



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.868 OF 2024

Rajesh s/o Samaydeen Chaudhary
Age: 42 years, Occu.: Convict,
R/o. At present confined at Paithan
Open Prison, Chhatrapati
Sambhajinagar

.. Petitioner

Versus

1. The State of Maharashtra,
Through Inspector General of Prisons;
2. Dy. Inspector General (Prison)
Central Zone-Chhatrapati
Sambhajinagar.
3. Superintendent of Jail,
Paithan, Chhatrapati Sambhajinagar.

.. Respondents

...
Mr. Rupesh A. Jaiswal, Advocate for the petitioner.
Mr. A. M. Phule, APP for the respondents/State.
...

**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

RESERVED ON : 15 OCTOBER 2024
PRONOUNCED ON : 24 OCTOBER 2024

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. The petitioner challenges the order passed by respondent No.1 on 08.03.2023 thereby refusing to take his name on the remission register and then it is also prayed that as his name is taken on remission register from 29.11.2013, it ought to be from 29.11.2018.

2. The petitioner/convict is undergoing imprisonment for life for the offence punishable under Section 302 of Indian Penal Code. He was arrested on 03.07.2007 and was convicted on 30.07.2009. He had preferred application for parole leave and it came to be granted by order dated 20.11.2012, which was extended up to 22.02.2013. He had surrendered in jail after about 280 days than sanctioned. A show-cause notice was issued to him. Accordingly, he had given reply, however, his name came to be removed from the remission register permanently. Thereafter, as per circular dated 27.07.2015/27.05.2016 issued by respondent No.1, the petitioner's name ought to have been taken on remission register after completion of five years after his surrender. Therefore, when he was arrested and brought back to jail on 29.11.2013, he ought to have been held eligible for taking on remission register from 29.11.2018. However, his name has been now taken after a period of 10 years i.e. on 08.03.2023 and, therefore, writ is required to be issued to correct the said record. Communication has been produced on record of the respondent No.3 which appears to be on behalf of the respondents giving the details. It is admitted that the petitioner was required to be brought in jail on 29.11.2013. Thus, his overstay was 280 days.

The judicial appraisal taken from Ad-hoc District Judge-1 and Assistant Sessions Judge, Nashik showed that the “exclusion of privileges admissible under the remission indefinitely” was the proposed punishment and the same came to be approved. Thereafter in view of circular dated 07.10.2019, the proposal in respect of the inmates, who had overstayed was kept before the committee and taking into consideration the condition, when petitioner had overstayed for 280 days and was required to be brought by arrest, the term or condition is that his name can be taken after six years. He came to the jail on 25.07.2014 and, therefore, he became eligible from 24.07.2020. Further, as per the report and condition, the petitioner should continue to work that is assigned to him. The said term has been fulfilled by the petitioner in December 2022. As per the letter of the Superintendent of Jail, Kolhapur Central Prison dated 07.06.2024, the petitioner was not doing the work that was assigned to him and, therefore, his name has been taken on the remission register from 01.03.2023.

3. Heard learned Advocate Mr. Rupesh A. Jaiswal for the petitioner and learned APP Mr. A. M. Phule for the respondents – State. In order to cut short, it can be said that both the

Advocates have made submissions in support of their respective contentions.

4. The first and the foremost fact that is required to be noted is that petitioner is accepting that he had overstayed for 280 days and another fact is that he was arrested in some other crime on 29.11.2013 and, therefore, it cannot be said that in the present case he was required to be brought by arrest. In other words, the said arrest was in respect of another offence. One more aspect that is required to be considered is that the respondents have not produced on record the proposal that was submitted by Superintendent, Central Jail, Nashik to District and Sessions Judge, Nashik, but the judicial appraisal dated 25.07.2014 has been produced and the concerned Judge has granted the approval. It is to be noted that the petitioner was convicted by City Civil and Sessions Judge, Mumbai and it appears that he was initially at Byculla Prison and then he was at Kolhapur Central Prison and further it appears that he was also in Central Jail, Nashik and it is now stated that he is in Open Prison, Paithan. It will not be out of place to mention here that by order dated 08.05.2024, the issue regarding jurisdiction was kept open, however, since the petitioner is now with Open Prison, Paithan

since 14.01.2024, this Bench has jurisdiction to entertain the present writ petition. However, we are on the point that the respondents have absolutely not followed the proper procedure. First of all, as regards the question for taking down the name of the petitioner from remission register is concerned, when the proposal that was made by the Superintendent, Central Jail, Nashik Road in respect of present petitioner, it appears that the proposal was for “exclusion of privileges admissible under the remission indefinitely”. That means his name was proposed to be taken from the remission register permanently. Definitely, it is a higher punishment and for that purpose the respondents ought to have followed the directions given by the Division Bench of this Court Bench at Nagpur in ***Sk. Jakir Sk. Babu Vs. State of Maharashtra, [Criminal Writ Petition No.284 of 2006, decided on 05.09.2008]***. Those directions have been reiterated by this Bench in ***Indraraj s/o Dashrath Sapkale Vs. State of Maharashtra and another, [Criminal Writ Petition No.232 of 2018 decided on 06.07.2018]***. Here, the judicial appraisal that is directed to be taken is from “the Sessions Judge concerned”. Therefore, the said judicial appraisal ought to have been from the convicting Court. Another aspect is that the judicial appraisal in the

present case is by an Assistant Sessions Judge, Nashik, who had no authority to deal with the cases under Section 302 of Indian Penal Code and, therefore, he is not eligible to give opinion in respect of any benefits or privileges admissible to a convict under Section 302 of Indian Penal Code.

6. However, it is to be noted that the proposal for taking his name again on the remission register appears to have been taken in view of circular dated 07.10.2019 and then he has been held to be eligible. Now, it will not be appropriate for this Court to make any further comment in respect of the judicial appraisal, because that was taken way back in 2014, but not acted upon immediately. Now, the question is whether the respondents could have applied the circular dated 07.10.2019 when the petitioner is relying upon the circular dated 27.05.2016 issued by the same authority throughout the State. It is specifically mentioned that if the behaviour of the convict is good in jail after his name is removed from the remission register, then after considering the good behaviour his name be taken on the remission register after about five years. Here, in the present case, the petitioner has returned/brought back to the jail on 29.11.2013. Therefore, his case ought to have been considered after five years from bringing

him back to the jail by the respondents. A subsequent circular cannot be made applicable. In other words, when the petitioner reported in the jail on 29.11.2013, then the circular dated 07.10.2019 cannot be made applicable to him retrospectively. His case should have been taken after five years, but the respondents failed. We do not agree with the respondents that the petitioner would be eligible for consideration from 24.07.2020 i.e. six years after he was brought to jail i.e. 25.07.2014 (this is the date of judicial appraisal and not the date on which he was brought to jail). In these circumstances, the petition deserves to be allowed. Hence, the following order :-

ORDER

- I)** Writ Petition stands allowed.
- II)** Order dated 08.03.2023 passed by respondent No.1 is quashed and set aside to the extent of date of taking the name of the petitioner on remission register.
- III)** Respondent No.1 is directed to take the name of the petitioner on remission register within five years from 29.11.2013 i.e. with effect from 29.11.2018.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm