

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

18 CRIMINAL WRIT PETITION NO.513 OF 2021

Sherkhan s/o Mirbas Khan Pathan
Age : 49 years, Occu : Convict,
R/o. Petitioner is undergoing his
sentence in Central Jail, Aurangabad
Permanent Resident of Machigalli, Umri,
Tal. Umri, Dist. Nanded .. Petitioner

Versus

The State of Maharashtra
Through Superintendent,
Central Jail, Aurangabad .. Respondent

...
Advocate for the Petitioner : Mr Rupesh A Jaiswal
APP for the Respondent / State : Mr S.D. Ghayal
...

**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

Date : 03-05-2021

ORAL JUDGMENT (PER: RAVINDRA V. GHUGE, J.) :-

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

2. We have considered the strenuous submissions of the
learned Advocate for the petitioner and the learned Prosecutor on

behalf of the State. With their assistance, we have perused the notification dated 08-05-2020, and the judgment of the learned Division Bench of this Court dated 22-02-2018 delivered in Criminal Writ Petition No.0071 of 2018 filed by the present petitioner namely Sherkhan S/o. Mirbaj Khan Pathan Vs. The State of Maharashtra and Others.

3. The petitioner was an under trial prisoner from 27-04-2010 till he was convicted on 08-12-2011 by the learned Sessions Judge, Bhokar in Session Case No.65 of 2010 for having committed offences punishable under Sections 302 and 498-A of the Indian Penal Code, 1860 (IPC). The petitioner has undergone 9 years and 6 months of jail term till today.

4. The impugned order indicates that, the petitioner was earlier granted furlough leave for the period of 28 days and was expected to report back to the prison within the time prescribed. However, the petitioner had to be arrested to be brought back to the prison on 07-08-2014, beyond the furlough leave. The unauthorised stay of the petitioner out of the prison was for 677 days. This was considered by the learned Division Bench of this Court in Criminal Writ Petition No.0071 of 2018 vide Judgment dated 22-02-2018.

This Court noted that, the petitioner had not reported to the prison within time and stayed for 677 days unauthorizedly out of the prison as his wife died and he had four minor daughters. This Court also noted, that as a consequence of the arrest of the petitioner and he being brought back to the prison after 677 days delay, he was rendered ineligible for remission and his name was, therefore, permanently removed from the remission register. This Court concluded that, he had suffered the punishment for his late reporting and allowed his criminal writ petition by granting him furlough leave subject to compliance of the necessary formalities / conditions. The learned Advocate for the petitioner submits that, he could not derive any benefit from this Judgment of the Court as he did not have the capacity of fulfilling the conditions of surety and, therefore, he did not avail of the furlough leave.

5. It is well settled that, a person cannot be punished twice for the same misdeed. The present petitioner, notwithstanding that his wife died, had not returned to the prison for 677 days beyond the furlough leave granted and he had to be arrested in order to be brought back to the prison. This is surely an act which cannot be countenanced and could not have been pardoned. The Jail authorities have, therefore, rightly removed his name from the

remission register thereby meaning that, the present petitioner would no longer be entitled to seek remission. So also, the law on remission is that, for one day delay of reporting to the prison, a prisoner forfeits five days of remission period. Since he has been permanently removed from the register of remission, he has lost his right to seek remission at any time in future and even if it was held that he is entitled for remission in future, the delay of 677 days multiplied by 5 days, which equals to 3385 days, would be forfeited from his remission.

6. In our view, as has been held by the co-ordinate Bench of this Court in the Judgment dated 22-02-2018 (*supra*), the present petitioner has been penalized for his deeds as recorded above and, once he has suffered the punishment of his name being removed from the remission register, we are not inclined to accept the view of the Superintendent of Aurangabad Central Jail that the present petitioner would not be entitled for emergency parole under Rule 19 (1)(C) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, on this sole ground.

7. In view of the above, this petition is allowed. The impugned order dated 07-08-2020 is quashed and set aside. Subject to the

fulfillment of the usual requisite conditions that are made applicable for granting emergency parole leave, the petitioner shall be granted such emergency parole leave with effect from 10-05-2021.

(B. U. DEBADWAR)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

Gajanan Punde, PA.