

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

CRIMINAL WRIT PETITION NO.1420 OF 2018

Satish s/o Bajirao Daspute
Age 48 years, Occu. Nil,
Convict No.7568,
R/o At present in Central Prison,
Aurangabad, District Aurangabad

...PETITIONER

VERSUS

1. The State of Maharashtra,
(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.B. Narwade, A.P.P. for respondents
.....

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

Date of reserving judgment : 28th February, 2019
Date of pronouncing judgment : 11th April, 2019

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

1. By this petition under Article 226 of the Constitution of India, the petitioner herein seeks directions to the respondents No.2 and 3 to release him from prison as he has completed more than 14 years of actual imprisonment, and 24 years including

remission.

2. The petitioner is a life convict. He has been convicted way back on 30.7.2002 by the Additional Sessions Court, Ahmednagar. He was an undertrial prisoner. Thus, he has been in jail since 8.11.1998.

3. It is the case of the petitioner that, considering his good conduct in the prison, the respondent No.3, in exercise of powers under Section 433-A of the Criminal Procedure Code, sent a proposal for his premature release, to the Home Department, in May 2014 and placed him in specific category. The said proposal was pending over four years. The petitioner had, therefore, preferred Criminal Writ Petition No.718/2018. The Writ Petition was disposed of in view of the statement made on behalf of respondent No.3, that the petitioner would be released on his completing 22 years of imprisonment. The State of Maharashtra, in Home Department, took a decision on 26.6.2018 to prematurely release the petitioner on completion of 22 years of imprisonment (inclusive remission). In spite of the order, the respondents No.2 and 3 have not released the petitioner. Hence the petition.

4. The respondents filed an affidavit, in reply to the

petition. According to the respondents, on 8.1.2013, the petitioner escaped/ fled from Yerwada Open Prison. He had to be arrested and brought back to the prison on 21.1.2013. An offence punishable under Section 224 of the Indian Penal Code was registered against him. As such, the petitioner violated the provisions of the Prisons Act, Prison Discipline Rules etc. His remission of 1178 days has, therefore, been forfeited. The petitioner has yet not completed 22 years of imprisonment. The petitioner, therefore, could not be released prematurely.

5. The petitioner filed rejoinder affidavit, contending to have been punished with multiple punishments. His remission amounting to 1178 days has been forfeited. He has been transferred from Open Prison to Closed Prison. Moreover, since then, he has not been released on parole or furlough. The petitioner, therefore, urged for directions to the respondent No.2 to reduce the punishment imposed upon him and release prematurely.

6. The petitioner is a life convict. On 8.1.2013, he had escaped from Yerwada Open Prison. He was arrested and brought back to prison on 21.1.2013. This fact appears to have been suppressed from the petition. For this Prison offence, a crime punishable under Section 224 of the Indian Penal Code was

registered against him. He has also not been granted parole or furlough. Moreover, his remission of 1178 days has been forfeited. As such, he had been imposed with multiple punishment. The petitioner, however, could not point out any provision to suggest that no such punishments could be imposed. It is true that, forfeiture of remission of 1178 days may sound grossly disproportionate to his period of abscondance of two weeks. The petitioner has, however, not challenged the said order.

7. It is true, the Home Department has directed the respondent No.2 to release the petitioner prematurely on completion of 22 years of imprisonment. The respondent No.2 has not released the petitioner on the ground of him having not completed that much years of imprisonment. Since the petitioner appears to have not taken exception to the order dated 1.4.2013, forfeiting his remission of 1178 days, we are not inclined to direct the respondent No.2 to release the petitioner prematurely. However, we leave it to the respondent No.2 to reconsider the petitioner's case since his conduct appears to have been good as the Home Department has passed order for his premature release. The petitioner may, if so advised, challenge the order forfeiting his remission of 1178 days.

8. Suffice it to say that the petitioner has not made out a case for issuing directions to the respondent No.2 to prematurely release him from prison. Criminal Writ Petition is, therefore, disposed of accordingly.

R.G. AVACHAT
JUDGE

S.S. SHINDE
JUDGE

fmp/