

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

WRIT PETITION NO.1172 OF 2019

Manik Ananta Patil

...Petitioner

vs.

The State of Maharashtra and Anr.

...Respondents

**WITH
CRIMINAL APPLICATION NO.174 OF 2019**

Mr. N. N. Gawankar i/b Mr. Manas Gawankar for the petitioner.

Mrs. P. P. Shinde, APP for the Respondent.

Mr. N. M. Kamble, Jailor Group II, Yerwada Central Prison.

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

DATE : 16/04/2019.

P.C.

. Petitioner is before this Court for three reliefs. First one is regarding remission of two years on account of Golden Jubilee Celebration. Second is wrong treatment given to alleged over stay of 98 days and therefore removal of name of prisoner from remission register for three years. Last challenge is to removal of name of the prisoner from remission register for three years as per the order dated 1/12/2011 for late reporting by 119 days.

2. Necessary facts and documents on record are pointed out to this Court.

3. Learned APP is relying upon reply affidavit.

4. We find that the entitlement or liability of prisoner to

remission on account of Golden Jubilee Celebration is not in dispute. In paragraph No.17 of reply affidavit the necessary information has been set forth. It is mentioned therein that if the Competent Court furnishes required information, decision on the case of petitioner would be taken.

5. Facts show that co-convicts with petitioner viz., Ulhas Rane, Narendra Bhoir, Dnyaneshwar Patil have been given that benefit already. All three were acquitted by the Special Court on 18/5/1997. They were arrested on 23/9/1992 and released on bail during trial. State Government challenged this acquittal and ultimately Hon'ble Apex Court has on 24/1/2000 convicted them. Till their conviction, all of them were on bail.

6. When Respondents sought clarification in this respect in relation to co-accused, the Special Court TADA on 28/5/2018 informed that co-accused were on bail. Because of this information State Government has extended to them benefit of Golden Jubilee Celebration.

7. Here, learned APP has submitted that information was sought for in June 2018 and thereafter reminder has been sent in October 2018.

8. The petitioner is already categorized under 28 years category and he has few more months to put in prison. We are therefore not inclined to delve more into this niceties.

9. There is one more reason, for our refusal to look into these details. The order dated 8/1/2012 showing absence of the petitioner for 98 days as unauthorized, has been questioned before this Court. It appears that the petitioner was released initially on furlough leave for two weeks on 12/6/2009. 14 days extension therein was allowed and it expired on 9/7/2009. This Court in Writ Petition No.1790/2009 has taken into

consideration fact that he had undergone bypass surgery on 11/7/2009 and therefore granted him further extension of 3 weeks from 28/6/2009. This Court however then observed that he should report back by 17/8/2009. This Court in said order observed that he should have surrendered by 10/8/2009 and he had not surrendered. If he surrendered immediately on 18/8/2009, the period of over stay from 10/8/2009 to 18/8/2009 would be regularized.

10. Against this direction the petitioner approached Hon'ble Apex Court in SLP No.8211/2009 and on 16/11/2009 Hon'ble Apex Court granted him time of one week to surrender. That period of one week was to expire on 23/11/2009 and he has surrendered accordingly on that day.

11. In the result right from the date of his release from 12/6/2009 till 23/11/2009, as per orders of this Court and the Hon'ble Apex Court, he got leave and its extension. Period of 98 days therefore cannot be and could not have been treated as unauthorized absence. The punishment of removal of name of the petitioner from remission register for 3 years is thus unwarranted.

12. Learned counsel for the petitioner has submitted that for every year in prison, as per rules, prisoner earns remission of 114 days and thus, for period of three years he gets total remission of 342 days. This remission therefore must be credited and added to total period put in by him in prison. Material on record is however insufficient to show whether order of punishment dated 8/1/2012 has been actually implemented and therefore during relevant period of 3 years petitioner, has not earned any remission.

13. The order of punishment passed on 1/12/2011 has also been questioned before this Court. The said order shows that he over stayed the

furlough leave after he was released on 4/11/2004 and reported back voluntarily after 119 days. For this late return again his name has been removed from remission register for a period of three years.

14. After hearing learned APP we find that the challenge to the order of punishment dated 1/12/2011 is stale. Petitioner has acquiesced in it and enjoyed subsequent leave. Details in relation thereto are already mentioned by us above.

15. We are therefore not inclined to intervene in to this stale challenge. Petitioner could have raised that challenge even earlier.

16. In this situation, we find petitioner entitled to remission on account of golden jubilee celebration. Similarly the order dated 8/1/2012 is unsustainable and it is quashed and set aside. Remission earned by him for period of three years needs to be credited to his prison period, if it is not already done.

17. We therefore direct authorities to complete the exercise accordingly within a period of 4 weeks and thereafter to find out whether he had completed his punishment as per the order of categorization.

18. Written communication after completion of this exercise informing him the balance period to be spent in prison shall be served upon him with due acknowledgment within two weeks thereafter. Needless to mention that if as a result of this exercise, the prisoner is found to have completed the punishment, he shall be released forthwith. The petition is accordingly allowed and disposed of. No costs.

(PRAKASH D. NAIK, J.)

(B. P. DHARMADHIKARI, J.)