



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Criminal Application (APPW) No. 114 of 2024
in
Criminal Writ Petition No. 142 of 2024

Anil Laxman Jawade

Versus

The State of Maharashtra through the under Secretary Ministry of Home
Department having office at Mumbai

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Anand Deshpande, Advocate for the petitioner.
Shri D.V.Chauhan, PP for the respondent/State.

**CORAM : SMT. VIBHA KANKANWADI &
MRS. VRUSHALI V. JOSHI, JJ.**

DATED : 22nd JULY, 2024.

Once again the original respondent/State is moving an application for stay to the order dated 16th July, 2024 passed by this Court for 60 days.

2. We would like to place on record the background, the original petitioner Anil Jawade filed Criminal Writ Petition 142 of 2024 for declaration that he comes within a purview of category 3(a) of the Government Resolution dated 15th March, 2010 and therefore

he is entitled to be released from the prison after completion of 20 years instead of category 3(b) of the said Government Resolution. The prayer clause (b) was specific in contending that the Court should direct the respondent to release the petitioner forthwith, in case, the petitioner has completed 22 years of actual imprisonment. Then there was a prayer for quashing and setting aside the order passed by the respondent no.1 on 28th April, 2023, whereby it was held that the petitioner falls under the category 3(b) and not 3(a) as per the Government Resolution dated 15th March, 2010.

3. Opportunity was given to the respondent to file say. Reply was filed on behalf of the respondent nos. 1 and 2, by Kirti Rajesh Chintamani, Superintendent of Amravati Central Prison on 4th March, 2024. Thereafter, the matter was heard and the judgment was pronounced on 28th June, 2024. The petition was allowed and in view of the order / communication dated 9th November, 2020 passed by the State, the direction was given to release the petitioner wherein it was pointed out that he has already undergone the imprisonment of 22 years.

4. Matter further proceeded, in the sense, that the original petitioner was required to approach this Court by filing an application (Criminal Application (APPW) No. 107 of 2024), giving direction to the respondent to release him forthwith as till 12th July, 2024, he was not released.

5. After hearing both the sides this Court on 16th July, 2024 directed the respondent no.2 to release the petitioner/applicant

forthwith. On that date, learned APP on instructions made submission that though categorization of the applicant has been done, the actual period of sentence undergone is 17 years 9 months and 4 days. It was then observed that no calculation was given in the reply by the State and on the basis of communication dated 9th November, 2020, the petition was allowed. It was also observed that there cannot be disobedience of the order passed by this Court and if they have any problem, then they ought to have come to the Court immediately. With the said direction to release the applicant forthwith, that matter was disposed of. It appears that even now the petitioner has not been released and now the present application has been filed.

6. Heard Shri D.V.Chauhan, learned Public Prosecutor for the State and Shri Deshpande, learned advocate for the original petitioner.

7. Reply has been filed. Leave is granted to both the sides to correct the application as well as reply, to be carried out forthwith.

8. In the application, which is on behalf of the State, the details are given. That the petitioner faced the trial i.e. Sessions Trial No. 103 of 1993 in Crime No. 23 of 1993. The petitioner was convicted by the learned Additional Sessions Judge, Akola on 8th November, 1994. Thereafter, it appears that sentence was suspended and the convict was released on bail on 4th January, 1996 but thereafter after the dismissal of the appeal on 20th November, 2001, he was taken in custody. It also appears that the original petitioner faced another proceedings i.e. offence under Section 224 of the

Indian Penal Code vide SCC No. 3516 of 2014 which was decided by the learned Judicial Magistrate First Class on 15th February, 2016, wherein he was sentenced to suffer imprisonment for two years with a fine of Rs.2000/- in default to pay fine amount imprisonment for one month. The appeal was preferred by the original petitioner before the Criminal Appeal No. 43 of 2016 which was allowed then the original petitioner was acquitted from the offence punishable under Section 224 of the Indian Penal Code.

9. Along with the application now the chart is given stating that whenever the petitioner was released on parole or furlough leave, he has reported late on various occasions and total calculation shows that he was late by 3050 days and thereby excluding that period then his actual imprisonment would be 17 years 9 months and 4 days. Again in this communication it is stated on behalf of the State that the prison authorities have received orders from the Government that the petitioner should be released after undergoing actual imprisonment of 22 years.

10. The reply on behalf of the petitioner is the reiteration what was held by this Court in the judgment and then the order. In the present application, the State wants to approach to the Hon'ble Supreme Court and for that purpose prays for stay to the order dated 16th July, 2024 for 60 days.

11. The submissions on behalf of both the sides is as per the respective contentions.

12. Again at the costs of repetition, we would like to say that the respondent had not given the calculation in the reply which was filed in main petition, though there was a specific prayer clause (b) yet actual imprisonment was less than the categorization. Taking into consideration the fact that the petitioner was in jail since 2001 we had calculated, till the date of the judgment was pronounced, that it would be more than 22 years and therefore it was stated that the petitioner should be released. In fact the State ought to have given the entire record i.e since when he was under trial, how much incarceration he has undergone prior to the conviction by the trial Court and thereafter whether released on bail by suspending the sentence while the appeal was pending and then when he was taken in actual custody upon the decision of the appeal. That calculation is now made available that he has undergone one year, one month and 27 days after the conviction i.e. from 8th November, 1994 till 4th January, 1996 (i.e. till the date on which there was bail in pursuance to suspension of sentence). It also appears that he was in jail for four months and one day during trial. If all the said calculations would have been given earlier it would have been considered by this Court much less no account was given along with the reply as regards alleged delay of 3050 days for belated reporting after furlough or parole leave.

13. After the Court of law directs the release of a convict then it cannot be stayed since the liberty of a person would be at stake. However, now the learned Public Prosecutor is accepting that there was a mistake on the part of the State in not giving the details.

He also submits that the petitioner ought to have given his own calculation for his imprisonment with remission.

14. As aforesaid under the above circumstance, this Court had come to conclusion that the petitioner has undergone 22 years of imprisonment for which he has been categorized. But now the State is demonstrating that if we consider the belated reporting then it would be less than 22 years. The State intends to approach the Hon'ble Supreme Court and, therefore, we may not grant 60 days period for stay to the order dated 16th July, 2024, however, we may stay the order till 5th August, 2024. Accordingly, we stay the order dated 16th July, 2024 till 5th August, 2024. If there would be no order from the Hon'ble Apex Court further, then respondent no.2 shall release the petitioner. We reiterate that if he is not released thereafter, then all the consequences would follow.

15. The learned advocate on behalf of the original petitioner submits that the application for contempt of Court has been filed. List the said petition on **7th August, 2024**.

[MRS. VRUSHALI V. JOSHI, J.]

[SMT. VIBHA KANKANWADI, J.]