
(2018) 07 BOM CK 0006

In the Bombay High Court

Case No : CRIMINAL WRIT PETITION NO.1612 OF 2017

DYANOBA S/O. GANGADHAR MUNDE (C-6627)

APPELLANT

Vs

STATE OF MAHARASHTRA

RESPONDENT

Date of Decision : 03-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302

Maharashtra Prison (Remission System) Rules, 1962 — 10(5), 10(14)

Citation : (2018) 07 BOM CK 0006

Hon'ble Judges : S.S.SHINDE, J;V.K.JADHAV,J

Bench : Division Bench

Advocate : R.A.Jaiswal, V.N.Patil

Judgement

Â S.S.Shinde, J

1] This Petition is filed praying therein to quash and set aside the order dated 21.07.2011 passed by the District & Sessions JudgeÂ3, Aurangabad,

thereby removing the petitioner from remission register for a period of 5 years. Further it is prayed to direct respondent no.1 to take action on late

surrender as per law within time frame.

2] It is the case of the petitioner that, the petitioner is convicted by the Sessions Judge, Gangakhed, for the offence punishable under Section 302 of

the Indian Penal Code. The petitioner is undergoing the sentence of life imprisonment at Aurangabad Central Prison, Aurangabad. The petitioner is

having old age parents. The petitioner has wife and three children. He is only earning male member in his family. On 13.11.2009, the petitioner was

released on furlough; he was to surrender on 05.12.2009, however, he surrendered on 04.05.2010. Therefore, there was delay of 150 days in

surrendering before the Jail Authority. Due to which, respondent has issued show

cause notice to the petitioner. Thereafter, the petitioner has given reply to the said notice. After receipt of the reply of the petitioner, respondent no.1 has sent a proposal to the District and Sessions Court, Aurangabad to remove the name of the petitioner from the remission register for a period of five years. By judicial appraisal dated 21.07.2011, the District and Sessions Judge, Aurangabad removed the petitioner from remission register for a period of 5 years. Hence this Petition.Â

3] Learned counsel appearing for the petitioner submits that the impugned order is passed without assigning any reasons, and the same is not legally sustainable. As per Section 23 of the Maharashtra Prison [Remission System Rules, 1962], respondent no.2 is empowered to forfeit remission not exceeding 60 days. Without considering the said provision, the impugned order is passed.

The impugned order is passed on the readymade printed proformas with blank spaces, which have been filled in later on. The order passed by respondent in a prepared printed or cyclostyled format does not disclose that a specific ground of defence raised by the petitioner is dealt with. The petitioner was not arrested by the Police, in fact, he had surrendered suo motu. This fact has not been considered. Therefore, the impugned order deserves to be quashed and set aside.Â

4] Learned counsel appearing for the respondentÂState submits that there is delay of 6 years in filing the present Petition, therefore, on this ground alone this petition deserves to be dismissed. The petitioner has applied for furlough leave, and he was granted furlough on 13.11.2009 for a period of 14 days. On the request of the petitioner again, his furlough leave was extended by 7 days. However, he should have surrendered on 05.12.2009. He surrendered on 04.05.2010 almost 150 days late. Initially, the proposal for deduction of remission was forwarded to the Deputy Inspector General [Prison] at Aurangabad. After approval from the Deputy Inspector General [Prison] and after obtaining necessary judicial appraisal from the Sessions Court at Aurangabad, the remissions of the petitioner were deducted for 5 years. In view of Circular dated 22.05.2009 wherein ScheduleÂA Clause 8 provides that, if the convict overstayed for 3 months and up to 6 months without authority of law, then, he is not entitled for his remissions for 5 years. On 06.05.2010, the Superintendent of Jail has issued

show cause notice to the petitioner stating therein that, why his remission should not be deducted for overstay of 150 days?

Thereafter, the petitioner has submitted his reply on 10.05.2010. Therefore, the principle of natural justice has been followed by the authorities. As per

Chapter 37 Rule 10 [5] and Rule 10 [14], if the furlough was granted on certain conditions and if the prisoner violates any of the conditions mentioned

in the above rules, it amounts to jail offence. Considering the provisions of law and after following due procedure of law, the impugned order is passed.

Therefore, the Petition may be rejected.

5] We have considered the submissions of the learned counsel appearing for the parties. It is true that there is delay in approaching the Court.

However, the impugned order affects the rights of the petitioner inasmuch as the said order will adversely affect the petitioner when his case will be

considered for a premature release. The impugned order has been passed by using a ready-made printed proforma with blank spaces. While passing

the order, only blanks have been filled in. The practice of passing such orders is repeatedly deprecated by this Court. The impugned order has been

passed in a casual manner affecting liberty of the petitioner. The Division Bench of this Court at Nagpur Bench in Criminal Writ Petition No.283 of

2006 [Sk.Jakir Shaikh Babu Vs. State of Maharashtra], decided on 5th September, 2008, has laid down the guidelines for imposing the punishment, as

under:Â

â??(1). SufficientÂ noticeÂ preferably of at least seven daysâ?? 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.Â

(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.Â

(5). The order of higher punishment may be implemented after following steps (1) to (4).
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6] Upon careful perusal of the impugned order, it appears that the learned Sessions Judge has not recorded the reasons after consideration of the

record. In the facts of the present case, there is non application of mind on the face of the impugned order. Therefore, we set aside the impugned

order to the extent of the present petitioner, whose name is mentioned at serial no.15 in the said order, with further direction to the Competent

Authority to pass a fresh order after a fresh judicial appraisal by the learned Sessions Judge. Accordingly, we pass the following order:

i] The impugned order at Exhibit C is quashed and set aside to the extent of the present petitioner only.

ii] Fresh order shall be passed by the concerned authorities in the light of observations made in this judgment and order. While sending the file to the

learned Sessions Judge for judicial appraisal, a copy of this judgment and order shall be also forwarded to the learned Sessions Judge.

iii] A fresh order shall be passed by the concerned authorities within a period of three months from today.

All contentions on merits are kept open.