

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

CRIMINAL WRIT PETITION NO. 345 OF 2018

Haridas S/o yedoba Jadhav
[C-5610]
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

...
Mr.R.A.Jaiswal, Advocate for the Petitioner
Mr.S.Y. Mahajan, APP for the Respondent/State
...

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

Reserved on : 23.07.2018
Pronounced on : 25.07.2018

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

1. This Petition is filed praying therein to quash and set aside the order dated 27.06.2007 passed by Sessions Judge, Aurangabad, thereby removing the petitioner

from remission register permanently and also the order dated 09.06.2017 passed by Respondent No.2.

2. It is the case of the petitioner that, the petitioner is convicted by the Sessions Judge, Aurangabad, for the offence punishable under Section 302 of the Indian Penal Code. The petitioner is undergoing the sentence of life imprisonment at Central Prison, Aurangabad. He is only earning male member in his family. On 10.03.2003, the petitioner was released on furlough; he was to surrender within 28 days, however, he surrendered on 22.07.2006. Therefore, there was delay of 3 years, 3 months and 5 days in surrendering before the Jail Authority. Due to which, respondent has issued show cause notice to the petitioner. Thereafter, the petitioner has given reply to the said notice. After receipt of the reply of the petitioner, respondent no.1 has sent a

proposal to Sessions Court, Aurangabad to remove the name of the petitioner from the remission register permanently. By judicial appraisal dated 27.06.2007, the Sessions Judge, Aurangabad removed the name of the petitioner from remission register permanently. Hence this Petition.

3. Learned counsel appearing for the petitioner submits that the impugned order is passed without assigning any reasons, and the same is not legally sustainable. The show-cause notice which has been issued to the petitioner is on the ready-made printed proformas with blank spaces, which have been filled in later on. The petitioner was not arrested by the Police, in fact, he had surrendered *suo motu*. This fact has not been considered. Therefore, the impugned order deserves to be quashed and set aside.

4. Learned counsel appearing for the

respondent-State submits that there is delay of 11 years in filing the present Petition, therefore, on this ground alone this petition deserves to be dismissed. The petitioner has applied for furlough leave, and he was granted furlough on 10.03.2003 for a period of 28 days. He should have surrendered within 28 days. However, he surrendered on 22.07.2006 i.e. almost 3 years, 3 months and 5 days late. Respondent No.1 – Superintendent of Aurangabad Central Prison issued show-cause notice to the petitioner on 26th July, 2006, stating therein that, as to why the action of punishment of removing the name of the petitioner from remission register should not be initiated. The petitioner submitted his reply on 1st August, 2006 to the said show-cause notice and submitted that, due to financial difficulties and illness of his mother, he could not report back to the Jail authority within time. After receipt of

reply, Respondent No.1 found the reply of the petitioner unsatisfactory and submitted the proposal of punishment, namely removing the name of the petitioner from remission register permanently to Respondent No.2. Respondent No.2 passed the order, thereby removing the name of the petitioner from remission register permanently. Respondent No.1 sought the judicial appraisal from the Sessions Court, Aurangabad and after obtaining necessary judicial appraisal from the Sessions Court at Aurangabad, the name of the petitioner has been permanently removed from the remission register. On 26.07.2006, the Superintendent of Jail has issued show cause notice to the petitioner stating therein that, why his remission should not be deducted for overstay of 3 years, 3 months and 5 days? Thereafter, the petitioner has submitted his reply to the said show-cause notice on 01.08.2006. Therefore, the

principle of natural justice has been followed by the authorities. As per Chapter 37 Rule 10 [5] and Rule 10 [14], if the furlough was granted on certain conditions and if the prisoner violates any of the conditions mentioned in the above rules, it amounts to jail offence. Considering the provisions of law and after following due procedure of law, the impugned order is passed. Therefore, the Petition may be rejected.

5. We have considered the submissions of the learned counsel appearing for the parties. It is true that there is delay in approaching the Court. However, the impugned order affects the rights of the petitioner inasmuch as the said order will adversely affect the petitioner when his case will be considered for a premature release. So also show-cause notice issued to the petitioner is by using a ready-made printed proforma with

blank spaces. So also the impugned order has been passed in a casual manner affecting liberty of the petitioner. 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]***, decided on 5th September, 2008, has laid down the guidelines for imposing the punishment, as under:

- “(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)."

6. Upon careful perusal of the impugned order, it appears that the learned Sessions Judge has not recorded the reasons after consideration of the record. In the facts of the present case, there is non application of mind on the face of the impugned order. Therefore, we set aside the impugned order to the extent of the present petitioner, whose name is mentioned at serial no.1 in the said order only on the ground that, the impugned order is unreasoned one, with further direction to the Competent Authority to pass

a fresh order after a fresh judicial appraisal by the learned Sessions Judge. Accordingly, we pass the following order:

ORDER

- i] The impugned order dated 27.06.2007 passed by Sessions Judge, Aurangabad is quashed and set aside to the extent of the present petitioner only.
- ii] The impugned order dated dated 09.06.2017 passed by Respondent No.2 is quashed and set aside.
- iii] Fresh order shall be passed by the concerned authorities in the light of observations made in this judgment and order and the same be sent again for judicial appraisal. 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.
- iv] A fresh order shall be passed by the

concerned authorities within a
period of three months from today.

v] All contentions on merits are kept
open.

(V.K.JADHAV)
JUDGE

(S.S.SHINDE)
JUDGE

SGA