

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4710 OF 2019

Chandrakant Vishnu Shewale

...Petitioner

Vs.

The State of Maharashtra and Ors.

...Respondents

Mr. Harjeet Kaur for the Petitioner.

Smt. S.D. Shinde, APP for the Respondent - State.

**CORAM : B. P. DHARMADHIKARI &
SMT. SADHANA S. JADHAV, JJ.**

DATE : 6th NOVEMBER 2019.

PC.:

1 Heard finally. The petitioner had initially challenged order dated 29th June 2019 rejecting his appeal and upholding order passed by the Respondent No.3 denying him furlough leave. In view of leave granted on 9th October 2019 petitioner has also assailed order of prison punishment dated 23rd June 2016 whereby his name has been permanently removed from remission register.

2 Without prejudice to other contentions the learned counsel for the petitioner submits that in 2018 after death of father, petitioner was released on death parole and he has reported back himself on due date. According to her, action of removal of name from remission register is high-handed. Father of petitioner was then unwell and there was nobody else to

look after family. Petitioner was not absconding, has not indulged in any other offence but was taking care of his family and minor children. Contention is action of removal of name from remission register therefore is arbitrary. The medical records about the ill-health of father ought to have been accepted.

3 It is also submitted that in 2018 policy regarding grant of furlough leave has been amended and now respondents do not have power to permanently delete name of any prisoner on such grounds.

4 The learned APP is opposing the petition. According to her, order dated 23rd June 2016 has been passed in accordance with law then prevailing. The petitioner was given opportunity to bring evidence to substantiate his case but he failed to do so. As per the policy then prevailing as he had absconded for more than two years, appropriate punishment has been inflicted. Our attention is also drawn to Rule 4(10) of the Prisons (Bombay Furlough and Parole) Rules, 1959 to urge that this act of absconding dis-entitles the petitioner to claim furlough.

5 It is submitted that death parole is granted in exceptional circumstances and it cannot be used as an example to negate findings recorded in impugned orders.

6 With the assistance of respective counsel, we have perused the papers. The fact that petitioner did not report back on due date i.e. 9th June

2013 is not in dispute. Then because of ill-health of father he was also allowed extension of about 60 days. He thereafter also did not report back and was required to be arrested and brought to prison on 5th December 2015.

7 When he was asked to justify his conduct, he has given a reply along with necessary medical papers in support of ill-health of his father. The impugned order dated 23rd June 2016 does not show why authorities have dis-believed those papers. Though petitioner was called upon to produce evidence, that does not mean that medical papers produced by him could have been discarded. The respondents could have pointed out some material to show that medical papers do not inspire confidence that is not the position.

8 Not only this, subsequent death of father is also not in dispute. The respondents do not say that petitioner was not available at his residence and was therefore absconding. We therefore find it difficult to sustain the order of deletion of name from remission register permanently.

9 Rules permit respondents to forfeit remission to certain extent. Cut in remission can be maximum of 5 days for each day of delay. Here in present facts we find that interim of justice can be met with by directing cut in remission of two days for each day of delay i.e. of 1818 days in total. Insofar as the other order is concerned apprehension that the petitioner

may abscond is not borne out from the record. The respondents have not demonstrated that on earlier occasion whenever they went to apprehend him, he was not found at his resident. On the contrary, in 2018 when he was released on parole, he has reported back voluntarily within time. He has already put in 10 years in jail.

10 We therefore quash and set aside the appellate order as also order of Respondent No.3 rejecting him furlough leave.

11 We direct the respondents to obtain appropriate undertaking, sureties from him and to impose suitable terms and conditions. Subject to such terms and conditions and compliance respondents shall release him to avail furlough leave within four weeks from today. Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J.)

(B.P. DHARMADHIKARI, J.)