

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 774/2022.

Amit s/o Prakash Takbharve,
C-89, Aged about 35 years,
Presently detained in Open Prison,
Gadchiroli.

... **PETITIONER.**

VERSUS

1.The State of Maharashtra,
DIG Prisons, East Region,
Nagpur.

2.Superintendent of Jail,
Central Jail, Gadchiroli.

... **RESPONDENTS.**

Mr. I. Tambi, Advocate [Appointed] for the Petitioner.
Shri M.Khan and Ms.N.Tripathi, A.P.Ps. for Respondents.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATE : FEBRUARY 24, 2023.

ORAL JUDGMENT (PER , VINAY JOSHI, J.) :

Considering the nature of controversy involved in the

Rgd.

matter, and by consent of the learned Counsel appearing for the parties, Writ Petition is taken up for final disposal at the stage of admission by issuing Rule, making the same returnable forthwith.

2. The petitioner has overstayed after his release on furlough leave. The over stay was of 87 days, and as he did not return, he was required to brought back by way of his arrest. In the circumstances, punishment by way of cut in remission of sentence @ $1 \times 5 \times 87 = 435$ days has been imposed on the petitioner by respondent no.1 – D.I.G. Prisons, Nagpur vide order dated 26.04.2013. The matter was forwarded to the Sessions Judge for appraisal and approval, on which the order of the D.I.G. Prisons, Nagpur has been confirmed, which order is impugned in the present petition.

3. The entire thrust of the petitioner is about non-consideration of his case on the parameters laid down by this Court in **Gajanan Eknath Murle and others .vrs. State of Maharashtra and others – 2008 [1] Bom.C.R.[Cri] 814**. It is submitted that the

petitioner did not report in time as he was suffering from typhoid. Particularly, the petitioner would submit that it was his first occasion, where he surrendered late. The petitioners' conduct in jail was fair and he was sent to open prison. Moreover, the petitioner has already undergone substantial period of sentence and all these aspects have not been considered.

4. We have examined both the orders and find that though the learned Sessions Judge has referred to the decision in case of Gajanan Murle [supra], however, the order does not reflect that the case of petitioner was considered on said parameters.

5. In view of the decision in case of Gajanan Murle [supra], the factors to be considered are as below :

- [a] Whether the prisoner surrendered himself or had to be arrested.
- [b] The period of absence,
- [c] The number of times the prisoner committed prison offences and the punishments, if any, imposed on earlier occasion;
- [d] The number of times the prisoner breach of conditions imposed at the time of grant of furlough;

- [e] In case of late surrender, the reasons given for not surrendering in time;
- [f] The conduct of the prisoner in jail;
- [g] The period of imprisonment already undergone by the prisoner.

It appears that that these factors have not been considered properly while passing the impugned order, and therefore, the order impugned would not sustain in the eyes of law. Hence the following order.

ORDER

- [i] Criminal Writ Petition is allowed and disposed of.
- [ii] The impugned order passed by respondent no. 1 – D.I.G. Prisons, Nagpur dated 26.04.2013, as well as the order passed by the District Judge and Additional Sessions Judge, Nagpur dated 12.04.2022, are quashed and set aside.
- [iii] The matter is remanded back to respondent no. 1 – D.I.G. Prisons, Nagpur for fresh consideration in the light of guidelines issued by this Court in case of Gajanan Murle [supra], and decide the same within a period of three months from the date of receipt of this order.

[iv] Fees of the appointed Counsel for the petitioner be paid as per Rules.

6. Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE