

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

CRIMINAL WRIT PETITION NO. 1471 OF 2022

Shakir Abdul Bashid Kazi

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mrs. B.B. Gunjal, Advocate for petitioner
Mr. S.D. Ghayal, A.P.P. for respondents
....

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 11th JANUARY, 2023

PER COURT :

1. By this petition under Article 226 of the Constitution of India, the petitioner has sought to quash the order dated 11th December, 2019, passed by Respondent No.4 removing his name from remission register for a period of five years.

2. Heard learned counsel for the petitioner and learned A.P.P. for State. We have perused the records and considered the submissions advanced by learned counsel for the respective parties.

3. The petitioner is a convict, sentenced to undergo life imprisonment for the offence under Section 302 I.P.C. The petitioner was released on furlough on 23rd April, 2008. He was to surrender on 08th May,

2008. It is not in dispute that the petitioner did not surrender on the stipulated date and/or on later date. He was arrested on 08th September, 2009 i.e. after a delay of 498 days. The petitioner was issued show cause notice for permanent removal of his name from the remission register for his overstay for a period of 498 days. The authority, not being satisfied with the explanation given, vide order dated 07th May 2016 ordered removal of his name permanently from the remission register. The petitioner challenged the said order in Writ Petition No. 828 of 2018. By order dated 11th April, 2019, this Court allowed the petition and directed the Superintendent of Aurangabad Central Prison to reconsider the order of removal of name of the petitioner from remission register permanently.

4. Pursuant to the said order, a fresh show cause notice was served on the petitioner. Upon considering the reply submitted by the petitioner, by order dated 07th May, 2016 name of the petitioner was proposed to be permanently removed from remission register. The proposal was approved by DIG, Prison and sent to the learned Sessions Judge, Aurangabad for appraisal. The learned Sessions Judge observed that the orders passed by Superintendent of Central Jail Aurangabad as well as D.I.G. (Prison) are silent as regards the antecedents and conduct of the petitioner while in jail. The Sessions Judge further observed that the jail authority has not considered the explanation given by the petitioner for his overstay. Learned Sessions

Judge observed that though the petitioner had claimed that he was unable to surrender due to his mother's sickness, he had not produced any document, medical or otherwise, in that regard. The learned Sessions Judge took note of the fact that the petitioner had overstayed for 498 days and further that he had not surrendered on his own, but had to be arrested and brought back to the jail. The learned Additional Sessions Judge, therefore, did not accept the proposal of permanent removal of the name of convict and approved proposed removal of name of the convict from the remission register for a period of five years. Accordingly by the impugned order, the Respondent No.4 has removed the name of the petitioner from the remission register for five years. Aggrieved by the order, the petitioner has once again invoked writ jurisdiction of this Court.

5. The contention of learned counsel for the petitioner is that the jail authorities had not complied with the guidelines in circular dated 13th November, 2018. The said circular prescribes guidelines to be followed for permanent removal of name of the convict from the remission register. In fact, learned Additional Sessions Judge did not approve the proposal for permanent removal for failure to follow the said guidelines. The petitioner having availed his right of furlough was duty bound to surrender on the stipulated date. The petitioner overstayed for about 498 days and had to be arrested. The explanation offered was not satisfactory. The reply filed to

Superintendent of Aurangabad Central Jail reveals that even after the punishment, the petitioner has overstayed and constantly breached the conditions of furlough leave. The learned Judge has applied his mind to the material on record and by a reasoned order approved and proposed removal of his name from remission register for five years. We find no reason to interfere with the order.

6. Learned counsel for the petitioner further states that directions need to be given to the jail authorities to consider the representation dated 20th January, 2020. By the said representation, the petitioner had prayed reconsideration of the proposal of permanent removal of his name from the remission register. The representation has rendered infructuous in view of the order of learned Additional Sessions Judge. Hence no further order. Under the circumstances, the petition is dismissed.

(R.M. JOSHI, J.)

SSD

(SMT. ANUJA PRABHUDESSAI, J.)