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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3927 OF 2022**

Buvaji Sahdeo Hajare	]	..	Petitioner
vs.			
State of Maharashtra	]	..	Respondent

Mr.Balwant Salunkhe for the Petitioner.

Ms.Sharmila Kaushik, APP for the State.

Mr.Vinayak Chavan, Deputy Secretary, Home Department, Mantralaya, present.

Mr.Nandkumar Shinde, Prison Constable (Judicial Section), Visapur District Open Prison, present.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 2nd SEPTEMBER, 2024.

P.C.

1] In compliance of the order dated 27.08.2024, the learned APP has placed before us the communication addressed by the Superintendent, Visapur District Open Prison, dated 31.08.2024, indicating that there was a gross mistake committed in computing the period of actual imprisonment of the Petitioner/Convict and apology is tendered in that regard.

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We have noted the contention of the learned counsel representing the Petitioner in our order dated 27.08.2024 that the Petitioner/ Convict has undergone 27 years, 10 months and 20 days of imprisonment including the period of remission and only when he made the statement, the mistake was realized and apology is tendered before us.

We must make it clear to the Authority who had prepared the computation of the period undergone by the prisoner, to tender an apology to the Petitioner and not to the Court, as he deserve an apology for giving a hope that the he deserve his release on completion of 27 years, 10 months and 20 days of imprisonment.

2] In any case, today the question before us is whether the Petitioner deserve his classification under Category 3(b) or 6(a) of the Guidelines of 1992.

The opinion of the Additional Sessions Judge, Satara dated 28.11.2014 as regards premature release of the Petitioner, clearly classify him in column No.3(b), by taking note of the fact that he was guilty of committing double murder by inflicting several injuries on the two deceased persons which clearly reflected his intention.

Despite the seriousness of the offence, the District Judge, categorized him in Clause 3(b), which warranted him to undergo actual imprisonment of 24 years including the period of remission.

Even the Advisory Board and the DIG, Western Region, Pune, categorized him in Clause 3 (b) of 2010 Rules, requiring him to undergo 22 years or imprisonment with the minimum of 14 years, including the period of remission.

3] In utter ignorance of the aforesaid recommendations, the State Government has categorized him in Category 6(a) of 1992 Guidelines and we fail to understand as to how he could be categorized in this Clause.

Category 6 of the 1992 Guidelines, provide for 'Escapes' and Category (a) categorize the prisoners who have escaped from lawful custody while undergoing imprisonment who have absconded while on parole or furlough, as the category itself indicate it is for 'Escapees'.

If a prisoner who has overstayed on parole or furlough leave, he definitely would not fall within the category of 'Escapee'.

In addition for his late surrender whether for justifiable or unjustified reasons, he is imposed with a penalty and in the present case the Petitioner has been imposed penalty of 396 days for overstaying by 132 days.

It being trite position of law that the accused cannot be punished twice for the same act and in this case when the convict was already required to undergo the imprisonment for the number of days on account of his late surrender, he definitely cannot be made to once

again suffer by categorizing him as an 'Escapee'.

4] In any case, Category 6(a) is not applicable to the present Petitioner and though we are also not agreeable to the report of DIG who has categorized him for 22 years, as the 2010 Guidelines will not govern him as his conviction is dated 31.03.2004.

In the wake of the above, the Petitioner deserve his categorization in Category 3(b), where he is required to undergo imprisonment of 24 years including the period of remission. Since as on date, the Petitioner has already undergone 25 years, 7 months and 17 days, he deserve his release forthwith.

The learned APP shall communicate this order to the Superintendent, Visapur District Open Prison and the Petitioner shall be released within 24 hours from the date of uploading of the order.

Writ Petition stand disposed off in the above terms.

[MANJUSHA DESHPANDE, J]

[BHARATI DANGRE, J]