

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

CRIMINAL WRIT PETITION NO.828 OF 2018

Shakir Abdul Bashid Kazi,
Age major, Occu. Nil, Convict No.6258
R/o at present in Central Prison,
Aurangabad

...PETITIONER

VERSUS

1. The State of Maharashtra,
through Secretary, Home Department,
Mantralaya, Mumbai - 32
(Copy to be served on A.P.P., High Court of
Bombay, Bench at Aurangabad)
2. The Deputy Inspector General/ Inspector
General of Central Prison, Aurangabad
3. The Superintendent, Central Prison,
Aurangabad

...RESPONDENTS

.....
Mrs. Bharati B. Gunjal, Advocate for petitioner
Shri S.Y. Mahajan, A.P.P. for respondents
.....

**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

Date of reserving judgment : 4th March, 2019
Date of pronouncing judgment : 11th April, 2019

JUDGMENT (PER : R.G. AVACHAT, J.):

1. Rule. Rule made returnable forthwith and taken up
for final hearing with the consent of learned counsel appearing
for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks to set aside the order dated 7.5.2016, permanently removing his name from remission register. The petitioner further seeks a direction to the respondent No.2 to consider his application dated 3.8.2016 and enlist him in remission register within stipulated period.

3. The petitioner has been undergoing life sentence at Central Prison, Aurangabad. He was convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code on 10.6.2004. He was an undertrial prisoner since the date of his arrest i.e. 17.8.2003. As such, the petitioner has been in prison for over 15 years.

4. The petitioner was released on furlough leave for two weeks on 23.4.2008. He was supposed to return to jail on or before 8.5.2008. He had, however, overstayed for about 498 days. He had to be arrested and brought back to the jail. According to the petitioner, his mother was not keeping well. His brother passed away. There were financial constraints. Marriage of a sister was to be fixed. He, therefore, could not return to the jail, on 8.5.2008. The petitioner was, therefore, issued show-cause-notice regarding proposal for permanently removing his name from remission register. He replied to the notice with the

grounds stated hereinabove. The authority concerned, however, did not consider his reply. The respondent No.2 passed the order dated 9.2.2011, removing the petitioner's name from remission register. The order was in a printed format. The Sessions Judge also blindly gave his approval to the proposal. The petitioner had, therefore, to prefer a Writ Petition, being Criminal Writ Petition No.1264/2015. It was allowed with a direction to the respondent No.3 to reconsider the petitioner's case and pass reasoned order.

5. The respondent No.3 again considered the petitioner's case and proposed to permanently remove his name from remission register. The Deputy Inspector General of Prisons, respondent No.2, approved the proposal on 7.5.2016. The Sessions Judge apprised the same on 14.7.2016. The petitioner has, thus, again approached this Court.

6. The petitioner moved a representation to the respondent No.2 for restoring his name in the remission register.

7. According to the petitioner, his conduct in prison has been very good. The Circle Inspector has issued him a good conduct certificate on 17.2.2018. Since his name has been removed from remission register, he has been deprived of being

kept in Open Prison. He is not given work of Warden or Watchman. Similarly placed other prisoners have, however, been transferred to Open Prison. Considering the reformation and rehabilitation theory, the petitioner deserves to be relisted in remission register.

8. Mrs. Bharati Gunjal, learned counsel for the petitioner, made submissions on the lines of the averments made in the petition and ultimately urged for allowing the Writ Petition.

9. An affidavit-in-reply has been filed on behalf of the respondents No.2 and 3. It has been averred in the affidavit-in-reply that the petitioner overstayed furlough for 498 days in 2008. He had to be arrested to bring him back to prison. Thereafter, from 2013, he was released on parole on about eight times. On three occasions he again overstayed. The conduct of the petitioner indicates that he does not deserve to be enlisted in the remission register.

10. The learned A.P.P. made submissions, on the lines of the averments made in the affidavit-in-reply and placed on record a copy of the relevant Rules.

11. The petitioner seeks restoration of his name in the

remission register. The petitioner's name was permanently removed from remission register on account of his over-stay for 498 days, when he was released on furlough in March 2008. The petitioner was served with a notice to show cause as to why his name shall not be removed from the remission register. He had put up his case before the Superintendent, Aurangabad Central Prison in September/ October 2009. Thereafter, his name came to be removed from remission register. The petitioner filed Writ Petition, being Criminal Writ Petition No.1264/2015. The petition was allowed, setting aside the order removing his name from remission register. The respondent No.2 was directed to reconsider the petitioner's case on merits. Again on hearing the petitioner, the respondent No.3, by his order dated 16.4.2016 proposed to remove the petitioner's name from his remission register. The Deputy Inspector General of Prisons, Central Division, Aurangabad approved the proposal on 7.5.2016, while the Additional Sessions Judge-3, Aurangabad apprised the said decision. As such, the petitioner's name came to be permanently removed from the remission register.

12. The petitioner moved application dated 3.8.2016 and requested the respondent No.2 to enlist him in remission register. According to the petitioner, after a lapse of period of five years, if a conduct of the prisoner is found to be good, his name can be

enlisted in remission register.

13. According to learned counsel for the petitioner, in February 2018, the petitioner has been granted Good Conduct Certificate by Circle Prison Officer, Aurangabad Central Prison. Moreover, reformation and rehabilitation is the basic aim and object. The petitioner, thus, deserves to be enlisted in the remission register.

14. According to the learned counsel for the petitioner, learned Additional Sessions Judge did not apply his mind while apprising the proposal to permanently remove the petitioner's name from remission register.

There is on record, order dated 15.7.2016, passed by Additional Sessions Judge, Aurangabad. The same indicates that, the common order in respect of 48 cases was passed. It further appears that, the learned Additional Sessions Judge has not given any reasons as to why did he apprise the proposal of permanently removing the petitioner's name from remission register.

15. The Division Bench of this Court (Coram : A.S. Oka & S.C. Gupte, JJ.) in Criminal Writ Petition No.216/2013, has observed :-

“6. We must note here that when the learned Sessions Judge makes judicial appraisal of the proposed penalty to be inflicted on the prisoner, the learned Sessions Judge is expected to apply his mind to the material on record. He must record brief reasons after consideration of the record. Only after a reasoned order of appraisal is passed by the learned Sessions Judge that the punishment can be imposed.”

16. In the present case, non-application of mind by Additional Sessions Judge is writ large on the face of the order dated 15.7.2016. In the peculiar facts and circumstances of this case, the order dated 7.5.2016 of permanently removing the petitioner's name from remission register, therefore, deserves to be set aside, with a direction to the respondent No.3 to again place the proposal before the Sessions Judge, Aurangabad for appraisal.

17. In the result, the petition partly succeeds in terms of the following order :

ORDER

- (i) The order dated 7.5.2016, passed by the respondent No.2, permanently removing the petitioner's name

from remission register is hereby set aside.

- (ii) The respondent No.2 shall place the proposal for permanently removing the petitioner's name from remission register before the learned Sessions Judge, Aurangabad for his appraisal and then pass necessary orders.

Rule made partly absolute in above terms.

R.G. AVACHAT
JUDGE

S.S. SHINDE
JUDGE

fmp/