



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL WRIT PETITION NO. 94 OF 2023**

Kailash s/o Jagdev Gade, age – 60, C-63,  
Open Priosn Amravati, Dist Amravati.  
(In jail)

... PETITIONER.

**VERSUS**

1. The State of Maharashtra, through  
Superintendent of Prison, Amravati,  
Dist. Amravati.
2. The D.I.G., (East Prison), Nagpur,  
Dist. Nagpur.

... RESPONDENTS.

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Shri A.Y. Sharma, Advocate for the petitioner.  
Mrs. Tripathi, A.PP for the respondent/State.

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**CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.**  
**DATED : 05.09.2023.**

**ORAL JUDGMENT** : (Per : Vinay Joshi, J.)

**RULE.** Rule made returnable forthwith.

2. The matter is taken up for final disposal by consent of

learned Counsel appearing for the parties.

3. The petitioner is convicted for the offence punishable under Section 302 of the Indian Penal Code and is in jail from 04.01.2007. The petitioner's case was considered for remission after completion of 14 years of actual imprisonment. On considering the petitioner's case vide order dated 21.05.2022, the petitioner was directed to be released after completion of 22 years of imprisonment.

4. It is the petitioner's grievance that including remission, he has already undergone 22 years, and thus, he deserves for release. According to the petitioner, he was surrendered late in past for which no action was taken. For instance, the petitioner surrendered late in the years 2011, 2012 and 2016 but no remission cut punishment was imposed within time, and now, during pendency of this petition that exercise has been done. Learned Counsel for the petitioner also attracted our attention to all six judicial appraisals pertaining to remission cut to contend that without application of mind, those orders have been passed. Particularly, the petitioner relied on paragraphs 17 and 18 of the decision of this Court in case of ***Vishal Baban Vanne vs. the State of Maharashtra 2019 ALL MR (Cri) 2259*** wherein this Court has emphasized the need of considering the reply filed by the convict

and to pass judicial order depending upon satisfaction of the reason for late surrender. It is abundant clear that none of the judicial appraisal order bears a single worded reason meaning thereby there is total non-application of mind. Obviously, those orders run contrary to the dictum laid by this Court in above referred decision.

5. In view of above, we hereby quash and set aside all six remission cut orders. We direct to the Superintendent of Jail to forward all fresh proposals with convict's reply for judicial appraisal within two weeks from the date of this order. If the prisoner has not submitted reply in either of the case, he should be given an opportunity to give reply within four days from the intimation.

6. The learned Sessions Judge shall consider the reasons accorded by the petitioner for late surrender and in view of the above referred decision of this Court, shall pass the appropriate judicial appraisal order demonstrating the application of mind. The said exercise shall be done within two weeks from the date of receipt of the fresh proposal from the Jail Authority. On receipt of judicial appraisal, the Superintendent of Jail shall pass the appropriate order within two weeks thereafter, and report the compliance to the Registry of this Court.

7. The Writ Petition stands disposed of. Rule is made absolute in above terms. No order as to costs.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

*Trupti*