

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

CRIMINAL WRIT PETITION NO.617 OF 2018

Abdul Bashid Abu Syeed Chandphasha Kazi
Age : 70 years, Occ : Nil Convict No.6259,
R/o At present in Central Prison,
Aurangabad.

PETITIONER

VERSUS

1. State of Maharashtra,
Through Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Deputy Inspector General/
Inspector General of
Central Prison, Aurangabad.
3. The superintendent,
Central Prison,
Aurangabad.

RESPONDENTS

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Mrs.Bharati B. Gunjal, Advocate for the
Petitioner

Mr.S.Y. Mahajan, APP for the Respondent/State

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

Reserved on : 10.07.2018
Pronounced on : 18.07.2018

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

1. This Petition is filed praying
therein to quash and set aside the order

dated 9th February, 2011 passed by the Respondent No.2. Further it is prayed to direct respondent no.2 to consider application dated 1st August, 2016 filed by the petitioner and for enlisting him in remission register within stipulated period.

2. It is the case of the petitioner that, he is convicted by the Additional Sessions Judge, Udgir, for the offence punishable under Section 302 of the Indian Penal Code in Sessions Case No.53/2003 and he is undergoing sentence of life imprisonment at Aurangabad Central Prison, Aurangabad. The petitioner has wife and children. One son of the petitioner has died due to serious illness and therefore, the wife of the petitioner was under depression. The petitioner is only earning male member in his family. On 15.03.2007, the petitioner was released on furlough for two weeks and he

ought to have surrendered before the Jail Authorities on 30.03.2007. However, he has not surrendered within time and the Police authorities have arrested the petitioner on 08.09.2009. Thus the petitioner had overstayed for 893 days. Due to which, respondent has issued show cause notice to the petitioner on 13.09.2009. Thereafter, the petitioner has given reply to the said notice. After receipt of the reply from the petitioner, respondent no.3 has sent a proposal to the Respondent No.2 to remove the name of the petitioner from the remission register. Thereafter, by order dated 09.02.2011, the Respondent No.2 has removed the name of the petitioner from remission register. By judicial appraisal dated 21.07.2011, the District and Sessions Judge-3, Aurangabad granted approval to the order dated 09.02.2011 thereby removing the name of the petitioner from remission register

permanently. Hence this Petition.

3. Learned counsel appearing for the petitioner submits that the order giving judicial appraisal by the District and Sessions Judge-3, Aurangabad is passed without assigning any reasons, and the same is not legally sustainable. The impugned order is passed on the ready-made printed proformas with blank spaces, which have been filled in later on. The order passed by respondent in a prepared printed or cyclostyled format does not disclose that a specific ground of defence raised by the petitioner is dealt with. This fact has not been considered by the authorities. Therefore, the impugned order deserves to be quashed and set aside.

4. Learned A.P.P. appearing for the respondent-State submits that there is delay of more than 7 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 15.03.2007 for a period of two weeks. The petitioner ought to have surrendered on 30.03.2007, however, he failed to surrender within time, and the Police authorities have arrested the petitioner on 08.09.2009 and thus the petitioner has overstayed for almost 893 days. Initially, the proposal for deduction of remission was forwarded to the Deputy Inspector General [Prison] at Aurangabad. After approval from the Deputy Inspector General [Prison] 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. The Annexure-C of the Circular dated 22.05.2009 provides for the procedure to be adopted for removing the name

of the convict from the remission register. Accordingly, by following the due process, on 13.09.2009, the Superintendent of Jail has issued show cause notice to the petitioner stating therein that, why his name should not be removed permanently from the remission register for overstay of 893 days? Thereafter, the petitioner has submitted his reply on 11.12.2009. Therefore, the principle of natural justice have been followed by the authorities. After considering the provisions of law and following due procedure of law, the impugned order is passed. Therefore, learned A.P.P. submits that, 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 by filing this Writ Petition. However, the impugned order affects the rights of the petitioner in as much as

the said order will adversely affect the petitioner when his case will be considered for premature release. The impugned order has been passed by using a ready-made printed proforma with blank spaces. While passing the order, only blanks have been filled in. The practice of passing such orders is repeatedly deprecated by this Court. 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 documents, it appears that the Sessions Judge has not recorded the reasons while granting judicial appraisal for removing the name of the petitioner permanently from the remission

register. 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 dated 09.02.2011 passed by Respondent No.2. We further quash and set aside the order dated 21.07.2011 passed by the District and Sessions Judge, Aurangabad, to the extent of the present petitioner, whose name is mentioned at serial no.22 in the said order, 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 09.02.2011 passed by Respondent No.2 is quashed and set aside. So also the order dated 21.07.2011 passed by the District and 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 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.K.JADHAV)
JUDGE

(S.S.SHINDE)
JUDGE

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