

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

**WRIT PETITION NO. 1393 OF 2022**

Ronald James Alvares

..Petitioner

V/s.

The State of Maharashtra

..Respondent

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Mr. Hitesh Shah for the Petitioner.

Mr. A.R.Kapadnis, APP for the Respondent/State.

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**CORAM : SUNIL B. SHUKRE, AND  
ABHAY S. WAGHWASE, JJ.**

**DATE : 14<sup>th</sup> MARCH 2023**

**P.C.**

1. Rule. Rule is made returnable forthwith. Learned APP waives service for Respondent/State. Heard finally by consent of parties.

2. It is the contention of the learned counsel for the Petitioner that the order dated 31.05.2019 by which the order of premature release of the Petitioner has been recalled, does not take into consideration the observations of the Apex Court in the Criminal Appeal filed by the Petitioner wherein the Apex Court has categorically observed that the possibility of reform and rehabilitation of the Appellant cannot be ruled out.

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3. The learned counsel for the Petitioner further submits that Co-ordinate Division Bench of this Court in Criminal Writ Petition No. 2693 of 2017, filed by the Petitioner seeking direction for his premature release, decided on 14.02.2019, had directed the State Government to consider the case of the Petitioner for premature release in accordance with the policies of the State Government in the light of the law laid down by the Apex Court in the case of *State of Hariyana v/s. Jagdish*<sup>1</sup> and take appropriate decision as expeditiously as possible, but the impugned decision of the State Government discloses that the State Government has neither considered the observations of the Supreme Court about the potentiality of the Petitioner to reform himself, nor has considered the ratio laid down in the case of *State of Hariyana* (supra). The learned counsel for the Petitioner further submits that two jail offences and two defaults committed by the Petitioner in surrendering himself before the Jail Authority on the due dates after his release on parole were prior to 2019 and these instances were not placed by the State Government before the other Bench of this Court when it disposed of Criminal Writ Petition No. 2693 of 2017 on 14.02.2019. He submits that in any case, those offences and defaults being quite old, should not come in the way of the Petitioner in getting an order of his premature release.

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1 AIR 2010 SC 1690

4. The learned APP submits that the offences and defaults committed by the Petitioner while undergoing sentence would sufficiently show that the Petitioner does not have any potential to reform himself nor would deserve any such privilege to be conferred upon him by the State Government.

5. There is no doubt that while deciding the Criminal Appeal of the Petitioner, the Supreme Court had observed that the possibility of reform and rehabilitation of the Appellant could not be ruled out. Similarly, there can be no two opinions about the principles of law laid down by the Supreme Court in the case of Jagdish (Supra) and their being followed by the State Government while considering the case of premature release of the life convict. These principles of law are as follows:

- (i) Whether the offence was an individual act of crime which did not affect the society at large.
- (ii) Whether there was any chance of future recurrence of committing a crime.
- (iii) Whether the convict had lost his potentiality in committing the crime.
- (iv) Whether there was any fruitful purpose of confining the convict any more,
- (v) What is the socio-economic condition of the convict's family and other similar circumstances.

6. At the same time, we must say that in the very case of Jagdish (supra), as pointed out by the learned APP, the Supreme Court has also delineated the scope of judicial review of the order passed in such cases by the State Government and it has been laid down that the scope is very limited and can be undertaken only on any of the following grounds:

- (a) That the order has been passed without application of mind.
- (b) That the order is malafide.
- (c) That the order has been passed on extraneous or wholly on irrelevant consideration.
- (d) That relevant materials have been kept out of consideration.
- (e) That the order suffers from arbitrariness.

7. The above referred propositions of law are well entrenched in the field of Criminal jurisprudence and therefore, let us now examine the impugned order of the State Government in the light of these principles of law.

8. The primary considerations in a case like the present are of the possibility of the Petitioner reforming himself, whether there is any chance of future recurrence of committing of a crime, whether the Petitioner has lost his potentiality in committing the crime or whether any fruitful purpose would be served by letting

the Petitioner serve his full term of imprisonment as per the sentence awarded to him.

9. Upon consideration of all the relevant facts and circumstances of the case, in particular, the instances of the jail offences having been committed by the Petitioner and also two defaults committed by him in returning to the prison on due dates, at least on two occasions, we find that the Petitioner loses on all counts of the above referred considerations. The Supreme Court in its judgment delivered in the Appeal filed by the Petitioner had made observation that there was a possibility of reform and rehabilitation of the Petitioner, but it appears to us that the hope so expressed by the Apex Court for the better future of the Petitioner has been shattered in pieces by the offences and defaults committed by the Petitioner. These offences and defaults have been committed by the Petitioner, it must be noted, while the Petitioner was undergoing his sentence. If a prisoner who undergoes the sentence of imprisonment indulges in one singular criminal act, it is still understandable and can be ignored saying that a stray crime may not be considered as a disqualification for his seeking premature release. But here it is not so. This is a case wherein jail offence has been committed not once, but twice and such deviant behaviour of the Petitioner has even continued, when the Petitioner jumped parole granted to him twice. On one occasion, the overstay of the Petitioner extended to 1115 days and Petitioner was required to be arrested and brought

back to the jail prison. Such behaviour of the Petitioner sufficiently indicates that the Petitioner has by his own acts ruled out the possibility of his reform and rehabilitation. Of course, the learned counsel for the Petitioner submits that the first default committed by the Petitioner in respect of his return to the prison on due date was of the year 2009. But, we must say that it was not an isolated instance and rather it was repeated later on. Therefore, to say that something done about more than a decade ago, could not be held against the Petitioner would be like pardoning the Petitioner for whatever deviation and whatever defaults he commits. In fact, the breach so committed by the Petitioner in returning to the prison on the due dates can be pardoned only to the extent of granting of parole or furlough to the Petitioner subsequently. So far as concerned the question of potentiality of the Petitioner to reform himself, we are of the considered view that the default committed as far back as 2009 would still have its ripple effect on the reform possibility of the Petitioner. Same is too, about the jail offences, which have been committed prior to the year 2019. The above referred material would sufficiently indicate that as of now, the Petitioner by his conduct does not rule out any possibility of improving himself and it does not appear reasonable that the Petitioner may not indulge in same criminal behaviour. This also shows that as of now no fruitful purpose would be served by ordering premature release of the Petitioner.

10. All these aspects have been duly considered by the State Government while taking its decision to not grant any premature release to the Petitioner. The decision of the State Government is not smittenly any malafies nor does it show any non application of mind nor is based upon any extraneous consideration nor it suffers from manifest arbitrariness. Therefore, we are of the view that no interference with the impugned decision of the State Government is warranted.

11. Writ Petition stands dismissed. Rule is discharged. No order as to costs.

12. At this stage the learned counsel for the Petitioner states that the Petitioner is of 62 years today and by virtue of his advanced stage he lost his potential to commit any crime. As of now, the conduct of the Petitioner does not give any assurance about his weakness in committing any crime. Therefore, on this count, no relief can be granted to the Petitioner.

(ABHAY S. WAGHWASE, J.)

(SUNIL B. SHUKRE, J.)