

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

**CRIMINAL WRIT PETITION NO. 313 OF 2020**

Kalu Sahdev Embadwar C-91,  
Aged About : Major,  
Presently detained in Open Prison,  
Gadchiroli.

....PETITIONER

---- VERSUS ----

1. DIG Prisons,  
East Region, Nagpur.
2. Superintendent of Jail,  
Central Jail, Gadchiroli.

.... RESPONDENTS.

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Shri G. L. Agrawal, Advocate (Appointed) for the petitioner.  
Ms N. R. Tripathi, A.P.P for the respondents/State.

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**CORAM : V. M. DESHPANDE AND  
AMIT B. BORKAR, JJ.**

**DATE : 21.08.2021.**

**ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]**

1. Heard.

2. **RULE.** Rule made returnable forthwith.

3. By this writ petition under Article 226 and 227 of the Constitution of India, the petitioner is challenging order dated 05.12.2019 passed by the learned Chief Judicial Magistrate, Nagpur.

4. The petitioner is a convict for the offence punishable under Section 302 of the Indian Penal Code is undergoing sentence of imprisonment for life. The petitioner is presently lodged in Open Central Prison at Gadchiroli. The petitioner was released around 25.05.2012 on furlough leave for a period of 14 days and was obligatory to surrender himself on 09.06.2012, but the petitioner failed to surrender himself before the Jail Authority and was required to be arrested by Police Authorities on 06.01.2013. There was delay of 211 days in surrendering back to the Jail.

5. The respondent No.2, therefore, was pleased to punish the petitioner by passing an order depriving him of remission permanently. The said order of deprivation of remission permanently dated 12.12.2013 was sent for judicial appraisal. The learned Chief Judicial Magistrate, Nagpur by order dated 04.12.2019 accept proposal sent by the respondent No.2 confirming permanent deprivation of remission. The petitioner has therefore, challenged the order dated 04.12.2019 by way of the present petition.

6. This Court on 09.03.2021, issued notice for final disposal to the respondents. The respondent No.2 in pursuance of

the notice of this Court has filed reply dated 12.06.2021. The respondent No.2 in the said reply has given details of furlough and parole leave granted to the petitioner. It is stated that the proposal of the petitioner for cut in permanent remission has been approved by the learned District and Sessions Judge. It is submitted that there is no merit in the petition and the same is required to be dismissed.

7. We have carefully considered the material produced by the petitioner and the reply filed by the respondent No.2 along with its Annexure. The impugned order reflects that the petitioner has not produced death certificate of his father to substantiate his claim of surrendering late.

8. Shri G. L. Agrawal, learned Advocate appointed for the petitioner submitted that since the petitioner was in jail, he could not submit death certificate of his father and has now placed it on record and therefore, the impugned order is not sustainable.

9. On consideration of the impugned order, we are satisfied that the death certificate was not produced before the learned Chief Judicial Magistrate, Nagpur. Taking into consideration the fact that the petitioner was in jail and therefore, could not

produce the death certificate of his father, we are satisfied that the petitioner has made out the case for remand of matter to the learned Chief Judicial Magistrate, Nagpur. It is necessary in the interest of justice for the learned Chief Judicial Magistrate to consider the death certificate produced by the petitioner and re-examine the proposal sent by the respondent No.1.

10. We therefore, pass the following order :-

- i. The petition is partly allowed.
- ii. The impugned order dated 05.12.2019, passed by the learned Chief Judicial Magistrate, Nagpur is quashed and set aside.
- iii. The learned Chief Judicial Magistrate shall consider the death certificate produced on record by the petitioner at Annexure – B and shall take fresh decision into the proposal sent by the respondent No.2 for permanent cancellation of remission of the petitioner.
- iv. The learned Chief Judicial Magistrate, Nagpur shall decide the proposal for permanent cancellation of remission within a period of 4 months from today.

11. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

Shri G. L. Agrawal, learned Advocate being appointed to represent the petitioner shall be entitled to fees quantified at Rs.1500/-.

**JUDGE**

**JUDGE**

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