



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

CRIMINAL WRIT PETITION NO. 1124 OF 2023

Dipak S/o Subhash Patil
(C-6125),
Age : 41 years, Occ : Convict,
R/o Bhairav Nagar, Plot No.59-A,
Gut No.172, Jalgaon
At present confined in Central Jail
Nasik.

..PETITIONER

-VERSUS-

1. State of Maharashtra,
Through Deputy Inspector General,
of Prisons, Central Division,
Aurangabad
2. Superintendent Central Jail,
Nasik Road, Nasik.

..RESPONDENTS

...
Advocate for the petitioner : Mr. R.A. Jaiswal
APP for respondent – State : Mr.N.R. Dayama

...

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.) :

. The present petition was filed initially seeking writ of mandamus directing respondent No.1 to grant remission to the petitioner as per the Maharashtra Prisons (Remission System) Rules, 1962 (Hereinafter referred to as “the Remission Rules” for brevity) from

27.01.2012 and onwards. The petition is filed on 25.07.2023. Thereafter, in view of subsequent development i.e. receipt of judicial appraisal, the petition was amended and further prayers were added seeking to (a) quash and set aside judicial appraisal report dated 03.11.2023; (b) claiming remission w.e.f. 04.05.2016 in the light of circular dated 27.05.2015 and (c) seeking direction to place the petitioner in open prison.

2. The facts of the case are as under :-

Sr. No.	Date	Particulars of Events
1.	07.03.2003	The petitioner was arrested in relation to an offence registered against him under Section 302 of the Indian Penal Code (IPC).
2.	20.10.2006	The petitioner was convicted and sentenced to suffer life imprisonment for the offence punishable under Section 302 of the IPC in Sessions Case No.84/2004, vide judgment and order dated 20.10.2006 passed by the learned Sessions Judge, Jalgaon.
3.	14.11.2007	The petitioner was granted parole leave for a period of 30 days i.e. upto 15.12.2007.

4.		However, the petitioner did not return after the period of parole leave was over.
5.	04.05.2011	The petitioner was arrested and brought to prison after a period of 1237 days from the date on which the parole leave had expired.
6.	27.01.2012	The name of the petitioner was permanently removed from remission register.
7.	27.12.2017	The petitioner made application to the Deputy Inspector General of Prison (DIG, Prison) for restoring his name in the remission register. This application came to be rejected.
8.	04.02.2019	The petitioner challenged the order dated 27.01.2012 directing removal of his name from the remission register permanently and subsequent order dated 27.12.2017 rejecting his application for restoration of name in the remission register vide Criminal Writ Petition No.1581/2018. The said petition came to be allowed. The matter was remanded for taking a fresh decision.
9.	25.07.2023	The present petition was filed on 25.07.2023 seeking directions to grant remission to him from

		27.01.2012 till the date of filing of the petition.
10.		Meanwhile in view of judgment and order dated 04.02.2019 passed in Criminal Writ Petition No.1581/2018, the matter pertaining to imposition of punishment was taken up for consideration afresh.
11.	17.10.2023	After filing of the petition, respondent No.2 had passed an order for removal of name of the petitioner from the register of remission on permanent basis exercising powers under the Remission Rules. It is directed that the order shall come into force upon receiving sanction from the DIG and subject to positive judicial appraisal report from the convicting Court. This order dated 17.10.2023 is produced on record by the learned APP during the course of hearing on 25.11.2023. It is taken on record and marked as Exhibit – A.
12.	27.10.2023	The DIG, Prison has granted sanction to the order dated 17.10.2023 for removal of name of the petitioner from the remission register on permanent basis.
13.	03.11.2023	The convicting Court i.e. the learned Sessions

		Judge, Jalgaon has made positive recommendation for removing the name of the petitioner from remission register.
14.		The petition is amended in order to challenge judicial appraisal granted on 03.11.2023. Apart from this prayers are also made to include his name in the remission register w.e.f. 04.05.2016 and to put him in open prison.

3. As mentioned above, after remand of the matter, the fresh order for removing the name of the petitioner from remission register has been passed on 17.10.2023. This order dated 17.10.2023, which is passed by the competent authority namely the Superintendent, Central Jail is issued without prior approval / permission of the DIG which is received subsequently on 27.10.2023. Likewise, judicial appraisal is done on 03.11.2023 i.e. after passing of the order dated 17.10.2023.

4. The order of removal of name from remission register on permanent basis is passed under Rule 23 of the Remission Rules. It is undisputed that punishment of removal of name from the remission register on permanent basis is higher punishment. Respondent No.2 – Superintendent is the competent authority to issue higher punishment

of removal of name from the remission register on permanent basis. However, in view of mandate of proviso to rule 23 of the Remission Rules, this order of higher punishment can be passed only upon obtaining previous sanction from the DIG, Prison. It is undisputed that the order imposing higher punishment is issued on 17.10.2023 and sanction is granted thereafter vide order dated 27.10.2023. The mandate of prior sanction is clearly breached and as such, order dated 17.10.2023 removing the name of petitioner from remission register on permanent basis can not be sustained.

5. Apart from sanction from the DIG, Prison, judicial appraisal is obtained from the convicting Court on 03.11.2023. Thus judicial appraisal is also subsequent to passing of the order dated 17.10.2023 by which the name of the petitioner is ordered to be removed from the remission register.

6. Legal position with respect to procedure for removal of name from the remission register is explained in the judgment of this Court in the case of *Sk. Jakir Sk. Babu Vs. State of Maharashtra, through Secretary and Another* reported in *2008(4) Mh.L.J. (Cri) 495*, wherein it is held that when higher punishment is proposed against a prisoner, then the proposal should be submitted to the higher prison

authority for seeking sanction for higher punishment and after receipt of sanction, judicial appraisal should be obtained from the convicting Court. Once order imposing higher punishment can be imposed only after receiving prior sanction and positive judicial appraisal.

7. Procedure prescribed for passing order is completely reversed, in as much as, the order which was required to be passed with prior sanction is passed subject to sanction and moreover, judicial approval which is required to be obtained before taking a decision is not obtained and rather the order made subject to recommendation in the judicial approval. The procedure prescribed under law is completely disregarded while passing the impugned order. The impugned order removing the name of the petitioner from the remission register is therefore unsustainable in law and deserves to be quashed and set aside.

8. Even if, we consider the order dated 17.10.2023 passed by respondent No.2 – Superintendent to be a mere proposal for imposition of higher punishment of removal of name of the petitioner from remission register on permanent basis and not the actual order imposing the said punishment, we find that after receiving sanction from DIG on 27.10.2023 and positive judicial appraisal on 03.11.2023,

respondent No.2 – Superintendent has not passed any fresh order imposing any punishment. This is undisputed position on record.

9. We are of the opinion that till such time as an order imposing higher punishment is passed, the petitioner will be entitled to the benefit of computation of remissions in accordance with law.

10. The petitioner claims that he is entitled for confinement in open prison in accordance with the Maharashtra Open Prisons Rules, 1971. Rule 5 of the said Rules confers authority on the Superintendent of Prisons to prepare a list of prisoners who are eligible and willing to confine in open prison. The petitioner has expressed his willingness to be confined in open prison. If he is otherwise eligible for the same, his case may be processed for confinement in open prison in accordance with the said Rules.

11. In view of the aforesaid, we pass the following order :-

ORDER

- (i) The petition is partly allowed.
- (ii) The order dated 17.10.2023 directing removal of name of the petitioner from register of remissions is quashed.

(iii) The matter is remanded back to Respondent No.2 – Superintendent, Central Jail Nashik Road, Nashik, for consideration of the matter afresh in the light of the above observations.

(iv) Respondent Authorities are also directed to consider the case of petitioner for confinement in open prison and take appropriate decision in the matter at the earliest.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/