



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CORRECTED VIDE COURT'S ORDER DATED 27-03-2024
CRIMINAL WRIT PETITION NO. 1441 OF 2023

Bharat S/o Jagan Patil,
Age : 47 yeras, Occu. Nil, Convict No. 5088,
R/o Shivnagar, Dyne Tq. Malegaon, Dist. Nashik,
At present in Central Prison, Nashik .. Petitioner

Versus

- 1] The State of Maharashtra,
Through Under Secretary Home Department,
Mantralaya, Mumbai
- 2] The Deputy Inspector General,
Central Prison, Aurangabad
- 3] The Inspector General of Prison,
Maharashtra State, Pune
- 4] The Superintendent of Central Prison,
Nashik .. Respondents

...
Advocate for petitioner : Ms. Bharati B. Gunjal
APP for the respondent – State : Mr. V.M. Jaware
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 05 MARCH 2024
PRONOUNCED ON : 20 MARCH 2024

ORDER (MANGESH S. PATIL, J.) :

Heard both the sides finally.

2. By invoking the powers of this Court under Article 226 of the Constitution of India, the petitioner is challenging the order passed by the respondent no.2 - Deputy Inspector General, Central Prison, Aurangabad (DIG, Prisons) dated 18-01-2011 whereby, for overstay of

349 days after he was granted parole for 14 days, which ended on 24-07-2009, by way of punishment his name was directed to be permanently removed from the remission system under the Maharashtra Prisons (Remission System) Rules, 1962 (hereinafter 'Remission Rules').

3. The learned advocate for the petitioner would submit that reasonable explanation was extended for overstay. It was not considered and by way of punishment, petitioner's name was directed to be removed from the remission system. The order is harsh and contrary to the reformatory and rehabilitative theory advocated by the State.

4. She would further submit that according to the government notification dated 13-11-2018, a person whose name has been removed from the remission system can be taken back into the system after six years of coming back to the prison after the overstay. Since the petitioner was brought back to the prison on 08-07-2010, his case ought to have been considered for bringing him back to the remission system after lapse of six years. Though recently, his name has been brought back to the system by the order of the remission committee, constituted according to this government notification, by the order dated 12-01-2024, for failure of the authorities to extend him the benefit under the government notification dated 13-11-2018, the petitioner has lost a valuable benefit of having credit of the period which he spent in

the jail. It ultimately would add to his credit and he could have derived the benefit of ordinary remission for premature release according to the government resolutions issued under section 432 of the Code of Criminal Procedure.

5. Per contra, the learned APP submits that remission is not a right. The petitioner had overstayed. There was no explanation and by way of punishment, after issuing a notice to show cause under the Prisons Act, 1894 and the Remission Rules, his name was removed permanently from the remission system which has been recently re-entered. There is enormous delay in preferring the writ petition and putting up challenge to the order which was passed way back on 18-01-2011.

6. Having heard both the sides, in our considered view, since it is a matter of remission which is a reformative concept, the request of a prisoner seeking inclusion of his name in the remission system cannot be allowed to be defeated on the ground of delay.

7. Obviously, there is nothing before us to objectively undertake any scrutiny, as to the legality of the impugned order whereby the petitioner's name was directed to be removed from the remission system permanently.

8. Though we are not inclined to quash and set aside the impugned order, the matter would not end here. Admittedly, by a government notification dated 13-11-2018, a policy has been evolved for taking back the prisoners in the remission system after completing six years in the prison after the overstay. Such entry into the remission system would benefit a prisoner in earning the days as per the remission scale for the period he spends in the jail as prescribed therein. It is in this context that even if the government notification has come into effect on 13-11-2018, since the petitioner had already completed six years after his return to the prison on 08-07-2010 after the overstay, the period six years thereafter would get over by 08-07-2016. Therefore, he was entitled to have the benefit of government notification dated 13-11-2018 from 08-07-2016 or at least from the day the notification was issued i.e. 13-11-2018.

9. It appears that his case was not so considered *albeit* recently by order dated 12-01-2024 of a committee constituted under that government notification, his name has been taken back in the remission system. Had it happened with effect from the date the government notification was issued i.e. 13-11-2018, he could have derived the benefit of last about 5-½ years which he spent in the prison.

10. Consequently, though we are not inclined to quash and set aside the impugned order dated 18-01-2011, it would be appropriate

that the respondents are directed to consider the petitioner's case for re-entry into the remission system from the date he completed six years after coming back to the prison on 08-07-2016 or at least from the date the government notification was issued on 13-11-2018.

11. The writ petition is allowed partly.

12. The writ petition challenging the impugned order is dismissed.

13. However, the respondents are directed to consider the petitioner's entitlement to re-entry into the remission system with effect from 08-07-2016 or 13-11-2018 and extend the consequential benefits, in the light of the government notification dated 13-11-2018. The exercise shall be completed as expeditiously as possible and in any case within eight weeks.

14. Needless to state that if he is found entitled to re-entry into the remission system from a specific date, all the necessary benefits shall be extended to him to which he would be entitled to, in accordance with law and his case shall be immediately thereafter considered for remission under section 432 of the Code of Criminal Procedure.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/