

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

CRIMINAL WRIT PETITION NO. 1258 OF 2019

Clint s/o Ernest Fernandez,
Age:- 34, Occ. Nill, R/o At present
Visapur Open Prison, Tq. Shrigonda,
Dist. Ahmednagar.

... **PETITIONER**

VERSUS

- 1] The State of Maharashtra,
through Secretary,
Home Department (Prison),
Mantralaya Mumbai-40000
- 2] The Deputy Inspector General of
Police (Prison) Western Region
Yerwada, Pune,
- 3] The Superintendent of the
Open Prison Visapur,
Dist:- Ahmednagar.

... **RESPONDENTS**

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Mrs. Sharada P. Chate, Advocate for Petitioner.

Mrs. V. N. Patil (Jadhav), APP for Respondents.

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CORAM : **T. V. NALAWADE &
K. K. SONAWANE, JJ.**

DATE : 28th August, 2019.

ORAL JUDGMENT: (Per T. V. Nalawade, J.)

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

2 The petition is filed under Articles 226 and 227 of the Constitution of India and following reliefs are claimed:

“B. By issuing writ, of certiorari and any other appropriate order, or, directions writ like nature the Respondents authorities may pleased be directed to give the benefit of set-off period (i.e. 20/11/2003 to 25.11.2005) two years five days as per section 428 of Criminal Procedure Code, the period spends in detention as under trial in the interest of justice.

C. Kindly issued a writ of nature of Habeas Corpus or any other appropriate writ, order or direction directing that the prisons authorities grant the petitioner set-off period that is spend in detention as under trial u/s 428 of Criminal Procedure Code as early as possible in the interest of justice.”

3 The submissions made and record show that the Trial Court had convicted the Petitioner in Sessions Case No.112 of 2004

and the Petitioner was sentenced to death penalty. This decision was challenged in Supreme Court by filing Criminal Appeal No.1092 of 2006. The Supreme Court partly allowed the appeal. Conviction was maintained but the death sentence was commuted to make it life imprisonment by the order dated 3rd August, 2010.

4 Death sentence was given to the Petitioner by the Trial Court and so, there was no question of mentioning the entitlement of Accused of set-off as provided under Section 428 of the Code of Criminal Procedure. There was no mention of such entitlement in the order of High Court also. Due to these circumstances, the Petitioner is feeling that the authority may not deduct the period for which he was behind bars as under trial prisoner in the case. That period was of more than 2 years. Due to this probability, the Petitioner is seeking direction against the Respondents authorities to see that the aforesaid period is deducted while calculating undergone period of the sentence of life imprisonment.

5 This Court has gone through the provisions of Sections 433, 433-A and 428 of the Code of Criminal Procedure. In Section

433-A, it is made clear that when death sentence is commuted to make it life imprisonment, the period of actual imprisonment shall not be less than fourteen years in any case. This is a clear restriction put on the power of the State. The “State”, Respondents can prescribe the period for which a prisoner needs to be kept in prison for undergoing life imprisonment sentence. In this State, there are guidelines like Guidelines of 1978, 1992 and 2010 etc.. In those Guidelines, the State has created categories of prisoners convicted for different offences for undergoing life imprisonment sentence. When the time comes, the State considers the matter and places the prisoner in a particular category due to which the prisoner is required to undergo the imprisonment sentence for a particular period and the period is between 18 years and 26 years. This period includes remission period also. That is the power of the “State” and the Court is not expected to interfere in that power of the State. In view of the aforesaid provisions of the Code of Criminal Procedure, it can be said that in the present case also, the Petitioner will have to undergo actual imprisonment for minimum period of fourteen years and when he will be placed in a particular category by the State, the period for which he was behind bars as under trial prisoner needs to be calculated and he

needs to be given set-off in the period of imprisonment for which he will be kept behind bars as per the aforesaid Guidelines. In any case, the entitlement of convict mentioned in Section 428 of the Code of Criminal Procedure cannot be taken away and so the set-off in respect of that period needs to be given to the convict. In view of the aforesaid provisions, this Court holds that the petition needs to be allowed. Office to calculate the exact period for which the Petitioner was behind bars as under trial prisoner and inform it to jail. So, the petition is allowed. Hereby direction is given to see that the Petitioner is given set-off in respect of the period for which the Petitioner was behind bars as under trial prisoner. Rule is made absolute in those terms.

[K. K. SONAWANE, J.]

[T. V. NALAWADE, J.]

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