

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

CRIMINAL WRIT PETITION NO. 1391 OF 2017

Dhanraj s/o Tanhu Marathe,
Age 50 years, Occu. Nil,
R/o At Javkhed (Kh), Post Hingone,
Taluka Erandol, District Jalgaon .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai 32
2. The Deputy Inspector General
Prisons, Central Jail,
Aurangabad
3. The Superintendent,
Central Jail, Aurangabad,
Taluka and District Aurangabad .. Respondents

Mr N.R. Thorat, Advocate for petitioner
Mr S.P. Sonpawale, A.P.P. for respondents

**CORAM : S.S. SHINDE AND
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 20.12.2017**

**DATE OF PRONOUNCING
THE JUDGMENT :**

JUDGMENT (Per A.M. Dhavale, J.)

1. The petitioner seeks quashing of orders dated 13.7.2005 and 6.4.2017 passed by the Deputy Inspector General of Prisons whereby his name was cut off from remission register and his request for re-entering his name in the remission register was rejected.

2. The petitioner was convicted under Section 302 of Indian Penal Code and was sentenced for life and his appeal was dismissed on 8.7.2003. On 2.12.1999, he was released on furlough for two weeks but he did not surrender to the jail authorities and was required to be arrested and brought by police to the jail after a long period of 1457 days. As per provisions of law and prison manual he was treated as absconding for more than six months and his name was struck off from the remission register permanently. The petitioner claims that his mother was suffering from cancer and his father was handicapped and there was nobody to take care of his mother and, therefore, he could not surrender in time. After his arrest he was served with show-cause notice dated 22.12.2003 as to why he should not be penalised for breach of terms and conditions of parole, for remaining outside for 1457 days and not returning on his own. He submitted reply communicating the factum of his mother's illness. The petitioner was not communicated in this regard till 2017. Meanwhile, he was granted parole on sixteen occasions and every time he surrendered in time. As per Apex Court's directions, for determining term of life imprisonment, opinion of the Sessions Judge was sought for categorisation of the nature of conviction of the petitioner and he reported Category 3(b) as per Government Resolution of 2010 as a period of twenty two years. Thereafter in 2016, the petitioner learnt that his pending remission of 1235 days was cancelled and his name was removed from the remission register permanently. The said order was not communicated to him. He made application dated 5.4.2017 for taking his name in the remission register, which came to be rejected by Deputy Inspector General (Prisons) (Respondent no.2). The petitioner assails the orders on following grounds:

- (i) No opportunity of hearing was given to the petitioner while passing the impugned order.
- (ii) The petitioner was granted parole sixteen times thereafter and he was also given certificate of good character.
- (iii) His mother was suffering from cancer and his act of not returning in time was not intentional.
- (iv) The guidelines provided by the Government with regard to imposition of punishment were not followed.

3. Besides the above referred documents, the petitioner's Advocate Mr Thorat has relied on judgments of this Court in **Tanu Marathe Vs. State (Cri.Appeal No.190 of 1998** decided on **8.7.2003**) (Aurangabad Bench) **and Kishor Vaiti Vs. The State (Cri.Writ Petition 216/2013 dated 24.12.2013 by A.S. Oka and S.C. Gupte, JJ.)** (by Principal seat at Bombay).

4. Bapurao More, Superintendent of Central Prison, Aurangabad has filed affidavit-in-reply on behalf of the respondents. It is stated that after the order of Deputy Inspector General (Prisons) dated 12.7.2005, the petitioner had made representation for re-entering his name in remission register, which was turned down as the petitioner had remained outside the jail for 1457 days and was required to be brought by police. The authority has already removed name of the prisoner from remission register permanently.

5. It is also argued that the impugned order was passed by using cyclostyle form without application of mind.

6. We have carefully considered the arguments advanced by the respective Advocates and the judgment cited by them. They have taken us through the pleadings, affidavits, documents on record.

7. The record shows following facts:

(i) The petitioner was prosecuted by 3rd Additional Sessions Judge, Jalgaon and was convicted under Section 302 of Indian Penal Code and he was in jail since September 1997.

(ii) On 2.12.1999, the petitioner was released for two weeks on furlough. That time, his mother was ill. His father was handicapped and suffered disability in right leg. The petitioner did not return and was required to be brought by police after 1457 days of overstay. He was issued a show-cause notice and he had filed reply.

(iii) The impugned order dated 12.7.2005 shows total non application of mind. Cyclostyle form has been used. It does not disclose that show-cause notice was given to the petitioner. It does not disclose the period for which he was outside the jail. It does not disclose the explanation given by the petitioner and that the same was not found satisfactory. It only shows the punishment that his name should be removed from remission register. It does not show that the said order was served on the petitioner.

8. **In Kishor Vaiti's** case (supra), relying on **Sk. Jakir Shaikh Babu Vs. State of Maharashtra, (Writ Petition no.283 of 2016), (2008 ALL MR (Cri.) 3389)**, following guidelines are laid down for imposing punishment:

“(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 petitioner.

(5) The order of higher punishment may be implemented after following steps (1) to (4).”

9. We find that in **Sk. Jakir's** case, the delay was of 190 days and his remission of 380 days was curtailed. In the present case, no doubt the period of overstay of 1457 days is too large. Nonetheless, nobody can be condemned unheard and the procedure prescribed for imposing punishment by way of cutting off remission should be followed. Besides, there should be a reasoned order showing the basic facts as well as the defence raised and the subjective satisfaction of the authority that the reason given was not satisfactory.

10. It may be stated here that on 2.8.2011, specific rules were framed prescribing various punishments for overstay, after furlough and parole

period is over. It discloses that if a convict stays away for more than six months (180 days), his entire remission is liable to be cut off. However, these rules are subsequent and those cannot be applied to the act of the petitioner, which took place much earlier.

11. The impugned order imposing the punishment is not produced by either party, but the order passed by D.I.G. (Prisons), Aurangabad dated 14.10.1998 after granting sanction to the order of removing the name from remission register is produced. Though delay of 1457 days is huge and probably very difficult to explain if not impossible, we find that the procedure described must be followed and a reasoned order should have been passed by the concerned authority. It is not clear if the name of the petitioner was removed from the remission register, how he was granted furlough and parole on several occasions thereafter. While determining the period of imprisonment for life, it will be necessary to determine the period undergone by the petitioner in jail, for which proper order regarding cutting of the name of the petitioner from the remission register is necessary.

12. Since there is non application of mind and no fair procedure was followed while imposing the punishment, we deem it fit to quash and set aside the impugned order with directions to the competent authority to grant opportunity to the petitioner and after hearing him, to pass reasoned order. Hence, we pass the following order:

- ORDER -

(I) The Writ Petition is allowed. The impugned orders dated 13th July 2005 passed by and 5th April 2017 passed by the Deputy Inspector General (Prisons), Aurangabad.

(II) The competent authority - respondent no.2 is directed to give opportunity to the petitioner to show cause his absence and to consider the reasons given by him and thereafter to pass appropriate order as per the law and Prison Manual. When such order will be passed, it should be communicated to the petitioner and his acknowledgement should be taken so that he can avail any remedies in case the order is against him.

(III) Rule is made absolute in above terms with no order as to costs.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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In **State, Represented by Inspector of Police, Chennai Vs. N.S. Ganeswaran, 2013 CRI L.J. 3619**, it is held that “In judging a question of prejudice, Court must act with a broad vision and look to substance and not to the technicalities, unless aggrieved makes out a case of prejudice or injustice. Some infraction of law would not vitiate the order/enquiry or result.”