

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 11 OF 2020
WITH
CRIMINAL WRIT PETITION NO. 861 OF 2019

Rajendra s/o. Mahadev Sakhare
Age 42 years, Occu. Nil Convict No. 8480
R/o. At Present Central Prison Aurangabad
Dist. Aurangabad.

....Petitioner.

Versus

The State of Maharashtra
Through Secretary Home Department
Mantralaya Mumbai and ors.

....Respondents.

Mrs. Bharati B. Gunjal, Advocate for petitioner.

Mr. K.D. Mundhe, APP for respondents.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 13/10/2020.

ORDER :

1. The proceeding bearing Criminal Writ Petition No. 861/2019 is filed for relief of direction against the respondents to decide the proposal given in respect of the petitioner prisoner for taking decision on his premature release. He is life convict. That proceeding was filed on 24.4.2019. The second proceeding bearing Criminal Writ Petition No. 11/2020 came to be filed on 19.12.2019 and in this matter relief of direction is claimed to see that the remission period to which he is entitled is considered and after calculating that period he is released from jail when he completes 24 years of jail term. Both the sides are heard.

2. It is not disputed that the authority has considered the guidelines given for taking decision on premature release and he is placed in such category of Guidelines of 1978 and 2020 that the period of 24 years of imprisonment is required to be undergone by such prisoner. That part of decision is not challenged by the petitioner and it is his contention that he is entitled to the remission which he had earned atleast prior to the date from which he absconded.

3. The submissions made and the say filed show that he was aged about 28 years when he was convicted and at present his age is 49 years. There was conviction in the year 1990 and in 1994 when he was released from jail on parole he absconded and he was brought back to the jail after 3684 days, on 5.8.2004. Thus, during this long period of more than 10 years he did not undergo the sentence of imprisonment and he was required to be brought back after his arrest. The record shows that when he was undergoing sentence of life imprisonment, three times he was convicted. The period of 3684 days cannot be counted as sentence undergone and if that period is excluded, the total imprisonment which was actually undergone including the under trial period comes to 20 years four months and 23 days. The submissions made show that the period of three months is given as remission period which is general remission.

4. This Court has carefully gone through the remission system, statutory rules. Rule 22 is as under :-

“22. Forfeiture of remission .- (I) Where a prisoner escapes from legal custody, the total remission earned by him up to the date of his escape shall stand forfeited.

(ii) Where a prisoner attempts to escape from legal custody or plans or abets escapes, the Superintendent shall, with the previous approval of the Regional Deputy Inspector General, pass such orders thereon as the circumstances of the case may require.

(iii) Where a prisoner, after his admission into the prison, is convicted of an offence under sections 147, 148, 152, 224, 302, 304, 304A, 306, 307, 308, 323, 324, 325, 326, 327, 332, 333, 352, 353 or 377 of the Indian Penal Code, the Superintendent shall with the previous sanction of the Regional Deputy Inspector General forfeit any remission earned by such prisoner.”

There is one more rule like Rule 23 and it is as under :-

“23. Power of Superintendent to forfeit remissions by way of punishments etc.- Subject to the provisions of rule 22, a Superintendent may punish any prisoner for offence under section 46 of the Act, in either or both the following methods that is to say, by-

(a) forfeiting any ordinary or special remission for a period not exceeding 60 days,

(b) removing any prisoner from the remission system for a period not exceeding one year :

Provided that where the Superintendent is of

opinion that higher punishment by way of forfeiture of remission or removal from the remission system is necessary in the case of any prisoner, he may, with the previous sanction of the Regional Deputy Inspector General, award such higher punishment including permanent removal from the remission system or both.”

5. The aforesaid Rules show that it is provided that in case like present one the total remission which was actually earned as on the date of escape can be forfeited. The learned counsel for petitioner submitted that there is no specific order in that regard. In any case, considering the aforesaid factual aspect and the rules, it can be said that after 1994 he could not have been put on the remission list and after that there was no question of earning any remission. Whatever previous remission he had earned could have been forfeited. Further, the authority has shown that ordinary remission of three months will be given. From the decision taken by the authority, the petitioner will come out of the jail on 3.7.2023. In view of the aforesaid rules and circumstances, this Court holds that the authority has not committed any error in taking such decision. In the result, both the petitions stand dismissed.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]