

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

CRIMINAL WRIT PETITION NO. 252 OF 2019

1. Sanjay S/o Dinkarrao Kakade,
Age: 28 Years, Occu.- Nil, Convict No.7842
R/o At present in Central Prison, Aurangabad. ... **Petitioner**

Versus

1. State of Maharashtra,
Through Secretary, Home Department,
Mantralaya, Mumbai – 32.
2. The Divisional Commissioner,
Aurangabad.
3. The Dy. Inspector General,
Central Prison, Aurangabad.
4. The Superintendent,
Central Prison, Aurangabad. ... **Respondents**

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Mrs. Bharati B. Gunjal, Advocate for the Petitioner.
Mr. Swapnil Joshi, A.P.P. for Respondent-State.

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

**DATE OF RESERVING THE JUDGMENT : 08.04.2019
DATE OF PRONOUNCING THE JUDGMENT : 24.06.2019**

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JUDGMENT :- (Per: Mangesh S. Patil, J.)

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P.
waives service for the respondents. With the consent of both the sides the
matter is heard finally at the stage of admission.

2. The petitioner is a prisoner undergoing sentence of life imprisonment and is lodged in Central Prison at Aurangabad, seeking this Court to invoke the powers under Sections 226 and 227 of the Constitution of India for extension of parole under the Prisons (Bombay Furlough and Parole) Rules, 1959 (herein-after the Rules).

3. The factual matrix as is relevant is as under:

Having been convicted for the offence of murder and sentenced to suffer life imprisonment the petitioner has been lodged in the Central Prison at Aurangabad. On 09.10.2017 he applied for parole leave under Rule 19 of the Rules. The respondent no.2 Divisional Commissioner, Aurangabad granted him parole leave of 45 days on account of illness of his mother. Accordingly he was released from prison on 16.10.2017. Before expiry of the leave period, on 15.11.2017 he sought extension of parole. Nothing was communicated to him about his such request for extension of parole. Assuming that he must have been granted extension of parole leave he applied for a second extension on 07.12.2017. His first request for extension of parole was allowed on 24.01.2018 and he was granted 30 days of extension, however the order was communicated to him on 11.02.2018. Since nothing was communicated to him about the request for second extension he on his own surrendered before the jail authorities on 30.01.2018. He was served

with a notice to show cause dated 31.01.2018 soliciting his explanation as to why he should not be punished for over stay and as to why 300 days should not be deducted from the remission at the rate of 1:5 for 60 days of overstay. He replied the notice on 21.03.2018 and informed that his mother was seriously ill and was required to under go investigation and therefore he was compelled to stay back. Not satisfied with his reply, by the impugned order dated 20.04.2018 the respondent no.2 Divisional Commissioner directed 150 days to be deducted from remission for 30 days of overstay. Being aggrieved he is seeking firstly, quashing and setting aside the impugned order directing deduction in remission and secondly, has sought extension of parole. Incidentally, his request for second extension was rejected on 03.03.2018.

4. The learned advocate for the petitioner submitted that the petitioner was not communicated promptly any decision on his first request for extension of parole. Under a *bona fide* belief and by virtue of the extreme necessity on account of serious illness of his mother he over stayed and applied for a second extension. However even this request was not promptly considered and in fact this application for second extension was rejected as late as on 03.03.2018. The first extension was also informed to him belatedly on 24.01.2018. Besides on his own he has surrendered before the jail authorities on 30.01.2018. There was genuine difficulty and he had explained it in his response to the show cause notice. He cannot be punished for the

lapses on the part of the respondents to promptly decide his application for extension of parole and therefore since there was a genuine reason for his over stay, by virtue of the Government Resolution dated 22.05.2009, at the most the remission ought to have been deducted at the rate of 1:3 and not at the rate of 1:5 and therefore the impugned order be quashed and set aside and consequential orders may be passed.

5. Per contra, referring to the affidavit in reply filed on behalf of the respondents the learned A.P.P. submitted that parole is not a right. It is only under special exigency a prisoner is granted parole under Rule 19 of the Rules. The petitioner ought to have surrendered if no decision was communicated to him about extension of parole and he was not entitle to assume anything. Since the explanation put forth by him was not acceptable, by virtue of the Government Resolution dated 22.05.2009, the remission has been deducted correctly at the rate of 1:5 since the period for over stay was more than a month and on two previous occasions he had overstayed for few days.

6. We have carefully perused the papers and the impugned orders. As far as the factual aspects are concerned there is not much of a dispute except that according to the petitioner his mother was suffering from Leukemia, whereas according to the respondents he had not furnished any

document in support of his version and whatever documents that were produced only mentioned that she was suffering from hypertension. It is therefore apparent that the applications filed by the petitioner were never decided promptly much less in the time frame laid down by the State Government vide Government Resolution dated 01.08.2007. Be that as it may, the fact remains that the petitioner was not communicated about first extension on 24.01.2018. Since he was released for 45 days on parole on 16.10.2017, the initial parole period got over on 30.11.2017. The parole was extended by 30 days and therefore he was entitle to enjoy it till 30.12.2017. He surrendered on his own on 30.01.2018 and apparently he over stayed for 30 days.

7. So far as the refusal of the second extension is concerned, though the petitioner has produced some medical papers along with the petition showing that his mother was suffering from Leukemia and hypertension, there is no material to show that he had produced the same record before the respondent no.2. It has been specifically mentioned in the impugned order that no such record was produced by him except showing that his mother was suffering from hypertension. In our considered view, in the absence of any material before the respondent no.2 Divisional Commissioner, to satisfy him objectively about the seriousness of the illness of petitioner's mother, no fault can be found with his subjective satisfaction arrived at while passing the

impugned order rejecting the second extension.

8. Besides, it is pertinent to note that the Rules stand amended in the year 2016 by virtue of the Government Resolution dated 26.08.2016. Amended Rules 19 (2) (C) (iii) of the Rules *inter alia* prescribe that a prisoner sentenced to life imprisonment is eligible for maximum of 45 days of parole in a year which can be extended up to 60 days once in three years only under exceptional circumstances. Since the petitioner had applied for parole after coming into force of such an amendment, he was entitled to 45 days of parole and a further extension up to 60 days that is he was entitled to the first extension of merely 15 days. If that was the case, when he was granted first extension of 30 days, thereby in aggregate was granted 75 days of parole, that itself was apparently beyond the provisions of the Rules. However since he has already been granted such first extension of 30 days, irrespective of any reason, he could not have been granted a second extension since he had already exceeded the limit of 60 days of parole in aggregate in that year. Therefore in any case no fault can be found with the impugned order passed by the respondent no.2 refusing to grant second extension.

9. As far as the deduction in remission is concerned, obviously he would be governed by the Government Resolution dated 22.05.2009 which prescribes for deduction in remission at the rate of 1:3 when a prisoner over

stays up to one month and himself surrenders to the jail. As is mentioned herein-above, he had surrendered 30 days late and therefore, the remission ought to have been deducted at the rate of 1:3 and not at the rate of 1:5 which is applicable to a case where a prisoner surrenders late on second occasion or surrenders after more than a month late or where while surrendering late on the second occasion he is unable to furnish sufficient explanation. A bare perusal of the impugned order dated 20.04.2018 shows that it has been mentioned that on previous two occasions he had surrendered late by two and three days respectively. Therefore assuming that he did surrendered late on previous two occasions and in the normal course the remission ought to have been deducted at the rate of 1:5, in his response he had specifically mentioned that the orders were communicated late to him about previous extension and that his mother was suffering from some illness for which he was already granted parole and first extension. In our considered view, this was a sufficient cause for him to claim deduction in remission at the rate of 1:3 and was not liable for such deduction at the rate of 1:5. We therefore have no hesitation in concluding that the respondent no.2 has illegally directed deduction of remission at the rate of 1:5 for 30 days over stay. The impugned order therefore deserves to be modified.

10. In the result the writ petition deserves to be partly allowed and is accordingly partly allowed. The request for grant of second extension of

parole is refused. However the impugned order passed by the respondent no.2 dated 20.04.2018 directing deduction in remission at the rate of 1:5 is modified and for 30 days of over stay the remission is deducted at the rate of 1:3 i.e. $30 \times 3 = 90$ days.

11. The Rule is accordingly made absolute to above extent.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]