

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.97 OF 2022

Mr. Rajendra Singh alias
Rajendra Singh Dholi,
aged 38 years, married, C.Q.
Furnished Apartments,
Behind Kadamba Depot,
Porvorim, Bardez, Goa.

... Petitioner

Versus

1. The State of Goa,
through the Chief Secretary,
Government of Goa,
Secretariat, Alto Porvorim,
Bardez, Goa.

2. State Sentence Review
Board, Government of Goa,
Secretariat, Porvorim,
Bardez, Goa.

3. Inspector General of
Prisons, Inspectorate General
of Prisons, 1st Floor, Old
Education Building, 18th June
Road, Panaji, Goa.

... Respondents

Mr. Ryan Menezes, Advocate for the Petitioner.

Mr. S.G. Bhobe, Public Prosecutor for the Respondents.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATE : 5th SEPTEMBER 2022

ORAL JUDGMENT : (*Per M.S. Sonak, J.*)

1. Heard Mr. Ryan Menezes for the petitioner.
2. Rule. The rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties.
3. The challenge in this petition is to the decisions of the State Sentence Review Board in its meetings held on 16.06.2021, 09.11.2021 and 22.03.2022 declining to release the petitioner prematurely.
4. The State Sentence Review Board has rejected the petitioner's case on merits. However, there is a serious dispute whether the petitioner had completed 14 years of actual imprisonment on each of the dates when the petitioner's case for premature release was considered by the Board.
5. Recently, in *Rohan Dhungat V/s. State of Goa, thr. Chief Secretary and 4 Ors.*¹, this Court has made several observations on the issue of computation of 14 years of actual imprisonment. In this regard, the Court has not only considered the provision of Section 433-A of Cr.P.C. but also the provisions

¹ Criminal Writ Petition No.466/2021(F)
decided on 03.08.2022

of the Goa Prisons Rules, 2005. According to us, the case of the petitioner will now have to be considered in the light of the observations in *Rohan Dhungat* (supra).

6. Therefore, we direct the State/Prison Authorities to take a decision on whether the petitioner in the present case has indeed completed 14 years of actual imprisonment in the light of the observations in *Rohan Dhungat* (supra). If the State/Prison Authorities conclude that the petitioner has not yet completed 14 years of actual imprisonment, then, such decision should be communicated to the petitioner as expeditiously as possible and, in any case, within six weeks from today.

7. However, if the State/Prison Authorities conclude that the petitioner has indeed completed 14 years of actual imprisonment, then, they shall refer the petitioner's case once again to the Board for reconsideration. The Board shall then make its recommendation as expeditiously as possible.

8. Mr. Menezes complains that the Board insists upon taking into consideration Goa Prisons Rules, 2021, for purpose of making its recommendations. Mr. Menezes relies on *Sharafat Ali V/s. State of Uttar Pradesh*² to submit that the rules as on

² 2022 SCC OnLine SC 193

the date of conviction would apply in such matters and not the subsequent rules.

9. Paragraph 6 of *Sharafat Ali* (supra) reads as follows:

*“6. The first principle which must be noted, while adjudicating upon the petition is that the application for premature release has to be considered on the basis of the policy as it stood on the date when the petitioner was convicted of the offence. This principle finds reiteration in several judgments of this Court such as **State of Haryana V/s. Jagdish**³. The most recent of them is the decision in **State of Haryana V/s. Raj Kumar @ Bitu**⁴.”*

10. Therefore, if the State Government places the matter of the petitioner before the Board for reconsideration, then, it will be the duty of the Board to follow the law laid down in *Sharafat Ali* (supra) and act accordingly.

11. Further, if the State Government indeed places the case of the petitioner before the Board for reconsideration then the Board should reconsider the case of the petitioner on its own merits and in accord with law without being influenced by its earlier decisions on the subject.

3 (2010) 4 SCC 216

4 (2021) 9 SCC 292

12. Thus, by leaving open all the contentions now raised on behalf of the petitioner, we dispose of the petition by issuing the above directions. Needless to add that if the petitioner is aggrieved by the decision of the State Government/Prison Authorities in not placing his case before the Board or if he is aggrieved by the decision of the Board, the petitioner will have the liberty to question such decision in accord with law.

13. Further, if the State decides to place the petitioner's case before the Board then the State should ensure that all reports concerning the petitioner are placed before the Board so that there is no warrant for rejection of the petitioner's case on the technical ground of non-availability of the report, etc. In our order dated 08.02.2022, based on the submissions of the learned Public Prosecutor, we had issued similar directions.

14. The petition is disposed of. The rule is made absolute in the above terms. There shall be no order for costs.

15. We clarify that Contempt Petition No.1313/2022(F) has already been disposed of.

16. All concerned to act on the authenticated copy of this order.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

NITI K

HALDANKAR

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