



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

CRIMINAL WRIT PETITION NO. 605 OF 2023

Rishikesh Kailasrao Bedre
Age : 40 years, Occ : Agriculture,
R/o Bedre Galli, Georai,
Tq. Georai, Dist. Beed.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through Secretary,
Home Department,
Maharashtra State, Mantralaya,
Mumbai – 32.
2. The Director General (Sudharseva),
Maharashtra State, Mumbai.
3. The Inspector General of
Prisons, Aurangabad.
4. The Deputy Inspector General of
Prisons, Aurangabad
5. The Superintendent of Prison,
Nashik Road Central Prison,
Nashik Road, Nashik.
6. The Superintendent of Prison,
Open Prison, Paithan,
Dist. Aurangabad.
7. Balraje @ Trimbak S/o Madhavrao Pawar
(Convict No.7381, inmate prisoner at
Open Prison, Paithan,
R/o Georai, Dist. Beed.

..RESPONDENTS

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Advocate for the petitioner : Mr.M.S. Deshmukh
APP for respondent-State : Mrs. P.R. Bharaswadkar
Advocate for respondent No.7 : Mr.A.M. Gaikwad

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CORAM : SMT. VIBHA KANKANWADI AND**ROHIT W. JOSHI, JJ.****RESERVED ON : 10th DECEMBER, 2024****PRONOUNCED ON : 14th JANUARY, 2025****JUDGMENT (PER ROHIT W. JOSHI, J.) :**

. Respondent No.7 in the present Petition was sentenced to suffer imprisonment for life, vide judgment and order dated 11.09.1997 passed by the learned Sessions Judge, Beed in Sessions Case No.131/1996 holding him guilty of offence punishable under Section 302 of the Indian Penal Code (I.P.C.). The petitioner is son of deceased Kailashrao Bedre, who was murdered by respondent No.7. Respondent No.7 while he was in jail was granted parole leave for a period of 30 days on 12.03.2009. However, he did not surrender on expiration of parole leave on 12.04.2009. He surrendered after a period of 429 days on 15.06.2010. On account of this delay in surrendering, respondent No.4 – Superintendent of Prisons had passed order dated 22.08.2011 thereby directing removal of his name permanently from register of remission. This order dated 22.08.2011 is passed subject to obtaining sanction from Respondent No.4 – DIG of Prisons and subject to judicial appraisal by Sessions Judge, Nashik.

2. Perusal of the order dated 22.08.2011 indicates that the punishment of removal of name from the register of remission is imposed by respondent No.5 subject to sanction by respondent No.4 and judicial appraisal by learned Sessions Court. However, at the same time, the said order also records that the punishment of removal of name from the register of remission is proposed to be imposed.

3. The grievance of the petitioner is that the order/proposal dated 22.08.2011 has not been forwarded for sanction to respondent No.4 or for obtaining judicial appraisal to the learned Sessions Court, Nashik. The petitioner has prayed that respondent No.5 should be directed to forward the proposal/order dated 22.08.2011 passed by respondent No.4 for obtaining sanction to respondent No.4 – DIG Prisons and also to the learned Sessions Court, Nashik for obtaining judicial appraisal.

4. Learned counsel for the petitioner submits that the petitioner is entitled to seek such relief since he is son of the person, who was murdered by respondent No.7. He points out allegations regarding misuse of parole leave by respondent No.7.

5. As against this, learned APP appearing for respondent Nos.1 to 6 and learned counsel Shri A.M. Gaikwad appearing for

respondent No.7 opposed the petition stating that the petitioner has no right to seek reliefs sought in the petition. It is their contention that remission of sentence is a matter between the Government and the convict/prisoner, and that the victim of offence or his family members do not have any locus to interfere in said matter.

6. The contention as regards locus of the petitioner needs to be rejected in view of the judgment of the Hon'ble Supreme Court in the matter of *Bilkis Yakub Rasool Vs. Union of India and others* reported in *(2024)5 SCC 481*.

7. As regards merits of the matter, we find that the order dated 22.08.2011 is passed disregarding the mandate of Rule 23 of the Maharashtra Prisons (Remission System) Rules, 1962 (Hereinafter referred to as "the Remission Rules"). Punishment of removal of name from the register of remission on permanent basis is a higher punishment. Power to impose such punishment is vested with the Superintendent of Prisons under rule 23 of the Remission Rules. Proviso to rule 23 clearly prescribes that such order can be passed only upon obtaining previous sanction from the DIG, Prison. Such sanction was admittedly not obtained before passing of the order dated 22.08.2011. Likewise judicial appraisal from the convicting Court is also required to be obtained before passing order of higher punishment. Both these

requirements which have to be observed prior to imposition of higher punishment have not been fulfilled before passing of the order dated 22.08.2011. Rather, the order is passed subject to sanction by DIG, Prison and judicial appraisal by the Sessions Court, Nashik. The order imposing higher punishment dated 22.08.2011 suffers from inherent defect of not obtaining prior sanction and prior appraisal. The order imposing higher punishment can not be passed before sanction before DIG, Prisons. Rather, a proposal is required to be placed seeking prior sanction for imposing higher punishment of removing the name from register of remission. Likewise, judicial appraisal is also required to be obtained before the order imposing higher punishment is passed. We are of the considered opinion that the order dated 22.08.2011 is completely illegal and invalid. It can not be validated by obtaining post-facto sanction or subsequent judicial appraisal. The order dated 22.08.2011 records that the same shall be enforced/implemented subject to sanction by DIG, Prisons and further judicial appraisal for punishment. The order dated 22.08.2011 can not therefore be considered as a proposal for intended action. It is an order which is passed subject to aforesaid two conditions.

8. Therefore, the prayer made by the petitioner for directing respondent No.2 to forward the order/proposal dated 22.08.2011 for

sanction before respondent No.4 – DIG, Prisons and also before the learned Sessions Judge, Nashik for judicial appraisal can not be granted. However, since it appears that respondent No.7 has committed jail offence by overstaying the parole leave by 429 days, it will be appropriate to direct respondent No.5 to consider the case for taking appropriate action against respondent No.7 in accordance with law. Hence we pass the following order :-

ORDER

- (i) The petition is partly allowed.
- (ii) The prayer for directions to forward the order/proposal dated 22.08.2011 passed by the Additional Superintendent of Prisons, Nashik Road Central Prison, Nashik Road, Nashik to Deputy Inspector General of Prisons, Aurangabad for sanction and further to learned Sessions Judge, Nashik for judicial appraisal, is rejected.
- (iii) Respondent No.5 – The Superintendent of Prison, Nashik Road Central Prison, Nashik is directed to take appropriate decision in the matter of prison offence alleged to have been committed by respondent No.7 for overstaying the parole leave.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/