

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

CRIMINAL WRIT PETITION NO. 244 2019

Dhananjay s/o Namdeo Kharade
(C-17713), Open Prison Visapur,
Tq. Shrigonda, Dist. Ahmednagar.

... **Petitioner.**

VERSUS.

1. The State of Maharashtra,
Through Superintendent of Jail,
Open Prison Visapur, Tq.
Shrigonda, Dist. Ahmednagar.

2. The State of Maharashtra,
Through : D.I.G. Prisons Pune.

3. The State of Maharashtra,
Through I.G. Prisons, Pune.

... **Respondents.**

...

Mr. Jaiswal Rupesh A., Advocate for petitioner.

Mr. S. J. Salgare, A.P.P. for respondents.

**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**

DATE : 20th MARCH, 2019

ORAL JUDGMENT (PER T. V. NALAWADE, J.) :

1. Heard.

2. Rule. Rule is made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

3. The petitioner is under going sentence of life imprisonment in Open Prison Visapur District Ahmednagar. When he was granted furlough

leave in the year 2016 he returned to jail two days late and so he was transferred to Yerwada Jail, close prison. This oral order was challenged by the petitioner by filing Writ Petition No. 1298/2018. This Court by the decision dated 15.01.2019 held that proper procedure was not followed for transfer of the petitioner to open prison to close prison and the order of transfer was set aside.

4. Due to aforesaid transfer order from open prison to close prison the petitioner was kept in close prison from 08.05.2017 to 03.02.2019. Submission is made that as per the rules there is remission of one month for every year of imprisonment if the prisoner is kept in open prison and the remission is of only 12 days for close prison and due to the aforesaid illegal order of transfer the petitioner is losing the benefit of the rule of Open Prison.

5. The learned counsel for the petitioner submitted that if the benefit of the rule of Open Prison is given to the petitioner he will be out immediately but if that benefit is not given he will have to lose that benefit as per the aforesaid difference in the two rules.

6. The particulars of the furlough leave granted to the petitioner are given in the petition and those are not disputed. It appears that the petitioner was kept in open prison from 25.12.2013 and except the aforesaid one lapse of returning to jail late by two days there was no other lapse on his part.

7. In view of the decision given by this Court in aforesaid Writ Petition this Court holds that it needs to be presumed that for the period 08.05.2017 to 03.02.2019 the petitioner was in open prison and accordingly the entitlement of remission needs to be calculated. With such directions and observations the petition is allowed.

8. Rule made absolute in those terms.

(MANGESH S. PATIL, J.)

(T.V. NALAWADE, J.)

mkd