

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL W.P.NO. 202 OF 2018**

Chandsing Ajitsing Kalyani
C/12823, Yerawada Central
Prison, Pune

.. Petitioner

Vs.

The State of Maharashtra

.. Respondent

....
Mr. Propser D'Souza Advocate appointed for Petitioner
Mrs. G.P.Mulekar APP for State
....

**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J.
AND M.S.SONAK, J.**

DATED : AUGUST 03, 2018

ORAL JUDGMENT [PER SMT. V.K.TAHILRAMANI, ACJ.]:

1 Heard both sides.

2 The prayer of the petitioner is that the period during which he was released on temporary bail, be counted as the period of imprisonment undergone by him and it be taken into consideration for granting remission.

3 Jail record of the petitioner shows that he was

Jayant
Digambarrao
Kandarkar
Digitally
signed by
Jayant
Digambarrao
Kandarkar
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released on temporary bail during the period from 8.12.2004 to 12.1.2005 i.e. a period of 34 days and thereafter from 29.10.2005 to 12.12.2005 i.e. a period of 43 days. Learned A.P.P. pointed out that the period of bail, parole, escape, extradition and other periods are treated as out-periods and not recognized as part of sentence. To support her contention, she has placed reliance on the Statutory Rules framed in relation to remission system which are framed under the Prisons Act. She has relied on Rule 7(f) of the said Rules. Rule 7(f) of the said Rules, reads as under:

“7. Ordinary remission may not be granted to a prisoner,

(a) to (e).....

(f) during out-periods which are not reckoned as part of sentence (being periods during bail, parole, escape, extradition and other periods which are treated as out-periods and not reckoned as part of sentence under specific orders of the State Government issued in that behalf”.

4 The Supreme Court in the decision in the case of ***Joginder Singh Vs. State of Punjab and others***, reported

in **2001 AIR SCW 3684**, in relation to whether the period that the prisoner is out on bail, can be counted as the period of remission or as the period of sentence undergone by the prisoner, has observed that if period of bail is counted as remission period or period undergone, it would reduce the criminal justice system to mockery as has been observed by the Supreme Court in Nauratta Singh's case (2000 AIR SCW 817 : AIR 2000 SC 1179 : 2000 Cri.L.J. 1710) (supra). It was further observed that the Supreme Court has categorically held that there is substantial difference between the words "parole" and "furlough" on one hand and the expression "bail" on the other. These judgments have also held that persons who are enlarged on bail cannot claim the benefit of the period during which they were on bail for the purpose of counting the period of sentence as already undergone to apply the remission given by the Government.

5 In the case of Nauratta Singh (2000 AIR SCW 817: AIR 2000 SC 1179 : 2000 Cri.L.J. 1710) (supra) after considering the judgment of Mohinder Singh (2000 AIR SCW 478 : AIR 2000 SC 890 : 2000 Cri.L.J. 1408) (supra) as

well as the decision of the Constitution Bench in *Sunil Fulchand Shah* (2000 AIR SCW 582 : AIR 2000 SC 1023 : 2000 Cri.L.J. 1444) (*supra*) it was held thus:

“18. The clear fallacy of the approach made by the High Court can be demonstrated through an illustration. An accused was tried for an offence under Section 326, IPC. During trial period he was allowed to remain on bail and the trial prolonged upto, say 3 years. Finally the Court convicted him and sentenced him to imprisonment for three years. Should not the convicted person go to jail at all on the premise that he was on bail for three years and is hence, entitled to remission of that period?.

19. Yet another illustration can be shown by stretching the above illustration a little further. If the aforesaid convicted person filed an appeal and got his sentence suspended by the appellate Court and the appellate Court confirmed the conviction and sentence after a period of 3 years, is he entitled to claim that he need not go to jail at all as he was on bail for more than 3 years during the post-conviction stage also? If it is to be held that he is entitled to such remission, we are afraid, the criminal justice system would be reduced to a mockery. The absurdity of the claim of the respondent can thus be demonstrated.”

6 In view of the above legal position, the prayer of
the petitioner cannot be granted, hence, Rule is
discharged. Petition is dismissed.

7 Office to communicate this order to the
petitioner who is in Yerawada Central Prison, Pune.

M.S.SONAK, J.

ACTING CHIEF JUSTICE