

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 232 OF 2018

Satish Rama Bhojane ... Petitioner

Versus

State of Maharashtra ... Respondents

Mr. Aditya Bapat for the Petitioner.

Mrs. M.H. Mhatre, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
P.D. NAIK, JJ.**

DATE : MARCH 20, 2019

P.C.:

Learned counsel (appointed) appearing for the prisoner submits that the impugned order dated 04/12/2017 passed by the appellate authority shows non application of mind. There is no grievance about the conduct of convict Satish in prison. As reporting late in the year 2003 is a stale episode, he was released once thereafter and that instance does not find consideration in the impugned order. Despite that he was again released in the year 2012 and he has returned back voluntarily after the delay of 22 days. He submits that had the prisoner tendency to abscond, he would not have returned back in the year 2013.

2. Learned APP on the other hand is relying upon the relevant legal provisions to urge that the order passed by the first authority and maintained by the appellate authority does not show any perversity or jurisdictional error.

3. After hearing respective counsel we find that the appellate order dated 4/12/2017 mentions first instance when on 21/11/2013 police arrested Satish and brought him back after the delay of about 330 days.

4. The next instance looked into is in 2013 when Satish himself returned back to prison with delay of 22 days. If this last conduct is appreciated, one may not be in a position to support the finding that he has tendency to abscond. However, the order passed by the first authority reveals that he was released in 2003 and was brought back on 15/7/2010 when police arrested him. This was after the delay of about 6 years, 9 months and 13 days. This delay and instance does not find even mention in the appellate order.

5. If the appellate authority was satisfied that this delay of 6 years, 9 months and 13 days has become irrelevant because on subsequent occasion i.e. on 11/4/2013 Satish had returned back voluntarily, then returning back voluntarily also could not have weighed with it to deny the request.

6. We therefore, find the impugned order suffering from the error of non application of mind.

7. Accordingly it is quashed and set aside. We direct the appellate authority to consider afresh the appeal of petitioner within four weeks from the date of communication of this order to it.

8. Writ petition is thus partly allowed and disposed of.

(P.D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)