

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

CRIMINAL WRIT PETITION NO.248 OF 2018

Nandkumar S/o Shivmurti Munde
(C-6205)
Central Prison, Aurangabad.

PETITIONER

VERSUS

1. State of Maharashtra,
Through Superintendent of Jail,
Aurangabad.
2. State of Maharashtra,
Through D.I.G. Prisons,
Aurangabad.

RESPONDENTS

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Mr. Rupesh A. Jaiswal, Advocate for the Petitioner.
Mr. D. R. Kale, APP for the Respondent/State.

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**CORAM: S.S.SHINDE &
V.K.JADHAV,JJ.**

Reserved on : 29.06.2018
Pronounced on : 19.07.2018

JUDGMENT: (Per V. K. Jadhav, J.):

1. Rule. Rule made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. By way of this writ petition, the petitioner is challenging the order dated 13.09.2004 passed by Additional Sessions Judge, Aurangabad, thereby removing name of the petitioner from remission register permanently and also the order dated 28.06.2017 passed by Deputy Inspector General (Prison), Aurangabad/respondent no.2 herein, thereby rejecting the application of the petitioner for taking his name back in the remission register.

3. Brief facts, giving rise to the present petition are as under:

The petitioner is convicted by the Additional Sessions Judge, Beed in Sessions Case No. 75 of 1997 by order dated 22.12.1999 for the offence punishable under Section 302 of IPC and sentenced to suffer life imprisonment. Petitioner was arrested on 9.9.1996 and was an under trial prisoner for approximately three months. Petitioner was released on furlough on 12.8.2002. He was due to surrender within 28 days but

he surrendered on 26.12.2003 i.e. late by 486 days. Respondent no.1 issued a show cause notice to petitioner and petitioner replied to it by stating that his mother was in need of operation. He also produced medical papers to substantiate the same. After receiving reply, respondent no.1 forwarded a proposal for punishment of removal of petitioner's name from Remission Register permanently for appraisal of District and Sessions Court, Aurangabad. After receiving judicial appraisal from concerned Sessions Judge, respondent no.2 removed petitioner's name from remission register permanently. Thereafter petitioner gave an application to respondent no.2 to take his name back on remission register considering his good conduct in jail, but respondent no.2 rejected his application by order dated 28.06.2017. Hence, this writ petition.

4. Learned counsel for the petitioner submits that, as per section 23 of the Maharashtra Prisons (Remission System) Rules, 1962, respondent no.2 is

empowered to forfeit remission not exceeding 60 days. Respondent no.1-Superintendent of Jail, in order to impose punishment of removal of petitioner's name permanently from remission register for his late surrender by 486 days, has used ready-made printed proformas with blank spaces filled in later, which *prima facie* indicates non-application of mind on the part of respondents. Learned counsel further submits that, respondent no.2-Deputy Inspector General, (Prison) is empowered to impose punishment on the petitioner for his late surrender, but he has to justify the same. In other words, he has to pass reasoned order to impose such punishment. The order of punishment passed by the respondents needs to be quashed and set aside as no reasons are assigned while passing the same. In the present case, respondents have imposed punishment of removal of petitioner from Remission Register permanently. Learned counsel submits that it is important to note that the petitioner, after late surrender in prison, was released on Furlough leave for

ten times and he was released on Parole leave for three times and on all occasions he surrendered in time *suo motu* except on one occasion when he surrendered late by two days, which shows that he has learnt a lesson from his mistake. Keeping in view his good conduct in jail and so as to prevent mental agony to petitioner, he needs to be taken back on Remission Register.

5. Learned counsel for the petitioner, in order to substantiate his submissions, placed his reliance on the following cases:

1. ***Sheikh Said Sheikh Najir Vs. State of Maharashtra and another***, reported in **2010 ALL MR (Cri) 3782**.
2. ***Arun Shankar Ramlingam Naydu vs The State of Maharashtra and others*** (Criminal Writ Petition No. 1478 of 2017) decided by Division Bench of this court on 02.02.2018.
3. ***Kishor Jairam Vaity vs The State of Maharashtra & Ors.*** (Criminal Writ Petition No. 216 2013) decided by Division Bench of

this Court at its principal seat at Mumbai on 24.12.2013.

6. Learned APP, on the other hand, invites our attention to the reply affidavit filed on behalf of the respondents and the annexures thereto. He submits that on 12.08.2002, the petitioner was released on furlough leave for two weeks. He did not surrender from furlough leave on due time and date. He was arrested by police and brought back in prison on 26.12.2003. Thus, he over stayed from furlough leave for 486 days. A show cause notice was issued to the petitioner on 16.01.2004 asking him to explain the said over stay. Petitioner submitted his reply on 05.03.2004 stating therein that he is the only bread earner in his family and his mother and wife were not well. Therefore, his presence was required for their treatment. But he had not submitted any documents as proof of illness/treatment of his mother and wife. The Superintendent of Aurangabad Central Prison forwarded a proposal on 20.04.2004 for appraisal of

District and Sessions Court, Aurangabad, for removal of petitioner's name from remission register. The said proposal came to be approved by the Additional Sessions Judge, Aurangabad by letter dated 13.09.2004. Accordingly, the Deputy Inspector General of Aurangabad Central Prison issued sanction order dated 12.07.2005 regarding removal of petitioner's name from remission register permanently.

7. Learned APP further submits that the petitioner made an application dated 01.06.2017 to the Deputy Inspector General (Prison) requesting him to take his name back on remission register. Said application was rejected by the Deputy Inspector General (Prison) on 28.06.2017 as per the provisions of Rules 24(i) & (ii)j of Chapter 38 of the Maharashtra Prison Manual, 1979, for the reasons that i) the petitioner has illegally overstayed from furlough leave for 486 days and he did not surrender himself but was arrested by the police and brought back to the prison; ii) that in the year 2015 also, the petitioner was released on bail and he

surrendered late by two days and that considering his past record, he is habitual of surrendering late from leave. The learned APP submits that thus, there is no substance in the petition and the same may be dismissed.

8. We have carefully considered the submissions advanced by the learned counsel for the petitioner and the learned APP for the respondent-State. With their able assistance, we have perused the memo of the petition, annexures thereto and the affidavit-in-reply filed on behalf of the respondents. Upon careful perusal of the documents, it appears that by the impugned order dated 13.09.2004 the Additional Sessions Judge has granted judicial appraisal to the punishment of total 31 prisoners, including the petitioner, without recording any reasons therein. Based on the impugned order dated 13.09.2004, the Deputy Inspector General (Prison)/respondent no.2 accorded sanction to the punishment of the petitioner and removed his name from remission register permanently by his order dated

12.07.2005. On careful perusal of the said order dated 12.07.2005, it appears that the same has been passed by using a ready-made printed proforma with blank spaces. While passing the order, only blanks have been filled in, which practice has been repeatedly deprecated by this Court. The impugned order dated 13.09.2004 has been passed in a casual manner without application of mind and without assigning any reasons.

9. In terms of the judgment and order dated 05.09.2008 passed by the Division Bench of this Court at Nagpur Bench in Criminal Writ Petition No. 283 of 2006 (Sk. Jakir Shaikh Babu vs. State of Maharashtra), guidelines for imposing the punishment have been laid down which read thus:

- “(1) Sufficient notice preferably of at least seven days’ duration be given to the prisoner for submitting reply to the notice of showing cause to proposed higher punishment.
- (2) Cause shown be considered. If no sufficient cause is shown, reasoned order be passed for

not accepting the contentions/cause shown by prisoner.

- (3) If higher punishment is proposed against the prisoner, then the proposal be submitted to the higher prison authority competent to grant sanction for higher punishment for the prison offence committed in the case.
- (4) After receipt of sanction order from the competent sanctioning authority and judicial appraisal from the Sessions Judge concerned, an order imposing higher punishment may be passed and communicated to the prisoner.
- (5) The order of higher punishment may be implemented after following steps (1) to (4)."

10. We must note here that when the learned Sessions Judge makes appraisal of the proposed penalty to be inflicted on the prisoners, the learned Sessions Judge is expected to apply his mind to the material on record. He must record brief reasons after consideration of the record. Only after a reasoned order

of appraisal is passed by the learned Sessions Judge, that punishment can be imposed. In the facts of the present case, non application of mind is apparent on the face of the impugned order dated 13.09.2004 and hence, the same is liable to be quashed and set aside.

11. So far as the impugned order dated 28.06.2017 is concerned, by the said order, the Deputy Inspector General (Prison), Aurangabad has refused the application of the petitioner for taking his name back on the remission register. While passing the said order, the Deputy Inspector General (Prison) has recorded the reason that the petitioner is habitual of late surrender from leave. On perusal of the leave record of the petitioner we find that except for the first occasion, when the petitioner overstayed for 486 days and was arrested and brought back to the prison, he was never required to be arrested by police and each time he had himself surrendered to the prison authority. On six occasions when the petitioner was released on furlough/parole, he has reported to the prison

authority on time i.e. on due date of his surrender. Considering the above facts and circumstances, it cannot be said that the petitioner is habitual of surrendering late from leave.

12. In view of the discussion in the foregoing paragraphs, we deem it fit to quash and set aside the order dated 13.09.2004 passed by the Additional Sessions Judge, Aurangabad to the extent of the present petitioner, whose name is mentioned at serial no.8 in the said order and also the order dated 28.06.2017 passed by respondent no.2 herein with further direction to the competent authority to pass a fresh order after fresh judicial appraisal by the Sessions Judge. Accordingly, we pass the following order:

ORDER

- I. The impugned order dated 28.06.2017 passed by respondent no.2 is quashed and set aside. So also the impugned order dated 13.09.2004 passed by the Extra Joint District and Additional Sessions Judge,

Aurangabad, to the extent of the present petitioner, is quashed and set aside.

II. Fresh order shall be passed by the concerned authorities in the light of the observations made in this judgment and order. While sending the file to the Sessions Judge for judicial appraisal, a copy of this judgment and order shall also be forwarded to the Sessions Judge.

III. A fresh order shall be passed by the concerned authorities within a period of three months from today.

IV. All contentions on merits are kept open.

V. Rule is made absolute in the above terms. The criminal writ petition is accordingly disposed of.

(V.K.JADHAV)
JUDGE

(S.S.SHINDE)
JUDGE