



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.765 OF 2025

Mahadeo Rangnath Sendge

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary, Home Department
Mantralaya, Mumbai-400032.
2. The Deputy Inspector General of Prisons
Western Region Aurangabad
Division Aurangabad.
3. The Superintendent
Open Prison at Paithan
District, Chhatrapati Sambhajnagar

.. Respondents

...
Ms. Sharada P. Chate, Advocate for the petitioner.
Mrs. R. P. Gour, APP for the respondents/State.
...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 18 SEPTEMBER 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present petitioner is a convict, who has prayed for the following
reliefs :-

“B) This Hon’ble High Court may be pleased to issue appropriate writ, order or directions to respondent NO.2 to quash and set aside order dated 03.05.2012 and 01.07.2013 respectively passed by respondent NO.2 in the interest of justice.

C) This Hon'ble High Court may be pleased to issue appropriate writ, order or directions to respondent No.2 to deduct his remission by applying the ratio 1:1 instead of the ratio 1:5 and 1:4 and deduct only 274 days remission instead of 637 days remission in the interest of justice."

2. Heard learned Advocate Ms. Sharada P. Chate for the petitioner and learned APP Mrs. R. P. Gour for the respondents/State.

3. The learned Advocate for the petitioner submits that the petitioner was released on parole leave on 07.06.2011 for 30 days for the purpose of arrangement of his daughters marriage. Thereafter, as the said leave was not enough, he has filed application for extension of parole for 30 days. The said application was allowed and parole leave was extended for 30 days. He was thereafter supposed to surrender on 06.09.2011. In spite of knowledge about the said fact, the petitioner surrendered on 03.12.2011 i.e. after a delay of 89 days and, therefore on 05.12.2011, show cause notice was issued to the petitioner as to why his name should not be taken off from the remission register. Reply has been given by the petitioner on 08.12.2011 and 12.03.2012, wherein he had stated that his wife was suffering from serious illness and there is no one to look after his family affairs and therefore he has surrendered late. Further, on 30.11.2012 the petitioner was released on furlough leave for 14 days and he was granted 14 days extension of furlough leave. Thereafter, he was supposed to surrender on 29.12.2012, but at that

time his wife was under medical treatment and no one was there to look after her medical affairs and therefore, on 01.07.2013 show cause notice was issued to the petitioner by respondent No.2. His explanation has not been accepted and the impugned orders have been passed on 03.05.2012 and 01.07.2013 and the judicial appraisal is stated to have been taken, but it is taken from the Court at Nashik. The authorities ought to have accepted the explanation of the petitioner. She relies on the Full Bench decision of the Hon'ble Gujarat High Court in ***Bhikhabhai Devshi Vs. State of Gujarat and Ors., [MANU/GJ/0058/ 1987]***, wherein it has been observed thus :-

“However, in cases of late surrender, where there is no element of escape, but merely there is a delay in surrendering, the question will have to be examined on the facts and circumstances and merits of each case. A given case of a prisoner defaulting in timely surrender, who is wanted by the jail authorities and who is not available at the place where ordinarily he should be and who is apprehended by the police or who surrenders because of the chase by the authority, may fall under the first part where he cannot be trusted to be released on furlough again. But such cases are at the other extreme.”

4. The learned APP relies on the affidavit-in-reply by Mr. Balrajendra s/o Chokhaji Nimgade, the Superintendent of Open Prison, Paithan, District Chhatrapati Sambhajnagar, wherein it is stated that the

petitioner came to be convicted by the learned Additional Sessions Judge, Ambajogai in Sessions Case No.85 of 2008 on 06.10.2010 thereby holding him guilty of committing offence punishable under Section 302, 307 read with Section 34 of Indian Penal Code and has been sentenced to suffer imprisonment for life. The said prisoner was transferred from Nashikroad Central Prison, Nashik to Open District Prison, Paithan on 09.10.2018. The fact about he was released on parole leave on 07.06.11 and the same was extended twice by 30-30 days by order dated 12.07.2011 and 20.08.2011 was admitted. The petitioner has to surrender before the authority on 06.09.2011, however, the petitioner had surrendered on 03.12.2011. The petitioner overstayed for 89 days after parole leave. As per Circular dated 02.08.2011, proposals to deduct the petitioner's name from remission register for 445 days as well as for deducting his remission by 192 days for overstaying on furlough leave were forwarded to Deputy Inspector General of Prison, Central Region, Aurangabad on 29.02.2012 and 01.07.2013. Those proposals were forwarded for judicial appraisal to District and Sessions Court, Nashik and those proposals have been approved on 17.07.2012 and 25.04.2014 respectively.

5. The first and the foremost fact that is required to be noted is that the act of taking the name of the petitioner from the remission register by way of overstay is considered to be an act of punishment as per the jail

manual. As regards the requirement of taking judicial appraisal in case of punishment in the form of taking the name of a convict out of the remission register is concerned, a procedure has been prescribed by this Court and accordingly the judicial appraisals have been taken. This Court Bench at Nagpur in ***Criminal Writ Petition No.284 of 2006 (Sk. Jakir Sk. Babu vs. State of Maharashtra)*** decided on 15.09.2008, has laid down the following guidelines 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).”

6. Thus, from this decision, it can be said that when higher punishment is proposed, then show cause notice is to be given and the

further procedure is required to be followed. Now, in guideline No.4, there is a stipulation of taking judicial appraisal and the word used is “judicial appraisal from the Sessions Judge concerned”. That means, it should be taken from the convicting Court and not from any other Court. Here, in this case, the proposals dated 01.07.2013 03.05.12 was sent to the learned District Judge-1 and Additional Sessions Judge, Nashik and he has given the opinion on 17.07.2012 and 25.04.2014. When the conviction to the petitioner was given by the learned Additional Sessions Judge, Ambajogai, District Beed, how the judicial appraisal can be taken from a Judge, who had not convicted the petitioner, is a question and, therefore, we say that when in **Sk. Jakir Sk. Babu (Supra)** while laying down the guidelines, the word used is “Sessions Judge concerned”, then it should be interpreted that the opinion or appraisal should be from the convicting Court and not from the Sessions Judge within whose jurisdiction the jail is situated. Now, the petitioner herein challenged the said judicial appraisals before this Court. No such rule has been pointed out by the learned APP which states that the judicial appraisal can be taken from the learned Additional Sessions Judge or learned Sessions Judge, within whose jurisdiction, the prisoner is located, where the petitioner has been lodged or the said convict has been lodged.

7. Another fact to be noted is that from the above guidelines in **Sk. Jakir Sk. Babu (Supra)**, it can be seen that when the higher punishment

is proposed, then the sanction is required to be given by the higher authorities and after the higher authority gives sanction and judicial appraisal from the Sessions Judge is given, an order imposing higher punishment may be passed and communicated to the prisoner. That means, a final order is required to be passed by the concerned authority taking into consideration the sanction and the judicial appraisal. We had therefore made a query with the learned APP as to whether till date the final order has been passed or not as per the decision in **Sk. Jakir Sk. Babu (Supra)**, he said it in the negative. It will not be out of place to mention here that in **Satish Kumar Shhinde vs. State of Maharashtra and others, [Criminal Writ Petition No.1875 of 2023 2023 decided on 24.10.2024]**, this Court has once again taken note of the decision in **Sk. Jakir Sk. Babu (Supra)** and directed the respondent/State and the Deputy Inspector General of Prisons to follow the steps as directed in **Sk. Jakir Sk. Babu (Supra)**. It appears that still the practice of taking the judicial appraisal from the convicting Court (Sessions Court concerned) and passing final order as contemplated under the said decision is not yet followed. Recently, in **Dnyanoba s/o Gangadhar Mundhe vs. The State of Maharashtra and others, [Criminal Writ Petition No.645 of 2025 decided on 08.08.2025]**, we have given following directions :-

“1)

- II)
- III) We direct respondent No.1/State to issue Circular / Guidelines stating that the guidelines in **Sk. Jakir Sk. Babu (Supra)** should be adhered to in all the prisons and the judicial appraisal should be taken as contemplated under the guidelines from the convicting Courts and not from the Court in whose jurisdiction the prison is situated, where such convict is lodged.
- IV) Such Guidelines / Circular be issued within a period of 15 days from today.
- V) Compliance be reported on 27.08.2025.
- VI) With these directions, the writ petition stands disposed of.”

8. When in the present case the judicial appraisals have not been taken from the “Sessions Judge concerned”, we set aside the orders dated 03.05.2012 and 01.07.2013 respectively and direct respondent No.2 to take the judicial appraisals from the “Sessions Judge concerned” i.e. the Additional Sessions Judge, Ambajogai, District Beed, who had convicted the petitioner within a period of one month from today and thereafter, to pass the final order as contemplated under clause (4) in **Sk. Jakir Sk. Babu (Supra)**.

9. With these directions, the writ petition stands disposed of.

[SANJAY A. DESHMUKH]
JUDGE

scm

[SMT. VIBHA KANKANWADI]
JUDGE