

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4494 OF 2018

WITH

WRIT PETITION NO. 5084 OF 2018

Amarshi Ramji Rathod ... Petitioners

Versus

The State of Maharashtra and anr. ... Respondents

Ms. Maya P. Mujumdar for the petitioners.

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

**CORAM : B.P. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.**

DATE : SEPTEMBER 25, 2019

P.C.:

Heard respective counsel.

2. Petitioner has complained of excessive punishment and in addition also challenges vires of rules which permit such punishment.

3. Learned APP has pointed out that even if the present petitions are dismissed, petitioner completes his prison punishment on 1/12/2019 and will be set free immediately thereafter.

4. The prisoner has reported late by 38 days in November, 2010 and for this late reporting of 38 days, 4 days cut in remission for each day of delay has been ordered as

punishment. Thus his remission of 152 days has been deducted for this late reporting. He was late by 30 days when he reported back on 28/1/2015. For this late reporting, punishment imposed is of 5 days cut in remission for each day of delay. Thus total remission cut on that account is of 150 days.

5. Son of the petitioner appears to be specially abled and on account of his treatment, petitioner kept out. He was sanctioned leave and he had reported back voluntarily. He was not required to be arrested and brought back. Even after his late reporting on 28/1/2015, he was again released on parole on 09/12/2016 and he has reported back voluntarily on 23/1/2017 on due date.

6. In this situation, when the respondent authorities have accepted the need to release him on parole or furlough and he has never absconded, we find the quantum chosen by the respondents on higher side.

7. The nominal role produced before us shows that even on 6/7/2009, he had reported back late by 131 days and at that time, the remission cut ordered was of 1 day for each day of delay.

8. Taking the overall view of the matter, we find that the remission cut of 3 days for each day of delay will meet the ends of justice. The total period of over stay is 68 days and therefore,

total cut will be 204 days. In view of this modification, it is apparent that the prisoner may have already completed his prison term.

9. We accordingly modify both the orders and bring down his remission cut to 3 days of each day of delay for both the occasions.

10. Respondents shall accordingly considering the said modification calculate the period of imprisonment and release him forthwith, if he has already completed the prison term.

11. Both the petitions are accordingly allowed and disposed of.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)