

pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.607 OF 2019

Subhash Shrimant Dhaygude

... Petitioner

Vs.

The State of Maharashtra

... Respondent

Ms. Ronita Bhattacharya for the Petitioner.

Ms. M.H. Mhatre, APP for the Respondent – State.

CORAM : A.S.OKA AND
A.S. GADKARI, JJ.

DATE : 5th MARCH 2019.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Heard the learned counsel appearing for the petitioner and the learned APP for the State. Rule. The learned APP waives service.

2 Forthwith taken up for final disposal. By order dated 11th June 2015, the petitioner was released on parole for the period from 8th July 2015 to 6th August 2015 (both days inclusive). On 20th July 2015, the petitioner applied to the State Government for extension of parole on the ground that his mother requires surgery and therefore, parole may be extended by further period of 30 days upto 7th September 2015. The medical certificate was also forwarded along with the said application. It appears from the record that on 24th August 2015, the petitioner made one more application for further extension of parole by 30 days upto 7th October 2015. Extension was sought on the ground that the petitioner's mother continues to be sick and requires to undergo a surgery. The

petitioner surrendered to jail on 6th October 2015. A show cause notice was issued to the petitioner calling upon him to show cause as to why his remission should not be cut. The petitioner replied to the show cause notice. Judicial appraisal was made by the learned Additional Sessions Judge, Kolhapur. In the judicial appraisal, it was mentioned that the order by which the application for extension of parole was rejected was challenged by the petitioner and the said order has been confirmed by the Division Bench of this Court.

3 By order dated 23rd February 2017, the Competent Authority imposed punishment of cutting of remission for 240 days. Remission was cut for a period of four days for each day of delay in reporting back to the prison. It is this order which is impugned in this petition.

4 After having heard the learned counsel appearing for the petitioner and the learned APP for the State, we find that in the impugned order dated 23rd February 2017, there is no application of mind by the Competent Authority to the reply submitted by the petitioner to the show cause notice. It is true that the order rejecting application for extension of parole was confirmed by this Court. We may note here that the letter dated 11th January 2019 signed by the Superintendent of Yerwada Central Prison addressed to the Registrar of this Court records that an order was made by the Home Ministry on 24th October 2015 by which his application for extension of parole was rejected. The petitioner had sought extension of parole upto 7th October 2015 and he surrendered on 6th October 2015. The decision on the application for extension of parole seems to have been taken after the period for which extension was sought expired. This fact is

not taken into consideration by the Competent Authority while passing the order of cutting remission. There is a non-application of mind inasmuch as the impugned order does not even refer to contents of the reply to the show cause notice. In the circumstances, the impugned order cannot be sustained.

5 Accordingly, we pass the following order :-

ORDER

- (i) The impugned order dated 23rd February 2017 passed by the Deputy Inspector General of Prisons, Western Zone, Pune is hereby set aside;
- (ii) We direct the said Authority to reconsider the issue after taking into consideration the reply submitted by the petitioner to the show cause notice. The Competent Authority will have to apply its mind to the question whether there is sufficient cause shown by the petitioner;
- (iii) We direct the Competent Authority to pass a fresh order within a period of one month from the date on which this order is communicated to the Competent Authority;
- (iv) A copy of the order passed by the Competent Authority shall be forwarded to the petitioner through the concerned Jail Superintendent. Even a copy of this order shall be forwarded to the petitioner;
- (v) Accordingly, Rule is made partly absolute on above terms.

(A.S. GADKARI, J.)

(A.S.OKA, J.)