

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 257 OF 2021

Suresh Ganpat Pawar,
Age-major, Occu.: Nil,
Now at Kolhapur Central Prison.
Kalamba, Dist. Kolhapur.

... Petitioner.

V/s.

1. The State of Maharashtra
Through its Additional Secretary,
Home Department, Mantralaya,
Mumbai-32.

2. The Director General of Prisons,
MS, Mumbai.

3. The Superintendent of Prisons,
Central Prison, Kolhapur.

... Respondents.

Mr.S.B.Talekar i/b. Talekar & Associates for the Petitioner.
Ms.S.D.Shinde, Assistant Public Prosecutor for the
Respondent– State.

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CORAM : **NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATE : **4 August 2022.**

JUDGMENT : (Nitin Jamdar, J.)

Rule. Rule is made returnable forthwith. Heard the
learned counsel for the parties. Taken up for disposal.

2. The Petitioner is seeking a direction to the Respondents for premature release of the Petitioner and for setting the order dated 1 August 2019 refusing to release the Petitioner on the ground that he is liable to be released only on completion of twenty six years imprisonment.

3. The Petitioner was convicted on 25 May 2001 by the Sessions Court, Pune in Sessions Case No.201/2000 under section 302, and was sentenced to life imprisonment. On 23 May 2017, the Petitioner applied for premature release on completion of 16 years of imprisonment, including remission for the benefit of release under the 14 Year Rule. The application of the Petitioner was not decided, and the Petitioner filed a writ petition in this Court bearing No.3042/2019 which was disposed of directing the State to decide the application within three months. Thereupon the impugned order came to be passed on 1 August 2019, rejecting the application and holding that the Petitioner would be entitled to be released only after completion of twenty six years of imprisonment, which the Petitioner has not completed.

4. The State of Maharashtra has framed guidelines for premature release of prisoners serving a life sentence under the '14 Year Rule'. These guidelines have been revised/reissued from time to time. Two guidelines that are the Government Resolutions referred to in the impugned order are dated 11 May 1992 and 15 March 2010. The impugned order has referred to the proposal submitted

by the Director General of Prisons, and the opinion of the Additional Sessions Judge dated 3 January 2017. The Respondent-State in the impugned order has given two reasons why the Petitioner cannot be released under the "14 years Rule". First, when he was released on furlough, the Petitioner had returned 173 days late, and in the year 2009, when released on furlough, he did not report for 1417 days; he was arrested and brought back. For this purpose, the Respondent- Authority has referred to clause 6(a) of the Government Resolution dated 11 May 1992. It is stated that as per this clause, the petitioner being an absconder, can be released only after the completion of 28 years of imprisonment. Second, considering the opinion of the Sessions Court wherein it is opined that the medical evidence shows that there were 29 external injuries on the deceased, indicating that the offence was with exceptional violence and brutality, it would fall under Clause 4(e) of the Government Resolution dated 15 March 2010 and such a convict cannot be released before the completion of 26 years. The Respondent- Authority then opined that since in the facts of the present case, the provisions of Resolution dated 15 March 2010 being more beneficial be applied to the Petitioner and the Petitioner can be released after completion of 26 years of imprisonment as calculated as per the applicable Rules.

5. The learned counsel for the Petitioner contended that overstaying on furlough leave would have consequences under different statutory Rules. Mere non-surrender after release on parole

or furlough can be considered a breach of furlough or parole and cannot automatically be meant that the Petitioner was absconding for the purpose of clause 6(a) of Resolution dated 11 May 1992. Learned counsel submitted that this aspect of the matter has not been considered by the authorities at all. The learned counsel for the Petitioner relied upon the decision of the Division Bench of this Court in the case of *Ashok Vasudeo Shetye v. State of Maharashtra*¹. The learned APP relied on the reply filed by the Respondent- State.

6. Clause 6(a) of Resolution dated 11 May 1992 reads thus:

CATEGORISATION OF CRIME	Period of Imprisonment to be undergone remissions subjected to a minimum of 14 years of actual Imprisonment including Set-off period.
6) ESCAPERS a) Prisoners who have escaped from lawful custody while undergoing imprisonment or who absconded while on parole or furlough	28 years

The first part of Rule 6(a) is not applicable to the Petitioner as the Petitioner did not escape from custody. As regards the second part of absconding while on parole or furlough, the phrase 'absconding' fell for consideration of the Division Bench of this Court in the case of *Ashok Vasudeo Shetye*. The Division Bench observed thus:

“ Now, it is no doubt true that a prisoner who absconds while he enjoys the benefit of an order of parole or furlough would be liable to be kept in prison for 24 years of actual sentence. But the facts and circumstances of our case do not

¹ 1988 BLR (Vol.XC) 198

show that the petitioner had absconded when he was either on parole or on furlough. It is important to note here that in 'absconding' there should always be an element of concealing or hiding. In our case, there is not even an iota of evidence or material to show that while on parol and/or furlough the petitioner concealed himself with a view to avoid the process of law. On the first occasion, it is stated, that he was arrested from his house and on the second occasion, it is further stated, that he was freely moving about and visiting Mantralaya making efforts that the impugned order to be revoked or withdrawn by the Government. Thus the record nowhere shows that he had at any point of time concealed himself in such a manner that he would successfully avoid the process of law. The dictionary meaning of the word "abscond" as can be seen from the New Webster's Dictionary is 'to withdraw or absent oneself in a private manner; run away, often with stolen valuables, in order to avoid a legal process; decamp.' In other words, to abscond means to depart clandestinely with a view to steal of or secret one's self from the jurisdiction of a court for a fraudulent purpose such as hindering or defrauding the creditors by avoiding legal process. It was held by the Supreme Court in Kartarey v. State of U.P., that 'to be an 'absconder' in the eye of law, it is not necessary that a person should have run away from his home, it is sufficient if he hides himself to evade the process of law, even if the hiding place be his own home' which shows that in absconding there is an element of hiding or concealing or secreting oneself. In case of State v. Umraokhan, AIR 1957 Raj 126 : (1957 Cri LJ 477) (Para 4) the Rajasthan High Court had observed :

"On a careful examination of the whole matter, it seems to me that "absconding" does not necessarily mean absconding from one's residence although usually when a person is hiding from his place of residence he is said to abscond. The primary meaning of this word is "to hide".

We may also mention here that the non-surrender of the petitioner after the completion of parole or furlough period can at the most be construed as a breach of condition of parole and/or furlough for which separate liability has been imposed by notification No. MJM 1561/39466 dt. 2 July, 1964 issued

under the statutory rules made by the Inspector General of Prisons which provides under Clause 2(a) that there would be a maximum out of 5 days' remission for each day of overstay. Therefore, we are of the opinion that breach of any of the conditions of parole or furlough would not by itself amount to "absconding" and at the most it may make the petitioner liable for losing the remission of 5 days for each day of overstay after the parole or furlough period was over. That being so, we have unhesitatingly come to the conclusion that in the instant case the petitioner had not absconded and, therefore, his case would be governed by guideline 3(a) and not by guideline 6. Hence he would be entitled to be released after he undergoes a sentence of 16 years and undoubtedly by now he has undergone more than 16 years of sentence, including remission earned by him."

(emphasis supplied)

Thereupon the Division Bench, after analysing the facts of the case, concluded that petitioner therein had not absconded and his case ought to be classified accordingly. We have not been shown any contrary decision.

7. Since the breach of condition of parole or furlough by itself would not amount to 'absconding', the facts of the present case had to be examined by the Respondent- Authorities before concluding that the Petitioner was 'absconding' as contemplated under clause 6(a) of the Government Resolution dated 11 May 1992. In the petition, the Petitioner has asserted on oath that at the relevant time, the Petitioner was looking for a suitable match for his daughter and could not surrender in time. The Petitioner asserted that he was very much available in the village and he was meeting prospective bridegroom, parents and relatives. The Petitioner has also stated

that his wife was suffering from heart disease, for which she was treated as an indoor patient, and he was looking after her medical treatment, for which the Petitioner has placed medical certificates on record. The learned counsel for the Petitioner pointed out that as regards these assertions, the reply on behalf of the Respondent-Authority is only that the Petitioner had not surrendered and had absconded.

8. The impugned order only states that the Petitioner reported late after 173 days and that in the year 2009, when he did not report for 1417 days, he was arrested and brought back. There is, however, no reference under which circumstances the Petitioner was arrested, from where he was arrested, whether his whereabouts were unknown, or whether the Petitioner had gone hiding and was not traceable. In the reply filed by the Respondent- Authority, three phrases have been used, i.e. Petitioner did not surrender in time; he was absconding, and he overstayed. The Respondent-Authority have overlooked that there is a distinction between the import of these three phrases. This approach of the Respondent- Authority is in contravention of the law laid down by this Court in the case of *Ashok Vasudeo Shetye*.

9. Therefore, the conclusion drawn by the Respondent-Authority that the Petitioner was absconding as per clause 6(a) of the Government Resolution dated 11 May 1992 without examining the facts and circumstances, cannot be sustained. The Respondent-

Authority will have to analyse the circumstances in which the Petitioner was arrested and brought back and thereafter record a finding whether he can be considered as absconding. Thereafter the Respondent-Authority will have to decide which category the Petitioner falls under and apply the most beneficial policy under the applicable Government Resolution.

10. Accordingly, the impugned order dated 1 August 2019 is quashed and set aside. The application of the Petitioner for grant of premature release is restored to file. The Respondent Authority will take a decision in the light of what is observed above within six weeks and communicate the same to the Petitioner.

11. We may note here that the Petitioner's original application was made in the year 2017 and that the Petitioner had to approach this Court for early disposal of his application, and then the impugned order was passed. Therefore, we expect the Respondent-Authority to adhere to the timeline set out above.

12. Rule is made absolute in the above terms.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)