

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1432 OF 2022

BHAGWAT @ GOVIND KAILAS DAHIPHALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mrs. B. B. Gunjal, Advocate for the Petitioner.
Mr. S. D. Ghayal, APP, for the Respondent – State.

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CORAM : SMT. ANUJA PRABHUDESSAI &
R.M. JOSHI, JJ

DATE : FEBRUARY 21, 2023

ORDER (PER R. M. JOSHI, J)

1. This Petition is filed under Article 226 and 227 of the Constitution of India challenging the orders dated 17.09.2008 (Exh. B) and 22.02.2016 (Exh. D) passed by the Respondent No. 2.

2. By order dated 17.09.2008 punishment was imposed upon the Petitioner by applying 1:5 ratio and deducting 177 days remission for reporting late after the completion of period of parole. He was also removed from remission register for the period of four years. By order dated 22.02.2016 (Exh. D) he was imposed punishment as per ratio 1:5 by commuting 155 days remission period under notification of 2011, for reporting late in the prison for second time.

3. Learned Counsel for the Petitioner submitted that the concerned authority has committed error in imposing double punishment on the Petitioner in first order by deducting 177 days from his remission and also removing his name from the remission register for four years. As far as the order dated 22.02.2016 is concerned, it is contended that notification dated 02.08.2011 is wrongly made applicable to the present case as the period for which the Petitioner was released on parole was from 18.10.2010 or 30 days and hence notification dated 22.05.2009 has application to the present case.

4. Learned APP objected to the maintainability of the Petition on the ground that the Petition has been filed belatedly. He placed reliance on the judgement of this Court passed in Criminal Writ Petition No. 55/2007 to support his contention. On merits, it is contended by learned APP that there is no substance in the submissions of learned Counsel for the Petitioner that in the present case is of 'double jeopardy'. He submits that there was no credit to the account of the Petitioner for grant of remission, and such period

being four years, his name was removed from the remission register for that period. It is also stated that there is no error in passing impugned orders as they are passed in consonance with notifications and relevant rules.

5. No doubt the Petitioner is seeking to challenge the order dated 17.09.2008 belatedly, however, the delay *per se* would not be sufficient to reject the Petition. Needless to record that the Petitioner being a convict does not enjoy the same privileges as other persons considering that there are several limitations and restrictions on the prisoners to exercise their rights, the delay *per se* is not a ground not to entertain the Petition though it can be taken into consideration in certain cases where it would not be reasonable to call upon respondents to justify the action at such belated stage. We therefore are not inclined to accept challenge to maintainability of Petition on ground of delay and the matter is decided on merits.

6. Admittedly, by order dated 11.12.2006 the Petitioner was released on parole for a period of 30

days. The said period was further extended by 30 days on an application of the Petitioner. He was required to return to prison on 18.02.2007, however, he reported on 25.06.2007. Thus, he overstayed for the period of 127 days. It is the contention of the Petitioner that he could not report due to his treatment for jaundice. The report indicates that no application was made for extension of period of parole on that grounds. In fact no application at all was made seeking second extension. This fact is clear from reply dated 24.03.2008, wherein it is candidly stated that he could not make an application for extension of parole. It is thus clear that present case is not the one where the request for second extension was rejected by the Authority.

7. The reporting of Petitioner to Jail on 25.06.2007 is unauthorised and amounts to overstay, inviting punishment for offence under Section 48-A of Prison Act, 1894. Before taking decision and passing order dated 17.09.2008, show cause notice was issued and after giving opportunity to the Petitioner, said order came to be passed. Hence, this is not a case of

non compliance of principles of natural justice.

8. In so far as the order dated 17.09.2008 is concerned, there is no dispute about the fact that the Petitioner reported to the prison on his own after 127 days of expiry of period of parole leave. The notification issued by the State Government imposing punishment in respect of late reporting indicates that where the convict has reported to the prison after the period of 2 months of the leave upto 3 months, the punishment would of the deduction of his remission period by applying ratio 1:5 days. We find no error committed by the concerned Authority in applying the said ratio.

9. With regard to the order dated 22.02.2016, it is sought to be canvassed by the learned Counsel for the Petitioner that there was wrong application of notification of 2011. According to her the ratio of 1:4 ought to have been applied while deducting the period of remission. In this regard, a perusal of the notification dated 22.05.2009, as well as dated 02.08.2011, indicate that in case of the convict reporting to the prison late on second time, the ratio

application for deduction of remission period would be 1:5 days irrespective of the fact as to the period for which he has reported late. It is not case of Petitioner that for any satisfactory reason he overstayed and/or such reason is not considered by Authority while imposing punishment. Thus, in these circumstances, we do not find any infirmity in the order dated 22.02.2016.

10. In the result, we do not find any substance in the Petition. The Petition stands dismissed.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)