
(2002) 05 BOM CK 0019
In the Bombay High Court
Case No : Criminal W.P. No. 104 of 2002

Kusum Devidas Wankhede

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-05-2002

Acts Referred:

Maharashtra Prisons Manual, 1979 — Rule 23

Citation : (2003) BomCR(Cri) 147 : (2002) 3 BOMLR 536 : (2002) 2 MhLj 921

Hon'ble Judges : V.M. Kanade, J;R.G. Deshpande, J

Bench : Division Bench

Advocate : Anita Gupta, for the Appellant; D.B. Patel, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—This criminal writ petition has been sent through post by the petitioner Sau. Kusum who is the wife of Devidas Wankhede who has been convicted u/s 304 of the Indian Penal Code and sentenced to undergo 7 years" of imprisonment by an order dated 17-11-1993 passed by this Hon"ble Court.

2. The petitioner did not engage any advocate but sent this petition for release of her husband from the prison as it is her contention that he has already undergone the sentence which was imposed on him and has completed 8 years, 3 months and 19 days of imprisonment including the various remissions to which he is entitled according to law. Since there is no advocate appearing on her behalf, this court vide order dated 1-3-2002 appointed Miss Anita Gupta to appear on her behalf as a counsel from the legal aid panel.

3. Rule was granted on 5th April, 2002, and it was made returnable in two weeks, The State Government has filed its submissions on affidavit dated 22-3-2002.

4. Facts:

It is the case of the petitioner that her husband Devidas Wankhede was convicted by the Sessions Court on 31-10-1988 and he was in jail for a period of 11 days i.e. till 11-11-1988 and thereafter he was released on bail by the High Court. His appeal came up for hearing in 1993 and this Court vide Judgment and order dated 17-11-1993 was pleased to convict him u/s 304 of the Indian Penal Code and sentenced to suffer R.I. for the period of 7 years and accordingly from 17-11-1993 he was in jail for the period of 4 months till 24-2-1994. Thereafter, he was released on parole. However, due to her illness, her husband did not return back to the prison and looked after her and surrendered himself on 22-8-1995. It is the contention of the petitioner that her husband did not abscond and was looking after her during the said period. Thereafter, he was transferred to Akola jail and continued stay in jail from 22-8-1995 to 2-7-1999 i.e. for 3 years, 11 months and 8 days. Thereafter, he was released on parole on 3-7-1999. However, he did not present himself on the expiry of parole due to her illness and due to the poor financial condition of the family. The petitioner has three daughters viz. i) Varsha aged about 22 years, ii) Manisha aged about 19 years and iii) Sonu aged about 16 years and her mother-in-law is 76 years old and there is no other male earning member in the family. The petitioner's husband was arrested on 12-8-2001. The petitioner has given chart on page no. 6 of her application. According to the said chart, the prisoner Devidas has already completed 8 years, 3 months and 19 days i.e. he has already served 7 years of sentence which was awarded to him by this Court and in spite of that the prisoner Devidas is not being released. It is her contention that for the breach of the Prisons Rules i.e. for overstaying after the parole period was over, the prisoner Devidas was punished and his entire remission period has been cancelled. It is contended by the petitioner that the procedures prescribed under the Specific Rules, have not been followed and as a result the said punishment which has been imposed is clearly illegal and liable to be quashed and set aside and the prisoner Devidas is entitled to get jail remission of 570 days.

5. The State has filed its reply dated 22-3-2002 in which it is contended that the prisoner Devidas is yet to undergo 10 months and 24 days of imprisonment and then only he would complete his imprisonment according to law and according to the State, he has undergone 6 years, 1 month and 6 days which are calculated as on 28-3-2002. It is submitted on behalf of the respondent State Government that the action taken by the competent authority for over staying after the period of parole was over, was according to law and, therefore, the prisoner was not entitled for remission. It is also submitted that the petitioner has filed an application before the State Government for premature release of the prisoner Devidas and, therefore, she is not entitled for filing the present application. It was further submitted that the present petitioner had filed a writ petition no. 313/01 earlier which came to be withdrawn by the petitioner on 26-11-2001.

6. We have heard Miss Anita Gupta, advocate appearing on behalf of the petitioner and Shri D.B. Patel, learned A.P.P. appearing on behalf of the State. Miss Gupta has submitted that while awarding the punishment for over staying

after the parole period is over, the respondent State has not followed mandatory procedure as laid down under the Maharashtra Prisons Manual, 1979 and the Prisons Act and she has submitted that before awarding any punishment it is necessary to obtain prior approval of the Inspector General of Police and a show cause notice has to be given and an opportunity has to be afforded for defending himself. It is submitted that the said procedure has not been followed and, therefore, the punishment which is awarded by the respondent, has to be quashed and set aside. She submitted that if the said punishment which is awarded by the Competent Authority, is quashed and set aside, the prisoner Devidas would be entitled to get jail remission of 570 days and if the said jail remission is calculated along with the actual period of detention of the prisoner Devidas, then in that event, he has already completed 8 years which is more than the period for which he was sentenced by this Hon'ble Court. Shri D. B. Patel, learned A.P.P. vehemently opposed the said submissions made by Miss Gupta. He submitted that the show cause notice was issued to the prisoner and opportunity of being heard was given to him. He submitted that though prior approval was not taken from the Inspector General of Police, after the punishment was awarded, the Superintendent is seeking post approval and sanction of the same and, therefore, the said punishment cannot be said to be illegal.

7. We have heard the learned counsel appearing on behalf of the petitioner and on behalf of the State. It is the settled position of law so far as the punishment for breach of Prisons Rules are concerned that it is necessary to obtain prior approval of the Inspector General of Police under Rule 23 and only thereafter the said punishment can be imposed. The word prior approval clearly indicates that before proceeding with the said proceedings, sanction has to be obtained. This has not been done in the present case, as a result the said punishment of cancellation of jail remission of the prisoner Devidas will have to be set aside. Even otherwise, according to the State Government, the prisoner would have been entitled to be released by January 2003. We have perused the statement given by the petitioner as well as by the respondent. There is obviously a calculation error in the statement which is given by the respondent inasmuch as some of the remission which the prisoner is even otherwise entitled to, have not been taken into consideration. The prisoner Devidas was responsible for catching a very huge and large amount of illicit drugs in the prison. This fact is not disputed by the respondent State. The prisoner was entitled to get remission for this brave act on his part which also has not been given to him which is apparent from the chart which is annexed to the reply filed by the State. In our view, therefore, under the circumstances, this is a fit case where the prisoner should be released by holding that he has already completed his entire term of imprisonment as per the Judgment and order of this Court. In fact, the prisoner has put in 8 years, 3 months and 19 days. Even if, it is assumed that this figure may be partly incorrect, the cancellation of State remission of 570 days by the State Government is patently illegal and the said period will have to be added to

the chart submitted by the State Government which shows that he has undergone 6 years, 1 month and 6 days. Even if, the said period of 570 days is added to the said period, he has completed more than 7 years in jail.

8. In the result, the petition is allowed. The respondents are directed to release the prisoner Devidas Wankhede forthwith from jail in respect of his sentence u/s 304 of the Indian Penal Code which is confirmed by this Court on 17-11-1993, unless wanted in any other case.