

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO.232/2020

Sudam Kachru Sarkate,
aged about Major, Occ. Nil,
R/o Convict No.C-6960 (592),
Open Prison Morshi, Amravati.

..Petitioner.

..Vs..

1. State of Maharashtra,
through Secretary,
Home Department (Prison),
Mantralaya, Mumbai.

2. Superintendent,
Central Jail Morshi, Amravati.

..Respondents.

Shri Ashish Fule, Advocate (appointed) for the petitioner.
Ms N.R. Tripathi, Additional Public Prosecutor for the respondents.

CORAM :- **SUNIL B. SHUKRE AND**
AVINASH G. GHAROTE, JJ.

DATED :- **4.3.2021**

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent.

2. The petitioner has approached this Court being aggrieved by the punishment in the nature of cut in his remission period at the

rate of 5 days for each day for which he was out of jail unauthorizedly. He was out of jail without permission for 46 days and, therefore, multiplying this figure by 5, the punishment of 230 days cut in the remission period of the petitioner has been awarded.

3. According to the learned counsel for the petitioner, the punishment so imposed upon the petitioner is unjustified for the reason that during the period from 19.7.2011 to 12.8.2011, the petitioner was ill due to typhoid and fever. In support, he invites our attention to the medical certificate dated 12.8.2011 which shows that the petitioner, in the opinion of the doctor issuing certificate, was suffering from typhoid during the said period. According to the learned Additional Public Prosecutor no reliance could be placed on the certificate for the reason that if the petitioner had been really ill during the said period, the petitioner would have done best to voluntarily surrender himself immediately after he had recovered from the illness and thus it was expected of the petitioner to have returned to the jail on 13th or 14th August, 2011, which he did not.

4. Considering the totality of the circumstances, we find no substance in the argument of learned counsel for the petitioner and merit in the submission of the learned Additional Public Prosecutor.

5. If the certificate dated 12.8.2011 is to be believed what would have followed thereafter could have been only the circumstance of the petitioner returning to jail either on 13.8.2011 or 14.8.2011 or within a reasonable span of 3 to 4 days after 12.8.2011. But, that did not happen. The petitioner continued to stay out of jail and was required to be arrested and brought back to the prison, which event took place on 3.9.2011. This would show that the petitioner must have obtained a certificate from the doctor by showing a pretense of his illness. The conduct of the petitioner does not show that we should place any reliance upon the certificate dated 12.8.2011.

6. Thus, we find no error in the punishment imposed upon the petitioner. The petition stands dismissed.

7. Legal remuneration of ₹ 2,000/- (₹ Two Thousand Only) be paid to the learned appointed counsel.

JUDGE

JUDGE