

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

CRIMINAL WRIT PETITION NO. 4137 OF 2019

Uday Dhaku Sutar

... Petitioner

V/s.

State of Maharashtra and Ors.

... Respondents

Mr. Daulat Khamkar for the Petitioner

Mr. J.P. Yagnik, APP for the Respondent - State

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

DATE : 29 JULY 2022

P.C. :-

By this Petition, the Petitioner has challenged the order dated 23 June 2016 passed by the Respondent No.2 – Superintendent of Kolhapur Central Prison in forfeiting remission for 300 days.

2. The Petitioner was granted furlough leave for a period of 30 days from 3 September 2015 to 2 October 2015. After a period of 30 days, the Petitioner was to return on 3 October 2015. However, the Petitioner returned on 2 December 2015. Since this conduct was resulted into penal consequences as per the provisions of Maharashtra Prisons (Remission System) Rules, 1962, the Petitioner was given notice on 5 December 2015. The Petitioner supplied reasons on 9 December 2015 stating that it was because of

the illness of the mother, the Petitioner stayed outside. This reason was not found satisfactory by the Authorities and as per the provisions of the Rules and the Notification issued by the Home Department, Mantralaya, Mumbai on 2 December 2015 for applying for 1 : 5 ratio, 300 days remission was deducted.

3. The Notification dated 2 August 2011 is issued under Section 59(5) of the Prisons Act, 1894 and to amend the Maharashtra Prisons (Remission System) Rules, 1962. Under Rule 23A, the proportionate cut in remission has been provided for clause 6. This provision stipulates for late coming on second parole in clauses (1) to (5) would be 1 : 5 ratio. However, if the reason for is justifiable then the cut of remission is proportionate to clauses (1) to (5). Therefore, it will have to be seen that the authorities committed any perversity in coming to the conclusion that the reason given by the Petitioner was not justifiable.

4. Though it is not stated in the reply, a ground is taken in the Petition that since the Petitioner had sought extension and no decision was given, the Petitioner stayed outside. The other ground is regarding the illness of the mother.

5. As regard the first ground, we have not been shown any provision of law for granting any deemed extension and that if an application is made for extension, it is not decided, the prisoner can

unilaterally decide to stay outside the prison. As regard the decision of the Division Bench (Aurangabad Bench) of this Court relied upon by the Petitioner in the case of *Ramesh Girjaram Bansode v/s. State of Maharashtra & Ors.* (Criminal Writ Petition No. 1675 of 2018 dated 7 January 2019) is concerned, the foundation of the order was that the Division Bench found that the reason for reporting late was justifiable being a serious illness of the wife of the convict. After recording this reason, the Division Bench observed that if an application is made for extension, decision would have been taken. Therefore, the Division Bench had not laid down any absolute proposition of law but it was in the peculiar facts of the case. Therefore, we come back to the main ground that is the justifiability of the reasons for overstay. In this case we find that the reason given by the Petitioner based on the medical certificate is swelling on the knee of the Petitioner's mother. If this ground is not considered as justifiable by the authorities who have discretion to decide on this aspect, then it cannot be said that this view taken is perverse. Furthermore, in the reply it is pointed out that necessary documents were not placed on record by the Petitioner. Therefore, we find no perversity in the view taken by the Respondent – Authorities in applying the formula 1 : 5 as per the Rules and Regulations.

6. The Writ Petition is accordingly rejected.

N.R. BORKAR, J.

NITIN JAMDAR, J.