



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1875 OF 2023

Satish Shankar Shinde,
Age-55 years, Occu:Prisoner,
R/o-Central Jail, Aurangabad

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-32,
- 2) The Dy. Inspector General of Prison,
Central Prison, Aurangabad,
Taluka and District-Aurangabad 431008,
- 3) The Learned Sessions Court (3rd),
District and Sessions Court, Aurangabad.

...RESPONDENTS

...
Mr. Madhukar M. Parghane Advocate for Petitioner.
Ms. P.R. Bharaswadkar, A.P.P. for Respondent Nos. 1 and 2.
Mr. C.K. Shinde Advocate for Respondent No.3.

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

DATE OF RESERVING JUDGMENT : 10th OCTOBER 2024

DATE OF PRONOUNCING JUDGMENT : 24th OCTOBER 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. By this Petition, the petitioner is challenging order dated 7th November 2009 passed by the learned Sessions Judge, Aurangabad thereby approving or ordering the removal of the name of the petitioner from remission register permanently.

3. The petitioner has come with the case that he is undergoing imprisonment in Central Jail, Aurangabad for conviction under Section 302 of the Indian Penal Code. The petitioner was released on parole leave by order dated 6th September 2006 for about 30 days, however, he had not surrendered within the stipulated period. He had surrendered before the jail authorities on 17th March 2009. Thereupon show cause notice was issued to him seeking explanation for late surrender. He had answered the said show cause notice. Mother of the petitioner had preferred an application on 30th October 2023 seeking addition of name of her son in the remission register kept by respondent No.2. Thereafter the petitioner collected the documents and came to know that respondent No.2

after getting explanation from the petitioner, had passed an order on 18th September 2009, which was an erroneous order, thereby removing the name of the petitioner from the remission register for a period of seven years. The Sessions Court, without assigning any reason, had approved / passed an order for removal of the name of the petitioner permanently from the remission register. The petitioner accepts that he had approached late to this Court by filing present petition, however, he relies on the decision of this Court in ***Indraraj Dashrath Sapkale vs. State of Maharashtra (Criminal Writ Petition No.232 of 2018)***, ***decided on 6th July 2018***, wherein it has been held that when the impugned order affects the rights of the prisoner which will have effect on his right to consider his name for premature release, then such delay cannot be taken adversely against the petitioner inmate. The petitioner submits that the order passed by the learned Sessions Judge is illegal and therefore, it deserves to be set aside.

4. Respondent No.2 has filed affidavit of Mr. Shivshankar Patil, Superintendent, Central Prison, Chhatrapati Sambhajanagar and submits that the petitioner was convicted by learned Additional Sessions Judge, Latur in Sessions Case No.2 of 1999 on 14th December 1999 for the offence punishable under Section

302, 309 of the Indian Penal Code and was sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for six months. The petitioner came to be released on parole leave on 3rd October 2006, however, he did not surrender himself in time. He was required to be arrested and brought back to the jail by the police authorities, thereby overstay of the petitioner was for 802 days. Paragraph No.4 of the Circular dated 2nd October 1984 issued by the Government of Maharashtra, provides that no penal consequences shall be imposed without judicial appraisal of the learned Sessions Judge. Further, some directions were given in Criminal Writ Petition No.284 of 2006 decided on 5th September 2008 by this Court, Bench at Nagpur, in respect of the prisoners who have surrendered belatedly. Accordingly, show cause notice was issued to the petitioner in the present case and his explanation was sought. When the sufficient cause was not shown in the said explanation by the petitioner, order was required to be passed in respect of not accepting the contentions. Further, as per the procedure prescribed, if higher punishment was proposed then it should be got sanctioned from the higher authority and after the sanction order is received, it should be sent for judicial appraisal by the learned Sessions

Judge. In this case, the learned Sessions Judge, Aurangabad by letter dated 7th November 2009 approved the punishment and ordered to remove the name of the petitioner permanently from the remission register. That order was served on the petitioner, however, he had not challenged it within time. On one more occasion the petitioner had overstayed and was required to be brought to the prison by arrest. At that time the period of overstay was 580 days. Thereafter, the petitioner was released on furlough leave on 5th June 2020 and at that time also he overstayed for about 14 days. Now, in view of the Circular dated 7th October 2019, the Additional Director General of Police and Inspector General of Prisons and Correctional Service, has laid down the procedure to take names of prisoners on remission register. Accordingly, the committee has taken the name of the petitioner back on the remission register on 12th August 2024. The action has been taken against the petitioner under the four corners of law.

5. Heard both sides and perused the documents on record.

6. The first and foremost fact to be noted is that when the petitioner was granted leave on 3rd October 2006, he was supposed to return to the jail on 3rd November 2006, but the

leave was extended by further thirty days vide order dated 21st November 2006. Then, the petitioner ought to have surrendered before the jail authorities on 2nd January 2007 but he has not surrendered and he was ultimately required to be brought after arrest, on 14th March 2009. The Superintendent of Jail gave proposal that his name should be removed from the remission register for about seven years. However, it appears that the learned District and Sessions Judge-3, Aurangabad gave the judicial appraisal stating that since the petitioner has reported belatedly by 802 days, his name should be removed from the remission register, permanently. Here, we would like to consider the decision, which is referred by respondent No.2, of this Court, at Nagpur Bench in ***Criminal Writ Petition No. 284 of 2006 (Sk. Jakir Sk. Babu vs. State of Maharashtra)***, decided on ***5th September 2008***, wherein following guidelines have been laid down for imposing the punishment:-

“(1). Sufficient notice preferably of at least seven days' duration be given to the prisoner for submitting reply to the notice of showing cause to proposed higher punishment.

(2). Cause shown be considered. If no sufficient cause is shown, reasoned order be passed for not accepting the contentions/cause shown by prisoner.

(3). If higher punishment is proposed against the prisoner, then the proposal be submitted to the higher prison

authority competent to grant sanction for higher punishment for the prison offence committed in the case.

(4). After receipt of sanction order from the competent sanctioning authority and judicial appraisal from the Sessions Judge concerned, an order imposing higher punishment may be passed and communicated to the prisoner.

(5). The order of higher punishment may be implemented after following steps (1) to (4). "

7. Thus, it is to be noted from the decision referred above that when higher punishment is proposed then show cause notice is to be given preferably of seven days duration for submitting the prisoner's reply. Then if cause is shown, it is to be considered by the competent authority and if the competent authority comes to the conclusion that no sufficient cause is shown, then reasoned order has to be passed not accepting the contentions / cause shown by the prisoner and then if the higher punishment is proposed, then proposal is to be submitted to the higher prison authority competent to grant sanction for higher punishment for the prison offence. Then, after receiving the sanction from the competent authority, judicial appraisal is also required to be taken from the Sessions Judge concerned. After both these reports / orders are received, then an order imposing

higher punishment may be passed and communicated to the prisoner.

8. Here, we had seen from the documents, as well as specifically the matter was adjourned so that the learned APP can take instructions, as to whether the final order was passed after the order of judicial appraisal was passed or communicated by the learned District and Sessions Judge. The learned APP has specifically stated that no order appears to have been passed. What has been produced or given, which is signed by the Special Police Inspector General (Prison), Aurangabad dated 18th September 2009, appears to be the sanction of the higher authority, which is in the form of order. However, the opinion / judicial appraisal has been given on 7th November 2009 by the learned District and Sessions Judge-3, Aurangabad. The decision in *Sk. Jakir Sk. Babu vs. State of Maharashtra*, (supra) was given on 5th September 2008 i.e. much prior to the judicial appraisal and sanction, as referred above. Therefore, what was expected from the respondents, was to follow the steps those were directed in the decision of *Sk. Jakir Sk. Babu vs. State of Maharashtra*, (supra). But there is absolutely no final order that was passed by the competent authority in this case. Further, from the judicial appraisal dated 7th November 2009, it can be

seen that no reasons have been assigned for coming to the conclusion that the name of the petitioner should be removed from the remission register permanently. Here what was proposed and sanctioned was for removal of the name of the petitioner from the remission register for about seven years. But what has been stated in the judicial appraisal, is the permanent removal of the name of the petitioner from remission register. Therefore, we hold that both the authorities totally erred in not following the decision in *Sk. Jakir Sk. Babu vs. State of Maharashtra*, (supra).

9. It is then now stated in the affidavit that in view of the Circular dated 7th October 2019, the name of the petitioner has been taken again on the remission register from 12th August 2024. At the cost of repetition, we would say that when there is no final order and the judicial appraisal says that name of the petitioner should be removed permanently from the remission register, unless the respondents would have approached the concerned Judge once again, the name of the petitioner could not have been taken on the remission register. Now, when his name has been taken, it cannot be removed. The question is, therefore, of the period between 18.09.2009 / 07.11.2009 to 12.08.2024. It appears that in between many times the

petitioner was allowed to go on leave and it appears that he has overstayed on almost all occasions. Still, his name has been taken on the remission register on 12th August 2024. The petitioner was not at fault as regards the mandatory requirements of observance of steps by the respondents and therefore, he cannot be denied the benefit if he is entitled to. However, what we found here is that no final order has been passed and even the order passed by the learned District and Sessions Judge-3, Aurangabad is a cryptic order wherein reasons have not been given. Then such decision deserves to be set aside. The matter deserves to be remitted back to the competent authority to pass final order, after taking a fresh judicial appraisal of the learned Sessions Judge. We do not, therefore, consider that the Petition suffers from any delay and laches. Hence, we pass following order:-

ORDER

(I) The Writ Petition stands partly allowed.

(II) The impugned order dated 7th November 2009 passed by the learned District and Sessions Judge-3 Aurangabad is hereby quashed and set aside.

(III) Respondent No.2 should submit the necessary documents for fresh judicial appraisal within a period of 15 days from today. While sending the file to respondent No.3, respondent No.2 should forward copy of show cause notice dated 18th March 2009, reply of the petitioner dated 26th March 2009, sanction of the Special Police Inspector General (Prison), Aurangabad dated 18th September 2009 along with the copy of this Judgment and order.

(IV) After receipt of all these documents, respondent No.3 to pass an order within a period of one month.

(V) After receipt of the judicial appraisal, the competent authority to pass the final order and the same be communicated to the petitioner.

(VI) Respondent Nos.1 and 2 to follow the steps as directed in *(Sk. Jakir Sk. Babu vs. State of Maharashtra)* (supra), henceforth.

(VII) Rule is made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE