

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 192 OF 2017
WITH
CRIMINAL APPLICATION NO. 59 OF 2017
WITH
CRIMINAL APPLICATION NO. 92 OF 2018**

Wilson B. Castellino	...Petitioner/Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Prosper D'Souza – for the Petitioner/Applicant.
Mrs. G.P. Mulekar, APP for the Respondent-State.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J.&
M. S. SONAK, J.**

DATE : 25.07.2018.

P.C.

1] In the criminal applications, the case of the petitioner is that on 19.11.2010, when he was released on furlough for two weeks, as there was overstay on the part of the petitioner, his remission was cut and he was removed from the post of convict overseer. It is the case of the petitioner that earlier he was appointed as Night watchman on 1.9.2009 and thereafter, he was appointed as convict overseer, but after he overstayed the furlough leave he was arrested and brought back to the prison and he was not given the post of convict overseer. Thus, the case of the

petitioner is that he was punished twice for overstay while he was on furlough. In other words, the petitioner is claiming that it is a case of double jeopardy. Hence, he prayed that both the punishments be set aside.

2] We may mention here that the petitioner had earlier preferred Criminal Writ Petition No.2473 of 2015 and Criminal Writ Petition No. 4313 of 2017 and in both the petitions, the very same contention has been raised. By order dated 28.11.2016 Criminal Writ Petition No. 2472 of 2015 came to be dismissed and by order dated 21.3.2018 Criminal Writ Petition No. 4313 of 2017 also came to be dismissed. In fact, in the order dated 21.3.2018 in Criminal Writ Petition No. 4313 of 2017 in paragraph 9, we have observed as under:

"9. It is further stated that the petitioner on the same grounds and with the same prayers keeps on preferring Writ Petitions, hence, his petition can be termed to be in the nature of vexatious litigations. The petitioner is hereby warned that if he keeps on making repeated petitions on the same grounds with the same prayers, we may consider taking action against him such as imposing costs."

3] The petitioner, time and again, is preferring applications with the same grievances and the same

prayers. In this view of the matter, no case is made out for interference. Hence, both the applications are dismissed.

4] We may state here that the petitioner in his petition as well as in the applications has prayed that he be produced before the court to argue his petition/applications in person. We have already heard the petitioner on video conferencing on many occasions on the same issues and as observed earlier the petitioner is raising the same issues and the same prayers in applications after applications. In this view of the matter, we do not think that any case is made out for producing the petitioner before the court to argue his petition/application in person. We may also state that on 19.11.2010 when the petitioner was released on furlough, he had to surrender on 4.12.2010, however, the petitioner did not surrender in time and he was arrested by the police after more than 600 days and brought back to the prison. Thus, there was overstay of 674 days on the part of the petitioner.

5] Thus, it is seen that the petitioner has history of absconding and during the period of overstay, the petitioner

had indulged into two offences. Had the police not arrested the petitioner, the petitioner would have continued to remain outside and not reported back to the prison. In view of these facts the repeated requests of the petitioner of being brought to the court to argue his petition/applications in person raise suspicion in the mind whether he would take this opportunity while he being brought to the court from prison to again abscond.

6] Looking to the earlier conduct of the petitioner, there is strong suspicion in the mind that the petitioner may try to run away from the police custody while he being brought to the court from the prison. In such circumstances and looking to the fact that earlier petitions have been dismissed on same ground, we are not inclined to grant any prayers in both the applications of the petitioner and hence, both the applications are dismissed.

7] In the petition, it is stated that the petitioner is in illegal detention and hence, he be granted bail by way of interim relief. He has also prayed that he be produced before the court to argue his petition in person.

8] As far as the issue of producing the petitioner before the court to argue his petition is concerned, we have already dealt with the same in the earlier paragraphs of this order. As far as the case of the petitioner that he is in illegal detention is concerned, we may state that by judgment and order dated 17.4.2003 passed by the learned Sessions Judge, Kalyan in Sessions Case No. 79 of 1998, the petitioner has been convicted under Sections 302, 450, 393 of I.P.C. Being aggrieved by the said conviction and sentence, the petitioner preferred Criminal Appeal No. 757 of 2003 before this Court. The said appeal came to be dismissed on 12.6.2007. In this view of the matter, it cannot be said that the petitioner is in illegal detention. As the criminal appeal has been dismissed by this court, this court is now *functus officio* and it is not possible to consider the prayer of the petitioner for bail or interim bail. Hence, the petition is dismissed.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

D.S.Sherla