

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

CRIMINAL WRIT PETITION NO.3975 OF 2018

1. **Mr.Shaikh Istiyaq Ahmed**
(At present in Judicial Custody
in Thane Central Prison)
Room No.101, 1st Floor,
Balkrishna Apartment,
Near Jama Masjid, Mussaji Galli,
Vasai (West), Palghar **...Petitioner**

V/s.

1. **The Union of India**
Through the Secretary,
Ministry of Home Affairs,
(Centre-State Division),
North Block, New Delhi-110 001
& Alternatively,
Through Ministry of Home Affairs
(Centre-State Division)
Aaykar Bhavan, 2nd Floor,
New Marine Lines, Mumbai.
2. **The Union of India**
Through The Secretary,
Ministry of Law & Justice,
North Block, New Delhi-110 001.
3. **Department of Home**
Through its Principal Secretary (Appeal)
Government of Maharashtra
Mantralaya, Mumbai – 400 032.
4. **The Inspector General of Prison**
State of Maharashtra, 2nd Floor,
Central Building, Pune- 411 001.

5. The State of Maharashtra
Through The Superintendent
of Prison, Thane Central Prison
Thane.

...Respondents

Mr.M.M. Najmi i/b Patel Mujjaffar Yasinshah for the Petitioner.

Mr.H.S. Venegaonkar for Respondent Nos.1 and 2.

Mr.Deepak Thakre-PP a/w Mrs.A.S. Pai-APP for the Respondent-State.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

RESERVED ON :08th APRIL 2019

PRONOUNCED ON : 02nd MAY 2019

JUDGMENT : (Per Smt.Bharati H. Dangre,J)

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. Shaikh Istiyaq Ahmed an Indian National and citizen of India has invoked writ jurisdiction of this Court initially seeking revision of his release date and seeking his release with effect from 17.11.2018. The petition however, came to be extensively amended to seek relief of quashing and setting aside of order dated 03.12.2018 passed by the Government of India, Ministry of Home Affairs, by which the prayer made by the petitioner for reduction of his sentence under the Repatriation of Prisoners Act, 2003 came to

be turned down on the ground that the sentence imposed on him by the Mauritius Court is not in consonance with the sentence imposed by the contracting State, thereby rejecting his prayer for adopting his sentence from 26 years to 10 years.

3. In order to adjudicate the issue involved, it would be necessary to delve into the chronology of facts leading to the filing of present petition. The petitioner, an Indian National and a citizen of India was charged with an offence of willfully, unlawfully and knowingly in possession of dangerous drugs for the purposes of distribution in Mauritius. He was charged for carrying 152.8 gms of heroin powder with (a) 15.9 grams contained in a double plastic sachet, and (b) 136.9 grams contained in 39 white plastic capsules.

In light of the said accusation, he was charged as a trafficker within the meaning of Section 41(3) and (4) of the Dangerous Drugs Act. The petitioner came to be arrested on 23.10.2008 by the Mauritius Police and he claimed not guilty and was subjected to a trial. The Supreme Court of Mauritius by a judgment dated 20.12.2014 recorded a finding of guilt and attributed knowledge to the petitioner for possession of the drugs which was considered to be worth Rs.2,292,000/-. A finding came to be recorded by the Supreme Court of Mauritius that the petitioner

is a trafficker. On conviction he was sentenced to 26 years of imprisonment by judgment dated 12.02.2014. The petitioner was undergoing incarceration in Mauritius. However, in light of the agreement entered into between the Government of India and the Court of Mauritius for transfer of prisoners, he came to be transferred to India from Mauritius to undergo the remainder of his sentence in Indian prison and from the year 2017, the petitioner is undergoing sentence in Thane Central Prison.

4. According to the petitioner on spending 1912 days in Prison he enquired with the jail authorities about the date of his release. On further enquiry, it was intimated that a period of about 1912 days (i.e. 5 years 2 months and 27 days) was not included by the jail authority in the sentence, while adopting the petitioner's transfer from Mauritius. The sister of the petitioner forwarded an e-mail communication to the Government of India, Ministry of Home Affairs on 19.04.2017 and the petitioner came in possession of some related papers. On the basis of this scanty material, the petitioner commenced his legal battle and legal notice was issued to the authorities on 07.03.2018 which the petitioner has annexed along with the petition. A detailed representation preferred by the brother of the petitioner Mr.Asfaq Mustak Shaikh where the ordeal suffered

by the petitioner was narrated to the authority. It was pointed out to the authority that the juxtaposition of Section 13(6) of the Repatriation of Prisoners Act, 2003 made the petitioner entitled for maximum punishment upto 10 years in terms of Section 21(d) of the Narcotic Drugs and Psychotropic Substance Act, 1985. The attention of the authority was also invited to the fact that the petitioner had undergone imprisonment of 1912 days i.e. 5 years 2 months and 22 days approximately in Mauritius/Eastern High Security Prison, Melorse and therefore the date of his release should be readjusted after taking into consideration the said period. Reference was also made to the provisions of the Repatriation of Prisoners Act, 2003 and the various indenture or treaties executed by the Government of India with Mauritius.

During the pendency of the said petition the said representation came up for consideration and two orders came to be passed by the Government of India, Ministry of Home Affairs, both being dated 03.12.2018. By the first order, the grievance of the petitioner about deduction of the period spent by him on remand in Mauritius i.e. of 1912 days not being taken into account while calculating his sentence on his transfer from Mauritius to India and for revision of his sentence was considered positively and it was ordered that the period spent on remand by the petitioner will be

deducted from the sentence of 26 years awarded to him. The grievance of the petitioner as regards the adoption of sentence in terms of Section 13(6) of the Repatriation of Prisoners Act, 2003, however, came to be rejected and it is this order which is the subject matter of challenge in the present Writ Petition. The petitioner rests his case on the provisions of the Repatriation of Prisoners Act, 2003 which is a special enactment which provide for transfer of certain prisoners from India to other country or outside India and their reception. The said enactment intends to give effect to the bilateral international sovereign treaties and the said enactment enables the transfer of convicted foreigners to their home countries and equally aims to receive Indians incarcerated abroad. Section 13 of the said enactment is invoked by the petitioner and on his representation preferred to the Central Government requesting to exercise the power conferred on it under Sub-Section 6 of the Section 13, the impugned order has been passed.

5. The learned counsel Shri.Najmi appearing for the petitioner advanced a submission to the effect that the reasoning cited in the impugned communication to reject the prayer of the petitioner on the ground that the reduction of sentence by 16 years is not in consonance with Section 13(6) of the Repatriation of

Prisoners Act, 2003 and Article 8 of the Transfer of Sentenced Persons Agreement between India and Mauritius is not a *bona fide* exercise of the power on behalf of the Government. He would invite our attention to Article 8 of the Indo-Mauritius Agreement on Transfer of Sentenced Persons which provide that the receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State. It is only if the sentence awarded by nature or duration or both is incompatible with the law of the receiving State, or its law so require, that State may, by Court or administrative order, adapt the sentence of punishment or measure prescribed by its own law. He submits that the said agreement contemplates that the nature and duration of the punishment or measure should correspond with the sentence that is imposed by the judgment of the transferring State. The learned counsel for the petitioner would further submit that the Mauritius Supreme Court had awarded him a sentence of 26 years for possession of 152.8 grams of heroin for the purpose of distribution and trafficking. He submits that as far as the laws in India i.e receiving State is concerned, it has undergone a substantial change in the year 2001 by amending the Narcotic Drugs and Psychotropic Substance Act, 1985 and by the (Amending Act of 2001) a scheme of graded sentence has been introduced by which the severity of the

sentence was linked in direct proportion, to the quantity of prohibited substance carried and a principle of the greater quantity, more severe sentence has been adopted. The learned counsel has relied on the communication of the Deputy Legal Advisor addressed to the Under Secretary to the Government of India dated 15.10.2015 where it was recorded that the petitioner was in possession of 152.8 gms and 120 gms of Heroin respectively which is a manufactured drug and it is intermediate quantity as per NDPS Act and the act of possessing the said drug was punishable under Section 21(b) of the NDPS Act. The learned counsel would further submit that the Enactment in India, which came to be amended by the Amending Act of 2001 introduced definitions of “small quantity” and “commercial quantity”, which meant the quantities less than and greater than, those notified in Section 2(xxiii a) and (vii a) of the NDPS Act. The scheme of graded sentences contemplate the maximum penalty of 20 years with minimum penalty of 10 years depending on the category of drugs possessed. In these circumstances, the learned counsel for the petitioner submits that the compatibility of the sentence ought to have been applied in law of the existing statutory frame work in India as against the sentence awarded to him in Mauritius.

6. Shri.Venegaonkar, the learned counsel appearing for the Union of India vehemently opposed the petition and justified the impugned order. He would place reliance on the affidavit filed by the Under Secretary, Ministry of Home Affairs, Government of India dated 28.01.2019. Shri.Venegaonkar, relying on the judgment of the Mauritius Supreme Court dated 12.02.2014 submit that the contention of the petitioner that he is entitled for maximum 10 years in India as per Section 21(b) of the Narcotic Drugs and Psychotropic Substance Act, 1985 is misleading. He submits that the order of Supreme Court of Mauritius has recorded that the accused was charged with the offence of willfully, unlawfully and knowingly being in possession of the dangerous drugs for the purpose of distribution in breach of Section 30(1)(f)(ii), 47(2) and 5(2) of the Dangerous Drugs Act of Mauritius and he was awarded 26 years imprisonment by the Supreme Court of Mauritius for possession of 152.8 grams of heroin for purposes of distribution and trafficking. Shri.Venegaonkar, would further submit that Section 13(6) of the Repatriation of Prisoners Act, 2003 is applicable if the sentence of imprisonment passed against the prisoner in the contracting State is incompatible with the Indian law as to its nature, duration or both and it is then open to the Central Government to adapt the sentence of such punishment as to the

nature, duration or both, as the case may be, which is compatible to the sentence of imprisonment provided for similar offence. However, this provision is appended with the proviso prescribed that the sentence so adapted shall, as far as possible correspond with the sentence imposed by the judgment of the contracting State. He would place heavy reliance on Article 8 of the Agreement on Transfer of Sentenced Persons between the two nations and would submit that the said agreement provide that the receiving States shall be bound by the legal nature and duration of the sentence as determined by the transferring State. The learned counsel thus asserted that Government of India is bound by the provision of Article 13(6) of the Repatriation of Prisoners Act, 2003 and also by Article 8 of the TSP Agreement between two nations. He would submit that the spirit of the Act as well as the agreement is to take care of the human aspect and to ensure that the convict is placed near his family and relatives which secures a better chance of rehabilitation. However, this process cannot be allowed to be used as a tool to undergo lesser sentence than which he would otherwise been required to be serve in the country where he was sentenced had he not been transferred to his native country. More soever the provision for adoption of sentence in Section 13(6) of the Act of 2003 according to Shri.Venegaonkar is not an unfettered and

absolute right but comes with a clear provision for adoption of a sentence if it corresponds with the sentence imposed in the contracting State and this surely would not encourage substantive reduction in the sentence pronounced in the sentencing State and receiving State is bound by the nature and duration of the sentence as determined by the Transferring State. In such circumstances, Shri.Venegaonkar submits that the petition deserves to be dismissed and the petitioner shall be required to undergo the entire sentence awarded to him by the Mauritius Supreme Court.

7. With the assistance of the learned counsel for the parties we have carefully perused the petition, affidavit-in-reply and also considered the rival submissions of the counsel representing both sides. Certain undisputed facts must be enumerated at the outset.

The petitioner is an Indian National and citizen of India. The petitioner came to be arrested on 20.03.2008 by the Mauritius Police for the offence punishable under Mauritius Dangerous Drugs Act. He was charged with possession of 152.8 grams of heroin powder out of which 15.9 grams was contained in a double plastic sachet and 136.9 grms was contained in 39 white plastic capsules. The Forensic Scientist led evidence before the

Court to the effect that she had examined the prohibited substance and found that the double plastic sachet contained 15.9 gram of brown powder and the 39 capsules contained a total of 136.9 grams of brown powder. Upon analysis, the powder was identified as heroin. On consideration of the testimony of the witness, the Supreme Court of Mauritius recorded a conclusion that the contraband was possessed by him for the purposes of distribution and it was not meant for his personal consumption. The Court conclusively recorded a finding that the accused before it, is a trafficker. Considering the circumstances involved, he was sentenced to undergo 26 years penal servitude. The time of 1900 days spent by the accused/petitioner on remand, awaiting the trial was directed to be deducted from the period for which the sentence was to run. The petitioner came to be sentenced on 12.02.2014 and he was ordered to serve 9496 days of imprisonment and his date of release was determine 17.12.2034. The case of the petitioner was taken up for repatriation from the Melrose Prison and on examination, no adverse record was found against the petitioner. The decision of repatriation was positively recommended by the Ministry of Home Affairs, Government of India. The representation was preferred under Section 13(6) of the Act of 2003 by the petitioner and on 28.06.2018, thereby praying that the

representation may be allowed in terms of Section 13(6) of the Repatriation of Prisoners Act, 2003 and the penalty imposed on him should be scaled upto 10 years as per Section 21(b) of the NDPS Act, 1984. It was also prayed that undergone period of imprisonment of 1912 days in Mauritius/Eastern High Security Prison, Melorse may be considered for revision of his release date and it was estimated to be nearing 17.11.2018.

On such a representation being made, the case of the petitioner came to be positively recommended and two orders came to be passed on 03.12.2018. By the first order the period spent on remand by the petitioner was ordered to be deducted from the sentence of 26 years awarded to him. The said communication was addressed to the Inspector General of Prisons, Maharashtra. Another order came to be passed on 03.12.2018 for consideration of the request of the petitioner to be entitled to a maximum punishment 10 years in India for adaption of sentence under Section 13(6) of the Repatriation of Prisoners Act, 2003. The said order which is impugned in the present petition turns down the request of the petitioner to adopt the sentence of 26 years awarded by the Mauritius Court to 10 years under Section 21(b) of the NDPS Act, 1985 and the said order reads thus :-

“7. Whereas, Section 13(6) of the Repatriation Act,

*2003 provides that if the sentence of imprisonment passed against the prisoner in the contracting State is incompatible with the Indian law as to its nature, duration or both, the Central Government may, by order, adapt the sentence of such punishment as to the nature, duration or both, as the case may be, as is compatible to the sentence of imprisonment provided for a similar offence had that offence been committed in India **provided that the sentence so adapted shall, as far as possible, correspond with the sentence imposed by the judgment of the contracting State.***

8. *Whereas, Article 8 of the Indo-Mauritius Agreement on Transfer of Sentenced Persons provides that the receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State. If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. **As to its nature and duration, the punishment or measure shall, as far as possible correspond with that imposed by the judgment of the transferring State.***

9. *Whereas, the prayer of the petitioner is to adapt the sentence of 26 years awarded by the Mauritius Court to 10 years under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, which would amount to reduction of sentence by 16 years and is thus not be in consonance with Section 13(6) of the Repatriation of Prisoners Act, 2003 and Article 8 of the Transfer of Sentenced Persons Agreement between India and Mauritius which provides that **the adapted sentence shall, as far as possible, correspond with the sentence imposed by the contracting State.***

10. *Therefore, in view of the above facts, the competent authority has not agreed to the request of Mr. Shaikh Ishtiyaque Ahmed for adapting his sentence from 26 years to 10 years.*

It is this order which is impugned.

8. In the backdrop of the factual situation emanating we have perused the agreement between the Government of Republic of India and Government of Republic of Mauritius on transfer of prisoners executed on 24.10.2005. We have also carefully perused the provisions of the Repatriation of Prisoners Act, 2003. The object of the Act of 2003 can be ascertained from its statement of objects

and reasons, which proceeds to state that prior to this enactment there was no provision, either in the Code of Criminal Procedure, 1973 or any other law, by which foreign prisoners in India could be transferred to their home countries. This was a matter of no little concern, allowing such prisoners to be repatriated to serve out their remaining jail terms as, it was thought would serve the object of social rehabilitation by placing them closer to their families. The Repatriation Act, 2003 was intended to work in conjunction with the bilateral international Sovereign treaties so that the Central Government would transfer convicted foreigners to their home countries and vice-a-versa. The said enactment came into force from 01.01.2004 and it is made applicable to a country or place outside India as specified by the notification issued by the Central Government. By seeking recourse to the provisions of the enactment, the prisoner who is citizen of contracting State may make an application to the Central Government for transfer of the custody from India to another contracting State. Contracting State was defined in the said enactment to mean a Government of any country or place outside India in respect of which arrangement has been made by the Central Government with the Government of such country or place towards treaties or otherwise for transfer of prisoners from India to such country or place vice-a-versa and

includes any Government of such country or place specified by the Central Government by notification in official Gazette. The enactment sets out the procedure for processing such an application in detail and it is the Central Government of the country by virtue of Section 12 of the enactment which is competent to accept the transfer of the prisoner, who is a citizen of India, from a contracting State wherein he is undergoing sentence of imprisonment subject to the terms and conditions as may be agreed to between India and that State. On such a request being accepted, then the Central Government may issue a warrant to detain the prisoners in accordance with provisions of section 13 of the enactment in such form as may be prescribed. Section 13 of the said enactment prescribes the determination of prison and issue of warrant for receiving a transfer prisoner in India. By the said provision, the Central Government is empowered in consultation with the State Government to determine the prison situated within jurisdiction of the State Government where the prisoners in respect of home warrant has been issued by the Central Government shall be lodged and it would also specify the officer who shall receive and hold the prisoner transferred from contracting State in custody. The most important provision in Sub Section-6 and the issue in the present petition revolves around the said sub-section which reads thus :-

“Section 13(6) :- *If the sentence of imprisonment passed against the prisoner in the contracting State is incompatible with the Indian law as to its nature, duration or both, the Central Government may, by order, adapt the sentence of such punishment as to the nature, duration or both, as the case may be, as is compatible to the sentence of imprisonment provided for a similar offence had that offence been committed in India:*

Provided that the sentence so adapted shall, as far as possible, correspond with the sentence imposed by the judgment of the contracting State to the prisoner and such adopted sentence shall not aggravate the punishment, by its nature, duration or both relating to the sentence imposed in the contracting State.

9. Apposite to the said enactment exists an agreement between the Government of Republic of India and the Government of Republic of Mauritius on the issue of transfer of prisoners. The said agreement executed between the two States desiring to facilitate the social rehabilitation of the prisoners into their own countries. The said agreement contain the following stipulations inform of Article 7, Article 8 and Article 9:-

“ARTICLE-7-Effect of transfer for the receiving State

1. *The competent authorities of the receiving State shall continue the enforcement of the sentence through a Court of administrative order, as may be required under*

its national law, under the conditions set out in Article 8 of this Agreement.

2. *Subject to the provisions of Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State along shall be competent to take all appropriate decision.*

“ARTICLE-8-Continued enforcement of sentence:-

1. *The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.*

2. *If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by Court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.*

“ARTICLE-9-Effect of sentence for the transferring State

When the receiving notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been enforced, such notification shall have the effect of discharging that sentence in the transferring State.

10. Based on the provisions of the enactment of the agreement the Central Government has considered the prayer of the petitioner. Article 8 of the agreement no doubt cast a duty on the receiving State to be bound by the legal nature and duration of the sentence as determined by the transferring State. It is only when the sentence by its nature or duration or both is incompatible with the law of the receiving State, it may adapt sentence to a punishment or measure prescribed by own law. The stipulation contained in Article 8 of the agreement, operates only as a restriction that it is not open for the receiving State to aggravate, by its nature and duration of the sentence imposed in the transferring State. Relying on the said clause, the Central Government has rejected the request of the petitioner by observing that the prayer of the petitioner is to adapt the sentence of 26 years awarded by the Mauritius Supreme Court to 10 years under Section 21(b) of the Act of 1985. The Central Government concludes that this would amount to reduction of sentence by 16 years and this would not be inconsonance with Section 13(6) of the Repatriation of Prisoners Act, 2003 and also Article 8 of the agreement between India and Mauritius which stipulates that the adapted sentence shall as far as possible correspond with the sentence imposed by the contracting State. The question that falls for consideration and determination is

whether the sentence imposed on the petitioner by the Mauritius Supreme Court is adaptable under the Indian Law. The test is whether the sentence of imprisonment passed against the prisoner in contracting State is incompatible with the Indian law, the Central Government may adapt the sentence of such punishment as to the nature and duration or both as may be as is compatible the sentence of imprisonment provided for a similar offence had that offence is committed in India. The petitioner is charged with the offence of willfully and unlawfully being in possession of the dangerous drugs for the purpose of distribution. If the similar offence was committed in India the petitioner would have been subjected to the NDPS Act, 1985 regime and he would have warranted a penalty under Section 21 of the said enactment. It is to be noted that Section 21 has undergone a substantial change by the Amending Act of 2001. The NDPS Act which provides for deterrent punishment for various offences related to illegal trafficking in Narcotic Drugs and Psychotropic Substance contained a uniform punishment of minimum 10 years rigorous Imprisonment which may be extended upto 20 years. While the enactment envisages severe punishment for drug traffickers it also envisages reformatory approach towards addict. The Parliament therefore proposed to rationalize the sentence structure so as to ensure that while drug trafficker who

traffic in significant quantity of drugs is punished with deterrent sentence and those who indulge in less serious offence are sentenced to lesser penalty. This resulted into rationalization of the sentence structure provided under the enactment and a wholly new scheme of graded sentences came to be introduced with effect from 02.10.2001. The said amendment linked the sentences to the quantity of prohibited substances carried. The punishment thus came to be trifurcated into three clauses namely (a) where the contravention involves small quantity, it call for imposition of sentence with rigorous imprisonment for a term which may extend to one year or fine which may extend to ten thousand rupees, or with both (b) Where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, then it imposed rigorous imprisonment it would call for intervention of rigorous imprisonment to ten years, and fine which may extend, to one lakh rupees (c) where the contravention involves commercial quantity then it would result in awarding of penalty of rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and fine of not less than one lakh rupees which may extend to two lakh rupees.

11. The new regime under the Narcotic Drugs and

Psychotropic Substance Act, 1985 rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, whereas those who commit less serious offences are sentenced to less severe punishment. The quantity of drug possessed by the petitioner would fall in category (b) i.e. intermediate quantity and therefore if he would have been tried in India under the existing regime after coming into force of the new amendment, he would have been liable for sentence of 10 years under clause 21(d). The petitioner was found to be in possession of heroin which is opium derivative and opium derivative is defined in Section 2(xvi)(ii)(d) and (e) of NDPS Act, 1985. The product seized from the petitioner was containing 6% of purity and what was considered by the authority was the gross weight of the seized material. In India, the petitioner, it would have fallen within ambit of Clause (b) of Section 21 and petitioner would have been liable for penalty of 10 years.

In such circumstances, it was open for the Central Government by taking into consideration the spirit of the Repatriation of Prisoners Act, 2003 and Article 8 of the Transfer of Sentenced Prisoners Agreement to adapt the sentence which would correspond with the sentence imposed by the contracting State by taking into consideration its nature and duration. What would be

required to be compared is the Act which constitute an offence in the contracting State and duration of penalty which would be imposed if a person is found guilty of committing an offence resulting from such an act. The reason cited in the impugned order of adaptability of the sentences and to be precise, sentence of 26 years awarded by Mauritius Court to 10 year under Section 21(b) of the NDPS Act, 1985 has been held to be not in consonance of the Section 13(6) of the Repatriation of Prisoners Act, 2003, we do not think that Section 13(6) or the agreement intend to measure the duration of the penalty and it is not a sole basis of it being compatible. Compatibility necessarily would involve the nature of offence and also the corresponding punishment. Taking into consideration the fact that if the same offence committed by the petitioner in Mauritius was committed in India, he would have been imposed a penalty prescribed under Section 21(b) and in such circumstances, the compatibility of the sentence would not only require compatibility of duration but also the nature of the offence. The mere reason that if the prayer of the petitioner is granted it would amount to reduction of sentence by 16 years cannot be a valid justification for rejection of the prayer of the petitioner. In such circumstances, we are satisfied that the order impugned passed by the respondent No.1 cannot be sustained and it rather violates

Section 13(6) of the Repatriation of Prisoners Act, 2003 and its object and spirit. In the result the impugned order is liable to be struck down. The petitioner is entitled for the benefit of adoption of sentence in terms of Section 13(6) of the Repatriation of Prisoners Act, 2003.

For the reasons recorded above, Writ Petition is allowed. Rule is made absolute in terms of prayer clause (b). The respondent is directed to revise the petitioner's release date by taking into consideration the adoption of sentence in terms of Section 13(6) of the Repatriation of Prisoners Act, 2003 and order the release of the petitioner after calculating his date of release.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)