

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.504 OF 2019

Shankar Govindrao Landge,
Aged about 37 years, r/o. Village
Mahakal, Tq. and District
Wardha, Presently detained in
Central Prison, Nagpur as
Convict No.C-8019.

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PETITIONER

// VERSUS //

1.The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai.

2.The Inspector General of
Prison, Pune, Maharashtra.

3.The Superintendent of Prison,
Central Prison, Nagpur,
Maharashtra.

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RESPONDENTS

Mr.Ganesh Krishna Iyer, Advocate (appointed) for the petitioner.
Ms N.R.Tripathi, A.P.P. for respondent nos. 1 to 3.

CORAM : SUNIL B. SHUKRE &
AVINASH G. GHAROTE, JJ.

DATE : 15.1.2021.

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

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

2. The petitioner had overstayed himself after his release on parole by a period of 88 days and therefore, punishment by way of cut in remission of sentence at the rate of $1 \times 5 \times 88 = 440$ days has been imposed upon the petitioner by the impugned order dated 15.3.2019.

3. While it is the contention of learned Counsel for the petitioner that such factors as are stated in the case of

Gajanan Eknath Murle and Others vs. State of Maharashtra and Others reported in 2008 (1) Bom.C.R. (Cri) 814 have not been properly considered by the learned Chief Judicial Magistrate, learned Additional Public Prosecutor disputes this.

4. We have gone through the impugned order and also the view taken by the Division Bench of this Court in the aforestated case of Gajanan Eknath Murle and Others. The facts which must be taken into consideration, as per this view, are as follows :

- i) Whether the prisoner surrendered himself or had to be arrested;
- ii) The period of absence;
- iii) The number of times the prisoner committed prison offences and the punishments, if any, imposed on earlier occasions;
- iv) The number of times the prisoner breached the conditions imposed at the time of grant of parole/ furlough.

v) In case of late surrender, the reasons given for not surrendering in time. Needless to mention that the burden is entirely on the prisoner to place on record the relevant materials justifying late surrender;

vi) The conduct of the prisoner in jail;

vii) The period of imprisonment already undergone by the prisoner.

5. It appears that these factors have not been considered appropriately while passing the impugned order and therefore, such order cannot sustain in the eye of law.

6. The petition is, therefore, allowed. The impugned order is hereby quashed and set aside. The matter is remanded back to the Court of Chief Judicial Magistrate, Nagpur for fresh consideration and decision, in accordance with law, within a period of four weeks from the date of receipt of the order. Rule is made absolute accordingly.

7. Learned Counsel (appointed) for the petitioner be paid remuneration of **Rs.2,500/-**.

JUDGE

JUDGE

[jaiswal]

