

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2243 OF 2021

Sachin Gajanan Shete ...Petitioner
vs.
The State of Maharashtra
(Through Superintendent,
Central Prison, Yerwada, Pune) ...Respondent

Mr. Rupesh Jaiswal, for the Petitioner.
Mrs. M.H. Mhatre, APP for the Respondent-State.

CORAM : **S.S. SHINDE &
N.J. JAMADAR, JJ.**

JUDGMENT RESERVED ON : 11th AUGUST, 2021
JUDGMENT PRONOUNCED ON : 23rd AUGUST, 2021

JUDGMENT : (Per N.J.Jamadar, J.)

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. This petition under Article 226 of the Constitution of India calls in question the legality and correctness of the order dated 22nd July, 2020 passed by the Superintendent, Yerwada Central Prison, Pune- respondent, whereby the application of the petitioner for release on Covid-19 emergency parole came to be

rejected on the count of overstay by 49 days when the petitioner was released on furlough on 8th February, 2012 and by 274 days when the petitioner was released on parole on 9th February, 2013.

3. Shorn of superfluities, the background facts can be stated as under:

The petitioner came to be convicted for the offence punishable under section 302 read with 34 of the Indian Penal Code, 1860 (the Penal Code) by judgment and order dated 11th June, 2001. The petitioner has been in custody since 22nd October, 2000. The petitioner asserts that he had overstayed by 274 days when he was released on parole on 11th February, 2012. However, the petitioner has already been punished by striking off his name from the remission register permanently. Thus, in the wake of situation which arose on account of Covid-19 pandemic, the said period of overstay could not have been arrayed against the petitioner to deprive him of the benefit of Rule 19(1)(c) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (the Rules, 1959). Consequently, the impugned order rejecting the request of the petitioner for for the overstay in the

year 2012 and 2013 is illegal and unsustainable and deserves to be quashed and set aside.

4. We have heard Mr. Jaiswal, learned counsel for the petitioner, and Mrs. Mhatre, learned APP for the State.

5. With the assistance of the learned counsels, we have also perused the material on record including a report submitted by the respondent on 20th June, 2021 to which a chart indicating details of incarceration is annexed.

6. Mr. Jaiswal would urge that the respondent committed an error in negating the prayer of the petitioner to release him on Covid 19 emergency parole by taking recourse to the conditionality of return on time on previous two occasions, prescribed in Rule 19(1)(c)(ii) of the Rules, 1959. Mr. Jaiswal submitted with tenacity that the facts that the said overstay had occurred prior to seven years and the petitioner has already been punished adequately for the said overstay could not have been lost sight of. Having regard to the total period of incarceration, the benefit of the Rule could not have been denied

to the petitioner, urged Mr. Jaiswal.

7. In contrast, Mrs. Mhatre, supported the impugned order. In the light of the fact that the petitioner had overstayed, on each of the occasions when he was released in the past, on furlough or parole, the respondent was within his rights in negating the request of the petitioner, submitted Mrs. Mhatre.

8. We have considered the rival submissions. First and foremost, the period of incarceration which the petitioner has undergone. It appears that the petitioner has been sentenced to suffer imprisonment for life for the offence punishable under section 302 read with 34 of the Penal Code. As of 31st May, 2021 the petitioner had undergone 19 years and 6 months actual imprisonment. Undoubtedly, the petitioner had overstayed by 274 days when he was released on parole in the year 2013. The record submitted by the respondent reveals that for the said overstay, the petitioner came to be punished by striking off his name permanently from the remission register. In effect, the petitioner has been debarred from claiming remission. As regards the second count of delayed reporting by 49 days, when

the petitioner was released on furlough, it is imperative to note that the petitioner surrendered on his own. Considerable time has elapsed from the said lapses in reporting on time, on the part of the petitioner.

9. In the backdrop of the fact that the petitioner has, as of today, undergone almost 19 years and 9 months actual imprisonment, the aforesaid delayed reporting back to prison on the part of the petitioner, in our view, pales in significance. Moreover, the petitioner was punished by deducting 196 days of remission for the overstay of 49 days and subsequently he has been saddled with the penalty of permanent forfeiture of remission for the overstay of 274 days.

10. In our view, the petitioner has been adequately punished for the said overstay. It is imperative to note that had the period of remission been counted, by now, the petitioner would have been eligible for premature release after completion of 14 years of imprisonment as the petitioner is categorized in a category which permits the release of the prisoner after completion of 24 years of imprisonment, including remission. But, for denial of

remission to the petitioner, he continues to be incarcerated.

11. In the aforesaid view of the matter, we are inclined to allow the petition. Hence, the following order.

ORDER

a] The impugned order dated 22nd July, 2020 passed by the Superintendent, Yerwada Central Prison, Pune stands quashed and set aside.

b] The petitioner/convict Sachin Gajanan Shete is directed to be released on emergency Covid 19 parole on usual terms and conditions as the respondent may find suitable to be imposed in the circumstances of the case.

c] The petitioner shall abide by all the conditions which may be imposed by the respondent.

d] Necessary orders for the release of the petitioner be passed by 31st August, 2021.

e] Rule made absolute in the aforesaid terms.

f] All concerned to act on on an authenticated copy of this judgment and order.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)