

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 542 OF 2019

Devraj S/o Venkat Phad, (C-10397)
Central Prison Nasik.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through D.I.G. Prisons,
Aurangabad

2. The State of Maharashtra
Through Superintendent,
Central Prison, Nasik.

...RESPONDENTS

...
Advocate for the Petitioner : Mr. R.A. Jaiswal
A.P.P for respondent-State : Mr. M.M. Nerlikar
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CORAM :T.V. NALAWADE AND
MANGESH S. PATIL ,JJ.
DATE : 3rd MAY, 2019.

ORAL JUDGMENT [PER T.V. NALAWADE J] :-

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. The present petition is filed for giving direction to respondent No.1 for giving remission of 90 days on the ground that the petitioner has completed Yoga Teacher Course and he has obtained certificate from Yoga Vidhnyan Prabhodhani. The petitioner is relying on the communication dated 13.04.2016 of Inspector General Prisons showing that up to three months remission can be given, if the prisoner appears

for Yoga Test which were to be held in the Month of May 2016 and October 2016. The institution from which the certificate needs to be obtained are also mentioned in this communication. After getting such certificate the Prison authority is expected to forward the proposal to Inspector General and on that basis the decision needs to be taken.

3. It was brought to the notice of this Court that under Government notification of Home Department dated 08.03.2016 power is delegated to the authority like Regional Superintendent of Police, Deputy Inspector General and Inspector General to grant special remission to any prisoner not exceeding period of 30 days, 60 days and 90 days respectively in a year. It can be said that the aforesaid communication dated 13.04.2016 was issued for exercising this delegated power given to the Inspector General (Prison). In any case the wording of State notification dated 13.04.2016 shows that the Inspector General was given discretionary power and he had a discretion to grant maximum remission of 90 days in a year.

4. In the present matter the Jail Superintendent recommended for giving remission of 90 days. The order of Deputy Inspector General dated 14.02.2019 shows that total remission of 45 days was given by the Deputy Inspector General. The Deputy Inspector General has power to give remission of 60 days. No particular reason is given as to why the

remission of only 45 days was given by the Deputy Inspector General.

5. When the discretion is given to such authority, the discretion should be used reasonably and the authority needs to give the criteria which can be used at the time of discretion. The reasons should appear in the order itself otherwise the prisoner who gets less than remission of 60 days would feel discriminated. This Court hopes that some criteria are laid down in all the three cases mentioned above and the matter of present petitioner is decided accordingly. In the result petition is partly allowed. The order of Deputy Inspector General dated 14.02.2019 is set aside and matter is remanded back to Inspector General to decide the matter afresh within 15 days from today. The order should give the reasons and for that the criteria may be laid down by the Deputy Inspector General.

6. As the circular was issued by the Inspector General and Inspector General has power of 90 days the matter needs to be decided by Inspector General and reason should be given and criteria needs to be laid down by the Inspector General for the same matter to be decided by the Inspector General (I.G.).

7. Rule made absolute in those terms. Petition is disposed of.

8. The present order to be communicated to the prisoner, Central Prison Nashik as well as Inspector General Nashik by learned Registrar (Judicial) by E-mail/fax etc.

[MAGESH S. PATIL]
JUDGE

[T.V. NALAWADE]
JUDGE

YSK/