
(2008) 02 BOM CK 0153

In the Bombay High Court

Case No : Criminal Writ Petition No's. 553 and 663 of 2007

Gajanan Eknath Murle

APPELLANT

Vs

State of Maharashtra and Superintendent, Central Prison

 Manoj Jaipal Bagde Vs The State of Maharashtra and
The Superintendent, Central Prison

RESPONDENT

Date of Decision : 16-02-2008

Acts Referred:

Maharashtra Prisoners (Remission System) Rules, 1962 — Rule 22, 23
Penal Code, 1860 (IPC) — Section 302
Prisons Act, 1894 — Section 45, 46

Citation : (2008) 02 BOM CK 0153

Hon'ble Judges : A.P. Lavande, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : Ku. Trupti Udeshi, in Criminal Writ Petition No. 553/2007, V.M. Deshpande, in Criminal Writ Petition No. 663/2007 and Anil Mardikar, in Criminal Writ Petition No. 618/2007, for the Appellant; T.A. Mirza, Assistant Public Prosecutor in Criminal Writ Petition Nos. 553 and 663/2007 and Joshi, Assistant Public Prosecutor in Criminal Writ Petition No. 618/2007, for the Respondent

Judgement

A.P. Lavande, J.—Heard Ms T. Udeshi, learned Counsel for the petitioner in Criminal Writ Petition No. 553/2007; Mr. V.M. Deshpande, learned Counsel for the petitioner in Criminal Writ Petition No. 663/2007, Mr. A. Mardikar, learned Counsel for the petitioner in Criminal Writ Petition No. 618/2007, Mr. T.A. Mirza, learned A.P.P. for respondents in Criminal Writ Petitions 553/2007 and in Criminal Writ Petition No. 663/07 and Mrs Joshi, learned A.P.P. for respondents in Criminal Writ Petition No. 618/2007.

2. Rule. Rule is made returnable forthwith.

3. All these three criminal writ petitions are being disposed of by common Judgment and order since the challenge in all these petitions is to the punishments imposed upon the petitioners for prison offences committed by the petitioners. The learned Counsel for the petitioners and learned Additional Public

Prosecutors appearing for the respondents submitted that it would be necessary to lay down the guidelines for the purpose of imposing punishment in respect of the prison offences since several petitions are being filed by the prisoners challenging the punishments imposed on them on the ground that the punishment imposed have been arbitrary.

4. In Criminal Writ Petition No. 553/2007 the petitioner is undergoing sentence of imprisonment for life for having committed offence punishable u/s 302 of the Indian Penal Code by Judgment and order dated 7.10.1998 passed by the 4th Additional Sessions Judge, Nagpur. He is presently confined at Central Prison, Nagpur. The petitioner was granted furlough on 17.1.2000 for a period of two weeks but he did not surrender in time. The petitioner was arrested and brought back to the prison on 8.2.2003 i.e. after 1103 days. The Superintendent of Prison issued show cause notice to the petitioner. In reply the petitioner contended that the delay in surrender was on account of ill-health of his wife who had to undergo operation and he had to look after his small children. The Superintendent of Prisons submitted proposal for prison punishment against the petitioner for forfeiture of remission in ratio of 1:5 i.e. 5515 days and removal of the name of the petitioner from remission register permanently. The proposal was approved by Deputy Inspector General of Prisons, Eastern Region vide order dated 7.1.2004 and by District Court vide order dated 8.9.2004.

5. In Criminal Writ Petition No. 663/07 the petitioner was sentenced to undergo rigorous imprisonment for life for having committed the offence punishable u/s 302 of the Indian Penal Code and some other Sections of the Indian Penal Code. The petitioner was released on furlough on 22.6.2005 for a period of two weeks. He did not surrender in time and he was arrested and brought back to the prison after a period of 45 days. The show cause notice was issued to the petitioner. The petitioner submitted reply and in reply he contended that his wife and daughter were sick and further that he had to make arrangement for payment of fees to his lawyer appearing in the appeal preferred before the High Court. The Superintendent of Prison proposed punishment of cut remission in the ratio of 1:5 which was approved by the D.I.G.P. and the same was also approved by the District and Sessions Judge, Nagpur by order dated 29.11.2006.

6. In Criminal Writ Petition No. 618/07 the petitioner is undergoing sentence for imprisonment for life at Amravati Central Prison for the offence punishable u/s 302 of the Indian Penal Code. On 18.2.2002 he was released on furlough for a period of two weeks and he was arrested after 288 days and was brought back to the prison on 18.12.2002. Show cause notice was issued to the petitioner. In reply the petitioner stated that his elder brother Narayan was suffering from mental illness and his old mother had to be operated upon her left leg. According to the petitioner, since there was nobody to look after his old mother he could not surrender back to the prison in time. The Superintendent of Prison after considering the reply filed by the petitioner proposed cut in remission in the ratio of 1:5 i.e. total 1440 days but since the balance remission available to the credit

of the petitioner was only 284 days the punishment of removal of the name of the petitioner from the remission register for a period of 10 years and 2 months was imposed on the petitioner. The proposal was approved by the DIG Prison and also by the District and Sessions Judge, Amravati.

7. Ms Udeshi, learned Counsel for the petitioner in Criminal Writ Petition No. 553/2007 made the following submissions. The punishment of cut in remission in the ratio of 1:5 is extremely harsh having regard to the fact that it was the first occasion on which the petitioner committed prison offence. She further submitted that two punishments have been imposed on the petitioner for one prison offence which is not permissible under the Rules. She further submitted that in any case punishment of removal of the name of the petitioner from remission register permanently is too harsh. She also further submitted that the District Judge ought to have heard the petitioner in person before approving the punishment proposed by the Superintendent of Central Prison, Nagpur.

8. Mr. V.M. Deshpande, the learned Counsel for the petitioner in Criminal Writ Petition No. 663/2007 submitted that the petitioner when was granted furlough on earlier occasions and he had surrendered in time. He further submitted that it was on the first occasion that the petitioner did not surrender in time and had to be arrested and, therefore, the punishment of cut in remission in the ratio of 1:5 is harsh and as such same is liable to be set aside. He also submitted that considering that the delay in surrender was only 45 days, the punishment imposed is on higher side.

9. Mr. Mardikar, the learned Counsel appearing on behalf of the petitioner in Criminal Writ Petition No. 618/07 submitted that the punishment imposed on the petitioner is harsh and the authorities concerned have not taken into consideration the fact that it was on the first occasion that the petitioner had surrendered late by 288 days and, therefore, thus the punishment imposed is on higher side. Mr. Mardikar submitted that the Superintendent ought to have heard the petitioner in person after he decided to propose punishment on the petitioner. Mr. Mardikar in support of his submissions relied upon the following Judgments;

i) Navneet v. State of Maharashtra and Anr., (2000) 10 SCC 326 .

ii) Mohan Suryabhan Chandan Vs. State of Maharashtra and Others, .

iii) Unreported Judgment dated 22nd October, 2001 of this Court in Shankarrao Maruti Adhau v. State of Maharashtra in Criminal Writ Petition No. 276/2001.

iv) Unreported Judgment dated 31st October, 2001 of this Court in Vineet Suresh Swamy v. State of Maharashtra and Ors., in Criminal Writ Petition No. 289/2001.

10. Since number of Writ Petitions are being filed in this Court challenging the punishments imposed on the prisoner for prison offences on various grounds the learned Counsel for the petitioners have submitted that the guidelines be laid down for the prison authorities to be followed at the time of imposing

punishment since the punishments have been imposed arbitrarily without taking into consideration the relevant facts. The learned Additional Public Prosecutors appearing on behalf of the respondents have also submitted that the guidelines be laid down so that the prison authorities will take into consideration the relevant factors at the time of imposing the punishment on the prisoners for prison offences.

11. Section 45 of the Prisons Act, 1894 declares certain acts to be prison offences when committed by a prisoner. Section 46 of the Act provides that the Superintendent may examine any person touching any such offence and determine, thereupon, and punish such offence by the mode prescribed therein. In exercise of the powers conferred under the Prisons Act, rules have been framed by the State Government known as Maharashtra Prisons (remission system) Rules, 1962. Rule 23 of the said Rules reads as under:

23. Subject to the provisions of rule 22, a Superintendent may punish any prison offence u/s 46 of the Act, in either of both the following methods, that is to say, by

(a) forfeiting any ordinary or special remission for a period not exceeding 60 days.

(b) removing any prisoner from the remission system for a period not exceeding one year; Provided that where the Superintendent is of opinion that higher punishment by way of forfeiture of remission or removal from the remission system (or both) is necessary in the case of any prisoner, he may, with the previous sanction of the Regional Deputy Inspector General award such higher punishment (including permanent removal from the remission system).

12. A bare perusal of Rule 23 makes it clear that the said Rule permits imposition of both the penalties by way of cut in remission as well as permanent removal of name of the prisoner from the remission register. Therefore, we are not in a position to accept the arguments of Ms Udeshi that both the punishment cannot be imposed simultaneously on a prisoner for a prison offence. We are also not in a position to accept the arguments of the learned Counsel for the petitioners that an opportunity of being heard must be given to a prisoner in case the Superintendent proposes to impose punishment. We also see no merit in the submission that a prisoner has to be heard by the District Judge before the approval is granted to the punishment proposed by the Superintendent of Prison and approved by D.I.G. Prison. Having regard to the provisions of the Prisons Act and rules framed thereunder we are of the considered opinion that in case a prisoner commits a prison offence the Superintendent of Police before proposing punishment is expected to give show cause notice to the prisoner and after considering the reply, if any, and after giving personal hearing to the prisoner pass appropriate order either accepting the explanation and exonerating the prisoner for committing alleged prison offence or propose punishment considering the cause shown by the petitioner. We are not in a position to accept

the contention of the petitioner that the prisoner ought to be given a separate hearing regarding proposed punishment after the Superintendent holds that the cause shown by the prisoner is not acceptable. No doubt before proposing the punishment the Superintendent of Prison is bound to consider the cause shown by the prisoner and the relevant factors which are germane for imposing punishment on a prisoner for prison offence. In our opinion, the Superintendent ought to take into consideration the relevant factors while considering cause shown by the prisoner and proposing punishment upon a prisoner who commits a prison offence. They are as follows:

- i) Whether the prisoner surrendered himself or had to be arrested;
- ii) The period of absence;
- iii) The number of times the prisoner committed prison offences and the punishments, if any, imposed on earlier occasions;
- iv) The number of times the prisoner breached the conditions imposed at the time of grant of parole/ furlough.
- v) In case of late surrender, the reasons given for not surrendering in time. Needless to mention that the burden is entirely on the prisoner to place on record the relevant materials justifying late surrender;
- vi) The conduct of the prisoner in jail;
- vii) The period of imprisonment already undergone by the prisoner.

The D.I.G. (Prisons) and the District Judge are also expected to consider whether the above referred factors have been taken into consideration while approving the punishment proposed by the Superintendent, and not to accept the same in a mechanical way.

13. We shall now consider the Judgments relied upon by Mr. Mardikar, the learned Counsel for the petitioner. In Navneet's case (supra) the Apex Court reduced the punishment imposed by the prison authorities from 159 days to 53 days on the ground that the prisoner had already sought extension of parole since his mother was sick and he had also annexed the certificate of Doctor showing the illness of his mother. In this case the petitioner had surrendered late by 53 days. The authority had not taken any decision on the request made by the petitioner for extension of the period of parole. In this background the Apex Court reduced the punishment from 159 days to 53 days. In Mohan Suryabhan Chandan's case (supra) the petitioner was released on parole for a period of 15 days. He moved an application for extension of parole on the ground of illness of his mother for 75 days which was rejected. In reply, the petitioner stated that he himself reported back to the prison after overstaying for 149 days. The punishment of forfeiture of the remission for 745 days was proposed which was finally approved by the District and Sessions Judge, Amravati. Since the petitioner had remission of only 405 days at his credit the same was forfeited

and it was ordered that he shall not earn remission during the period of 3 years. Learned Single Judge held that the punishment was harsh and restricted the penalty to forfeiture of remission of 405 days and set aside the punishment of imposition of penalty that the petitioner shall not earn remission for 3 years.

14. In Shankarrao Maruti Adhau's case (supra) the petitioner was granted furlough for a period of 7 days. He did not surrender in time but applied for extension after the period of parole had expired but the same was not considered. The petitioner surrendered on 5.2.1998 and thereafter he was informed that his application for extension of furlough was rejected by order dated 17.1.1999. The prison authorities imposed punishment of forfeiture of remission of 5 days for one day's absence. The Division Bench of this Court directed the jail authorities to reconsider the case of the petitioner since the jail authorities had not taken into consideration the circumstances which according to the petitioner justified late surrender. In Vineet Swamy's case (supra) the petitioner was granted parole on 3.11.1992 for 15 days and he was arrested after 149 days and the jail authorities imposed punishment for forfeiture of remission of 745 days i.e. in the ratio of 1:5. The Division Bench of this Court after considering the fact that on earlier occasions the petitioner had surrendered in time and this was the only occasion on which the petitioner has surrendered late reduced the punishment by way of cut in remission in the ratio of 1:1.

15. Having regard to the ratio laid down by the Apex Court and various Judgments of this Court and the factors mentioned above which are to be taken into consideration while imposing punishment we shall now deal with the case of each petitioner.

16. In Criminal Writ Petition No. 553/2007 the petitioner was arrested after a period of 1103 days. It is not the case of the respondents that on earlier occasion also the petitioner had committed breach of the conditions of parole/furlough granted and had surrendered late or had to be arrested. No doubt the petitioner was absconding for a considerable length of time but the fact remains that this was the first occasion for the prisoner to surrender late. Ordinarily, we would have remanded back the matter to prison authorities to reconsider the case. But in the interest of justice we deem it appropriate to reduce the punishment by way of cut in remission in the ratio 1:5 to 1:3. In so far as the removal of name of the petitioner from remission register permanently is concerned, the same is set aside and it is held that the petitioner would not be entitled to avail remissions for a period of 5 years from the date of approval of the punishment by the District Judge.

17. In Criminal Writ Petition No. 663/07, the petitioner was arrested and brought back to the prison after a period of 45 days and the remission of 240 days was cut. Considering that this was the first occasion on which the petitioner had committed breach, we deem it appropriate to impose punishment in ratio 1:2 i.e. cut in remission of 90 days.

18. In Criminal Writ Petition No. 618/07 the petitioner was arrested after 288 days and punishment by way of forfeiture of remission of 1440 days and removal of the name of the petitioner from the remission register for the period of 10 years and 2 months has been imposed. We deem it appropriate to reduce the sentence by way of cut in remission in the ratio 1:3 i.e. 764 days and the petitioner will not be entitled to avail of remission for a period of five years from the date of approval by the District Judge.

19. Rule made absolute in all the petitions in the aforesaid terms. The petitions stand disposed of in the aforesaid terms.

20. The fees payable to each of the learned Counsel appointed to appear on behalf of the petitioners is quantified at Rs. 1500/-.

21. The Registrar (J) to send the copies of this Judgment to all the Deputy Inspector General Prisons and the District Judges functioning within the jurisdiction of this Bench who shall ensure that the factors mentioned above are taken into consideration while imposing the punishment for the prison offences.