting with the judgment, we expect that our direction to conduct the periodical meetings by the Medical Committee as constituted under the Government Resolution dated 10.01.2006 shall be followed hereafter. We hope and trust, that the Director General of Prisons would personally look into the matter and see that there is proper compliance of the directions of this Court.

12. Rule made absolute in the above terms.

13. Copy of this judgment be sent to all prison authorities in the State of Maharashtra.

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

.....