

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

CRIMINAL WRIT PETITION NO.1796 OF 2022

Raghoji s/o. Dattaram Shinde	..Petitioner
Vs.	
The State of Maharashtra and ors.	..Respondents

Mr.R.A.Jaiswal, Advocate for petitioner
Mr.A.R.Kale, APP for respondents

**CORAM : SMT. ANUJA PRABHUDESSAI
AND R.M.JOSHI, JJ.
DATE : JANUARY 25, 2023**

PER COURT :-

Rule. With the consent of learned counsel for the parties,
the petition is heard finally.

2. The petitioner is a convict undergoing sentence of life imprisonment for the offence punishable under Section 302 of Indian Penal Code. The petitioner was released on furlough on 20.03.2020 for 28 days. He was under an obligation to surrender on 18.04.2020. However, he reported to the prison on 19.05.2020. Since he had overstayed for a period of 32 days, a show-cause notice was issued to him on 19.10.2021, calling upon to show cause why his remission should not be reduced by 160 days at the ratio 1:5 days.

3. The petitioner submitted his reply on 28.10.2021, wherein he stated that he was released on furlough during the period of Covid-19 pandemic. He stated that he had surrendered on 19.05.2020; but was directed to get a Covid negative report. The petitioner stated that he was allowed to return to the prison on 19.05.2020 only after procuring Covid negative certificate.

4. The respondent no.1 did not consider the reply given by the petitioner and proposed to penalise the petitioner by cutting the remission by 160 days. The proposal was sent to learned Sessions Judge, Aurangabad, for judicial appraisal. Learned Judge approved the proposal of the Superintendent of Prison, imposing punishment of cutting in remission of 160 days on account of failure of the petitioner to surrender in time. Being aggrieved by cutting of remission, the petitioner has involved the writ jurisdiction of this Court under Article 226 of the Constitution of India.

5. Section 48-A of the Prison Act provides that failure by a prisoner, without sufficient cause, to observe any of the conditions on which his sentence was suspended or remitted or furlough or release on parole was granted, shall be deemed to be a prison offence. One of the punishments which can be imposed for such

offence is loss of privileged admissible under the remission or furlough or parole. The Maharashtra Prisons (Remission System) Rules, 1962, relate to the eligibility of the prisoner for grant of remissions. Rule 23A provides for cutting of remission of the prisoner who overstay the period of parole or furlough and report late to the jail and lays down the formula for cutting the remission for every days delay.

6. In the instant case, the petitioner has sought reduction of remission to 1:1 days, i.e. one day's reduction for every day delay. It is to be noted that this is the second time he has returned late to the prison. Hence, clause (6) of Rule 23A of the Rules of 1962 would be applicable, which provides that when the prisoner surrenders late while on second furlough, the cut in remission would be in the proportion of 1:5 days. However, if the reasons given by the prisoner are justifiable, then cutting of remission would be proportionate with clauses (1) to (5) therein. The explanation given by the petitioner has not been considered by the jail authority. It is well known fact that the out break of Covid-19 pandemic and consequent lock-down in the country during the said period had posed several difficulties including curbs on transport. Considering

this scenario, learned Judge is not justified in rejecting the explanation given by the petitioner, for want of documents. The explanation given by the petitioner was justifiable. Hence, the case of the petitioner will be covered by clause (4) of Rule 23A, which provides the proportion of cut in remission as 1:4 days, i.e. insistence of Covid negative certificate, mandatory quarantine period etc., i.e. for everyday delay remission is to be cut by 4 days. Under the circumstances, the reduction in remission in 1:5 proportion is not justifiable and cannot be sustained.

7. Hence, the petition is allowed. The impugned order is quashed and set aside. The proposed punishment is reduced to 1:4 days. Rule is made absolute accordingly.

[R.M. JOSHI, J.]

[SMT. ANUJA PRABHUDESSAI, J.]

KBP