



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.905 OF 2025

Vijay s/o Kisanrao Mate

.. Petitioner

Versus

1. The State of Maharashtra
Through Under Secretary Home
Department, Mantralaya, Mumbai.
2. The Superintendent of
Chh. Sambhaji Nagar
Central Prison.
3. The Deputy Inspector General,
Chh. Sambhaji Nagar Central
Prison.

.. Respondents

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Ms. Bharati B. Gunjal, Advocate for the petitioner.
Mr. V. K. Kotecha, APP for respondents/State.

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**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] By issuing appropriate writ or direction in like
nature the order passed by respondent No.2 dated
01.04.2025 may kindly be quashed and set aside.

B-1] By issuing appropriate writ or direction in like
nature respondent No.2 (The Superintendent of Chh.
Sambhaji Nagar Central Prison) and respondent No.3 (The

Deputy Inspector General Chh. Sambhaji Nagar Central Prison) may kindly be directed to decide the proceeding in order dated 01.04.2025 issued by respondent No.2 within a stipulated period.

C] By issuing appropriate writ or direction in like nature the respondent No.3 may kindly be directed to discharge the petitioner from further proceeding and be considered to transfer him in open prison."

2. Heard learned Advocate Ms. Bharati B. Gunjal for the petitioner and learned APP Mr. V. K. Kotecha for respondents/State.

3. The learned Advocate for the petitioner submits that the petitioner was released on corona parole leave on 10.05.2020 for 45 days, however, that was extended by the State Government for 30 days till its cancellation in view of the pandemic situation. He was thereafter supposed to surrender on 17.05.2022. In spite of knowledge about the said fact, the petitioner surrendered on 02.10.2022 i.e. after a delay of 139 days and, therefore on 24.12.2022, 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 29.12.2022, wherein he had stated that he had not received any authentic letter and no understanding was given by the jail authorities that he was supposed to surrender on 17.05.2022. Though the petitioner has given genuine reason for his overstay, yet respondent No.2 was not

satisfied on his reply. Therefore, to give an opportunity for explanation, second chance was given to the petitioner and second show cause notice was issued to the petitioner and seven days time was granted for filing reply. Petitioner has give the same reason for his overstayed period. His explanation has not been accepted and the impugned order has been passed on 01.04.2025. The proposal for judicial appraisal has been sent to the District and Sessions Court, Aurangabad and it is pending there. 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. Sachin Ramesh Salve, the Superintendent of Open Prison, Chhatrapati Sambhajanagar Central Prison, District Chhatrapati Sambhajanagar, wherein it is stated that the petitioner came to be convicted by the learned Sessions Judge, Nagpur in Sessions Case No.554 of 2002 on 18.10.2013 thereby holding him guilty of committing offence punishable under Section 302, 120-B, 147, 148 of Indian Penal Code and has been sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- in default to suffer simple imprisonment for nine months. 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 surrendered on 03.10.2022 i.e. 139 days late. 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 08.04.2025 and it has been approved by order dated 02.06.2025 by the said authority on condition of judicial appraisal. On 30.07.2025, petitioner's proposal for judicial appraisal was forwarded to District and Sessions Court, Aurangabad. In fact, it should have been forwarded to the convicting Court i.e. Sessions Court, Nagpur.

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 08.04.2025 for imposing punishment of three years i.e. taking his name out of the remission register was sent to the wrong Court i.e. learned District and Sessions Court, Aurangabad and it is pending before the said Court. When the conviction to the petitioner was given by the learned Sessions Judge, Nagpur, District Nagpur, 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 proposal for judicial appraisal, which is pending before the learned District and Sessions Court, Aurangabad, 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 proposal for judicial appraisal has not been sent to the “Sessions Judge concerned”, we set aside the order dated 01.04.2025 and direct respondent No.2 to take the proposal for judicial appraisal from the “Sessions Judge concerned” i.e. the learned Sessions Judge, Nagpur, District Nagpur, 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