



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.875 OF 2025

Akbar Sayyad Shaikh

.. Petitioner

Versus

1. The State of Maharashtra
2. The Deputy Inspector General of Prisons
Western Region Aurangabad
Division Aurangabad.
3. The Superintendent
Open Prison at Paithan District,
Aurangabad

.. 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.) :-

1. Present petition has been filed challenging the order passed by respondent No.2 on 08.03.2023, thereby removing the name of the present petitioner from remission register for three years in view of overstay. The petitioner is also seeking directions to respondent No.2 to take/re-enter the name of the petitioner in remission register.

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

3. The learned Advocate for the petitioner submits that the petitioner was released on corona parole leave on 12.08.2020 for 45 days, however, that was extended by the State Government in view of the pandemic situation. He was thereafter supposed to surrender on 04.06.2022 in view of the Government Circular dated 04.05.2022. In spite of knowledge about the said fact, the petitioner surrendered on 25.09.2022 i.e. after a delay of 113 days and, therefore on 26.09.2022, 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 29.09.2022, wherein he had stated that he had not received any intimation from the jail authorities that he was supposed to surrender on 04.06.2022. His explanation has not been accepted and the impugned order has been passed on 02.08.2011 and the judicial appraisal is stated to have been taken, but it is taken from the Court at Aurangabad. 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.”

The past record of the petitioner has not been considered. It was his *bona fide* mistake since he could not come to know about the Government Circular dated 04.05.2022.

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 District Judge, Sangamner in Sessions Case No.04 of 2010 on 08.04.2011 thereby holding him guilty of committing offence punishable under Section 302 of Indian Penal Code and has been sentenced to suffer imprisonment for life. The said prisoner was transferred from Yerwada Central Prison, Pune to Open District Prison, Paithan on 11.05.2019. The fact about he was released on corona parole has been admitted and then it is stated that by Government Circular dated 04.05.2022, all the prisoners who were released on corona parole leave were asked to surrender with the respective prisons within 15 days maximum. However, the petitioner had not surrendered. He was required to be brought through Sangamner

Police Station. As per Circular dated 02.08.2011, a proposal to deduct the petitioner's name from remission register for three years is forwarded to Deputy Inspector General of Prison, Central Region Aurangabad on 19.01.2023 and it has been approved by order dated 08.03.2023 by the said authority on condition of judicial appraisal. On 25.04.2023, petitioners proposal for judicial appraisal was forwarded to District and Sessions Court, Aurangabad and it has been approved on 25.05.2023. The said judicial appraisal has also rejected the explanation that has been given by the petitioner.

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 proposal dated 08.03.2023 for imposing punishment of three years i.e. taking his name out of the remission register was sent to the learned District Judge-3 and Additional Sessions Judge, Aurangabad and he has given the opinion on 29.05.2023. When the conviction to the petitioner was given by the learned Additional Sessions Judge, Sangamner, District Ahmednagar, 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 appraisal dated 29.05.2023 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 :-

- I)
- 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 appraisal has not been taken from the “Sessions Judge concerned”, we set aside the order dated 08.03.2023 and direct respondent No.2 to take the judicial appraisal from the “Sessions Judge concerned” i.e. the Additional Sessions Judge, Sangamner, District Ahmednagar, 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

[SMT. VIBHA KANKANWADI]
JUDGE

scm