

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3147 OF 2024

Abhishek Suresh Kumar Singh .. Petitioner

Versus

The State of Maharashtra .. Respondent

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Mr. Ajinkya Udane a/w Mr. Vinayak Pandit, Maitrayee Garade
and Ms Sharmila Vasave, for the Petitioner.

Ms. S.S. Kaushik, APP, for the State-Respondent.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 22nd AUGUST, 2024**

P.C:-

1. We have heard learned counsel, Mr. Ajinkya Udane, who is representing the petitioner, on being appointed through Legal Service Authority.

The grievance of the petitioner through the letter addressed to this Court is about he not being admitted to Open Prison and grant of remission to him, since the year 2018 instead of 2022.

2. We have noted that, the petitioner was convicted by the Sessions Court in Session Case No.436 of 2011, for the offence punishable under Sections 302, 325 and 34 of the Indian Penal

Code and sentenced to imprisonment for life by Judgment dated 12.05.2016. It is not in dispute that he was incarcerated in the prison as an under trial prisoner since 10.02.2011, but for his entitlement to be admitted in open prison, Ms Kaushik, learned APP, has relied upon the Maharashtra Open Prison Rules, 1971, and in specific she would rely upon Rule 4, determining the eligibility of a person to be confined in open prison, and clause (d) require a person to be admitted to open prison, if he has undergone five years of the sentence of imprisonment of life imposed upon him excluding remission.

Applying the said rule to the facts of the case, Ms Kaushik has submitted before us that the present petitioner was convicted in the year 2016 and he would have been eligible to brought in open prison upon expiry of period of five years excluding remission. However she would submit that, since the Covid pandemic, the prisoners were released on Covid Parole Leave and since the State Government vide its Resolution dated 04.05.2022 declared that this leave will not be counted towards remission.

3. The request of the petitioner to be admitted in open prison was considered and he was admitted in Morshi Open Prison, Amravati, in the year 2022.

His grievance is that, he should have been considered to be in open prison on expiry of period of five years that is to be computed from 2018 instead of 2022, and thereafter, the benefit of the remission which is available to a prisoner in open jail that is 30 days for a calendar month should be conferred on him.

However, we did not think that the petitioner is entitled for this relief as the period of five years will have to be computed from the date on which the sentence has been imposed upon him and excluding the period of parole remission which is not to be computed as remission in the sentence, he may have to wait for some more time. However, since now we are in August, 2024, we direct the Superintendent, Morshi Open Prison, Amravati to consider his eligibility for computing the remission applicable to him upon his admission in open jail and pass appropriate order within a period six weeks from today.

4. This Court would like to record the appreciation of Advocate, Mr. Ajinkya Udane for his valuable assistance rendered and the Legal Services Authority is directed to make payment of the legal remuneration due and payable to him, within a period of six weeks from today.

The aforesaid order shall be communicated to the prisoner/convict through the Superintendent, Morshi Open Prison, Amravati, through the Registrar Judicial - I .

5. With this direction, the Writ Petition is disposed off.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)