
(2003) 01 BOM CK 0007

In the Bombay High Court

Case No : Criminal Writ Petition No. 475 of 2002

Kashinath Laxman Ingley

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 302
Prisons Act, 1894 — Section 11

Citation : (2003) 2 ALD(Cri) 48 : (2003) BomCR(Cri) 1387 : (2003) 105 BOMLR 832

Hon'ble Judges : S.T. Kharche, J;D.D. Sinha, J

Bench : Division Bench

Judgement

D.D. Sinha, J.—Rule, returnable forthwith. By consent of parties heard forthwith.

2. Heard Shri N.S. Bhat, learned Counsel for the petitioner and Smt. B.H. Dangre, learned Additional Public Prosecutor for the respondents.

3. The learned Counsel for the petitioner states that the petitioner was convicted for the offence punishable u/s 302 of the Indian Penal Code by the Sessions Court, Wardha and sentenced to suffer R. I. for life. It is contended that the petitioner was released on furlough leave for a period of two weeks by D.I.G. (Prisons) vide order dated 8.11.2000 and was required to be surrendered on 23.11.2000. The learned Counsel contended that the petitioner could not surrender on the due date and there was a delay of 50 days in surrendering before the Jail Authorities. It is contended that since the petitioner surrendered late by 50 days, the Jail Authorities in exercise of the powers conferred by Sub-section (1) of Section 11 of the Prisons Act, 1894, awarded punishment and deducted 250 days from earned remission.

4. The learned Counsel for the petitioner states that the petitioner could not surrender within the stipulated period because of the legitimate cause. The petitioner had undergone eye surgery and was in the hospital and, therefore, the petitioner had forwarded the representation to the concerned authorities for the

purpose of extension of furlough leave. It is contended that in a situation like this the maximum punishment which is awarded is cut of five days remission for each day of overstay. It is contended that taking into consideration the facts and circumstances of the present case, the respondents should not have awarded the punishment of deducting 250 days from the remission earned by the petitioner and, therefore, the order dated 14.2.2001 passed by the Superintendent of Jail, Amravati may be quashed and set aside.

5. The learned A.P.P., on the other hand, contended that the petitioner was required to surrender before expiration of furlough leave. However, the petitioner did not bother to surrender within the stipulated period and surrendered late by 50 days. It is contended that under Statutory Rules made by the Inspector General of Prisons, in exercise of powers conferred by Sub-section (1) of Section 11 of the Prisons Act, 1894 vide Notification No. MJM 1561/39466 dated 2nd July, 1964, the authorities under Sub-clause (a) of Rule 2 of the said Notification are entitled to impose cut of 5 days" remission for each day of overstay. It is further contended that though the application/representation was submitted by the petitioner for extension of furlough leave, the same was rejected. It is, therefore, contended that the impugned order passed by the authorities is sustainable in law.

6. We have considered the contentions canvassed by the respective Counsel and perused the relevant provisions. It is no doubt true that the authorities have powers under the relevant Rules referred to hereinabove to deduct 5 days" remission for each day of overstay. However, such power needs to be judiciously exercised and not arbitrarily, taking into consideration the cause for not reporting within the stipulated period. The authorities are also required to see if the cause is legitimate and the prisoner is prevented from returning to the prison within the stipulated period, for such a legitimate cause and if he has made an application well in advance for extension of furlough leave, in such situation, the Jail Authorities are required to take into consideration all these factors and then expected to decide the issue. In the instant case, it is not in dispute that the petitioner while he was released on furlough was required to undergo eye surgery and because pf that the petitioner could not report back within the stipulated period. It is also not in dispute that the petitioner made an application/representation to the concerned authorities for extension of furlough leave on this ground, however, the same was rejected by the authorities. In the facts and circumstances of the present case, we are of the considered view that the maximum punishment awarded by the authorities is not proper and we direct the authorities to consider the case of the petitioner on the basis of above referred observations made by us. 7. In the result, the impugned order dated 14.2.2001 passed by the respondent No. 2 is hereby quashed and set aside. The respondent No. 2 is directed to reconsider the case of the prisoner on the basis of the above referred observations within a period of eight weeks from today. Rule is made absolute in aforesaid terms. Criminal Writ Petition disposed of accordingly.