

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2617 OF 2024**

Aarif S/o Ayub Salar

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Rupesh Jaiswal (Through Video Conferencing) a/w Amit Waykool, for the Petitioner .

Mr. A. A. Naik, APP, for the Respondent-State.

**Coram: Madhav J. Jamdar &
Pravin S. Patil, JJ.**

Date: April 06, 2026

JUDGMENT:

1. Heard Mr. Jaiswal, learned Counsel appearing for the Petitioner and Mr. Naik, learned APP, for the Respondent-State of Maharashtra.
2. In this Writ Petition filed under Article 226 of the Constitution of India, the challenge is to the legality and validity of the Order dated 9th February 2023 passed by Respondent No.2-Deputy Inspector General (Prison), South Division, Byculla, Mumbai ("**impugned Order**"), by which the Petitioner's case for inclusion of his name in the remission system has been rejected.
3. Perusal of the record shows that the Petitioner was arrested on 22nd November 2007. Thereafter, he was convicted on 3rd June 2011 in Sessions Case No.67 of 2008 for the offence punishable under Section

302 of the *Indian Penal Code, 1860* ("**IPC**") and was awarded life imprisonment. The Petitioner was released on parole leave on the ground of his wife's ailment by Order dated 18th September 2012 and was accordingly actually released on 6th October 2012. Although the due date for Petitioner's surrender was 6th November 2012, he failed to surrender and overstayed for 331 days. He was subsequently arrested by the Police on 5th November 2013.

4. The Petitioner's name was permanently removed from the Remission Register. Thereafter, his case was considered for re-inclusion in the Remission Register in view of the Circular dated 13th November 2018 and the same was rejected.

5. It is the submission of Mr. Jaiswal, learned Counsel for the Petitioner, that the Petitioner's behaviour in the prison was good. He submits that the Circular applicable to the Petitioner is Circular dated 27th May 2015 and, more particularly, relies on Clause No.5 of the said Circular. He also relied on the decision of this Court in ***Ananda S/o Laxman Chopade v. The State of Maharashtra***¹.

6. On the other hand, Mr. Naik, learned APP, submits that the impugned Order has been correctly passed. He further submits that the applicable Circular is dated 13th November 2018.

7. Perusal of the record shows that the Petitioner was arrested on

1 Criminal Writ Petition No.5597 of 2024, Decided on 9th October 2025 [Kolhapur Circuit Bench]

22nd November 2007 and was convicted on 3rd June 2011 for offence punishable under Section 302 of IPC. He was released on furlough leave on four occasions, and on all four occasions, he surrendered to the prison authorities within time. He was granted parole leave on three occasions, and out of those three occasions, he surrendered to the prison authorities within time on two occasions. On one occasion i.e. on 6th October 2012, when he was released on parole leave on the ground of his wife's sickness, he overstayed for a period of 331 days and failed to surrender to the prison authorities. He was subsequently arrested on 5th November 2013.

8. As per the settled legal position, the policies/circulars applicable to convict are those in operation on the date of arrest, or any subsequent circulars that are more beneficial, as held by the Supreme Court in the decision of ***State of Haryana v. Jagdish***².

9. Insofar as the Circular dated 27th May 2015 is concerned, Clause No.5 is relevant, which reads as under:

"५. त्याअनुषंगाने बंदयास कायमस्वरूपी माफी पुस्तकावरून कमी केल्याच्या शिक्षेनंतर बंदीचे कारागृहातील वागणुक चांगली असली तर बंदयास माफी मिळत नाही. त्याकरीता बंदयावर कायमस्वरूपी माफी पुस्तकावरून कमी करण्याची शिक्षा दिल्यानंतर शक्यतो ५ वर्षांच्या कालावधीतील कारागृहातील वर्तणुकीची शहानिशा करून बंदीची वर्तणुक चांगली असल्यास त्यास पुन्हा माफी पुस्तकावर घेण्याबाबत नियम क्र.२४ (i) व (ii) नुसार योग्य ती कार्यवाही करण्यात यावी."

(Emphasis added)

Thus, what is relevant is the conduct of the prisoner while in prison.

² (2010) 4 SCC 216

10. Perusal of the record shows that the Petitioner has completed actual imprisonment of 15 years, 7 months and 26 days. Apart from that, he has also been granted remission of 391 days.

11. On 20th December 2024, the Supreme Court has granted bail to the Petitioner. While granting bail, the Supreme Court directed that the prison authorities to file an Affidavit regarding the conduct of the Petitioner while in custody, and the learned Advocate for the Respondent informed the Court that the Petitioner's conduct in custody was good.

12. A Division Bench of this Court in the decision of **Ananda** (supra) as well as a Division Bench of this Court in **Rajesh s/o Samaydeen Chaudhary v. The State of Maharashtra**³, observed in similar circumstances that the applicable Circular would be that of the year 2015.

13. Thus, in the facts and circumstances, the impugned Order dated 9th February 2023 passed by Respondent No.2-Deputy Inspector General (Prison), South Division, Byculla, Mumbai, is quashed and set aside, and it has been held that the Petitioner is entitled to inclusion of his name in Remission Register from 5th November 2018.

3 Criminal Writ Petition No.868 of 2024, Decided On 24th October 2024 [Aurangabad Bench]

14. Accordingly, the Writ Petition is disposed of in above terms with no order as to costs.

[Pravin S. Patil, J.]

[Madhav J. Jamdar, J.]