

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5597 OF 2024

Ananda S/o Laxman Chopade	]	
Age: 55 years, Occ: Labour,	]	
R/o Chopadewadi, Davri, Tal. Patan,	]	
District Satara,	]	
 At present confined in Central Jail,	]	
Kalamba, Kolhapur.	]	Petitioner

Versus

1.	The State of Maharashtra	]	
	Secretary Home Department	]	
	Mantralaya, Mumbai.	]	
2.	Inspector General of Prisons,	]	
	Pune.	]	
3.	Superintendent Central Jail,	]	
	Kalamba, Kolhapur.	]	Respondents

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Mr. Rupesh Jaiswal, for Petitioner.

Mr. Pankaj Deokar, A.P.P, for Respondent – State.

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CORAM : M.S. KARNIK &
SHARMILA U. DESHMUKH, JJ

DATE : 9th OCTOBER, 2025.

ORAL ORDER: PER M.S. KARNIK, J.

1. Heard Mr. Jaiswal, learned Counsel for the petitioner and Mr. Deokar,
learned A.P.P, for respondents – State.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks following reliefs;

“B] By appropriate Writ, direction or orders of like nature to direct the Respondents to give the petitioner remission of 15 months on eve of the Celebration of 75th year of India’s independence as per G.R. dated 13.3.2024 and accordingly to its effect entry be taken in Remission Register of petitioner forthwith and or,

C] By appropriate Writ, direction or orders of like nature to direct the Respondents to Credit in petitioner’s name remission of 2years and 3 months in remission register forthwith on eve of Golden Jubilee of India’s Independence as per G.R 6.08.1997 and on eve of 125th Birth Anniversary of the Dr. Babasaheb Ambedkar as per G.R dated 03.6.2017, and, or

D] By appropriate Writ, direction or orders of like nature to direct the Respondent no.1 to decide the premature release Application of the Petitioner as per the G.R dated 02.08.2004, within the frame, and, or to

E] By appropriate Writ, direction or orders of like nature to direct the Respondent No.1 to take him on remission register within 5 years from 19.01.2025 (with effect from 19.01.2020) and further direct the Respondent No.2 to credit to the Petitioner’s name remission in Remission Register from 19.01.2020 till petition is decided by this Hon’ble Court.

3. The petitioner was arrested on 27th October, 1996 for the offence punishable under section 302 of the Indian Penal Code (for short “I.P.C”). The

petitioner was convicted by the Sessions Court, Satara vide judgment and order dated 5th May, 1999 passed by the Sessions Court, Satara in Sessions Case No.2 of 1997 and sentenced to undergo imprisonment for life. It is the petitioner's case that he is entitled for grant of remission of two years on eve of Golden Jubilee of India's Independence as per the Government Resolution dated 6th August, 1997 of the State Government. The petitioner has undergone imprisonment more than sixteen years and two months including remission of twenty one year and twenty nine days. According to the learned Counsel, the petitioner has undergone substantial part of the sentence, but premature release application is not decided.

4. The respondents in the affidavit-in-reply filed by Nagnath G. Sawant, Superintendent of Kolhapur Central Prison, Kalamba, Dist Kolhapur had taken a stand that on 6th January, 2025, the State Government after considering the opinion of various Authorities had categorized the petitioner in category 3 (b) of Guideline dated 15th March, 2010. As per the said order, the petitioner can be released after completion of twenty two years of imprisonment including remission. The details are provided as to when the petitioner was released on furlough leave.

5. It is submitted that the Government had issued a Notification dated 2nd August, 2011 of the Home Department, State of Maharashtra which had amended and included rule 23-A as "Maharashtra Prison (Remission System)

Rule 1962” titled as “Maharashtra Prison (Remission System) (first Amendment) Rule 2011”. It is submitted that as per rule 23-A (8), the prisoner who has overstayed while on parole leave for six months or more shall be removed permanently from remission system.

6. Learned A.P.P pointed from the affidavit that the petitioner overstayed for a period of 4567 days. He was given a Show Cause Notice and after giving opportunity to the petitioner to give explanation, an order was passed whereby petitioner was removed from remission system. It is submitted that the said remission is not given to the prisoners who are out of prison illegally. It is submitted that as per the Circular dated 7th October, 2019, the petitioner will be taken on remission system book on 20th January, 2031 as the petitioner was brought back to the prison in the year 2015.

7. The petitioner is seeking the benefit in terms of the Circular dated 27th May, 2015 issued by the Additional Director General of Police which is at Page 34A of the petition. The said Circular came up for consideration before Aurangabad Bench of this Court in **Rajesh s/o Samaydeen Chaudhary Vs. The State of Maharashtra and others, Criminal Writ Petition No.868 of 2024**. By the order dated 24th October, 2024, in paragraph 6, this Court observed thus;

“6. However, it is to be noted that the proposal for taking his name again on the remission register appears to have been taken in view of circular dated 07.10.2019 and then he has been held to be eligible. Now, it will not be appropriate for this Court to make any further

comment in respect of the judicial appraisal, because that was taken way back in 2014, but not acted upon immediately. Now, the question is whether the respondents could have applied the circular dated 07.10.2019 when the petitioner is relying upon the circular dated 27.05.2016 issued by the same authority throughout the State. It is specifically mentioned that if the behaviour of the convict is good in jail after his name is removed from the remission register, then after considering the good behaviour his name be taken on the remission register after about five years. Here, in the present case, the petitioner has returned/brought back to the jail on 29.11.2013. Therefore, his case ought to have been considered after five years from bringing him back to the jail by the respondents. A subsequent circular cannot be made applicable. In other words, when the petitioner reported in the jail on 29.11.2013, then the circular dated 07.10.2019 cannot be made applicable to him retrospectively. His case should have been taken after five years, but the respondents failed. We do not agree with the respondents that the petitioner would be eligible for consideration from 24.07.2020 i.e. six years after he was brought to jail i.e. 25.07.2014 (this is the date of judicial appraisal and not the date on which he was brought to jail). In these circumstances, the petition deserves to be allowed”.

8. Though learned A.P.P made an attempt to justify the stand of the respondents that the petitioner is not entitled to brought back on the remission system book, however, there is nothing placed on record as regards non applicability of the Circular dated 27th May, 2015. Learned A.P.P submitted that Circular dated 27th May, 2015 has never been followed. We find the affidavit-in-reply is silent so far as Circular dated 27th May, 2015 is concerned. Moreover, this Court has in detail considered the applicability of the Circular dated 27th

May, 2015 in **Rajesh s/o Samaydeen Chaudhary** (supra). Hence, the contention of the learned A.P.P can only be stated to be rejected. Thus the petitioner was entitled to the benefit of the Circular dated 27th May, 2015 and in terms of paragraph 4 thereof, the stand of the respondents that the petitioner's case will be governed by the Circular dated 7th October, 2019 cannot be countenanced. The Circular dated 7th October, 2019 cannot be given retrospective effect. Circular dated 7th October, 2019 provides that the prisoner who had overstayed for a period of more than ten years and brought back by the Authorities, in such case, case of the petitioner regarding readmission on the remission system book would be considered after period of 16 years of imprisonment. The Circular dated 7th October, 2019 is not applicable in the present case. We, therefore, have no hesitation in allowing the writ petition. The respondents are directed to take the petitioner on the remission system book within five years from 19th January, 2015 and the respondent No.2 is further directed to credit the petitioner's name in Remission Register from 19th January, 2020.

9. The petition is allowed and the respondents are directed to consider the prayer of the petitioner to release the petitioner. The respondents to consider the relief prayed for by the petitioner in terms of prayer clauses (B), (C), (D), (E) and (F) in the light of the fact that we are allowing this petition on the basis of the Circular dated dated 27th May, 2015. Application be considered afresh accordingly.

10. The Writ Petition is disposed of in the aforesaid terms.

[SHARMILA U. DESHMUKH, J.]

[M.S. KARNIK, J.]