

(2001) 03 BOM CK 0051
In the Bombay High Court
Case No : Criminal W.P. No. 32 of 2001

Mohan Suryabhan Chandan

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-03-2001

Acts Referred:

Maharashtra Prisons Act, 1965 — Section 48

Citation : (2001) ALLMR(Cri) 1106 : (2002) 2 MhLj 203

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : N.S. Bhat, for the Appellant; Assistant Public Prosecutor, for the Respondent

Judgement

R.K. Batta, J.—Admit. With the consent of learned Advocate for the petitioner and learned A.P.P. heard forthwith.

2. The petitioner was released on parole under the Prisons (Bombay Furlough and Parole) Rules, 1959. for a period of 15 days w.e.f 14-1-1998. The parole was granted on the ground of illness of his mother. Within 3 days of his release on parole, the petitioner moved an application for extension of parole on the ground of illness of his mother for 75 days. This application was finally rejected on 16-4-1999. However, since no order had been received by the petitioner for extension of parole, it was his duty to have reported back after completion of 15 days of parole since by merely filing an application for extension of parole, the period of parole does not automatically stands extended. The petitioner reported back after overstay of 149 days. A show cause notice was given to the petitioner by the Jail authorities. The explanation given by the petitioner in pursuance of the show cause notice was that he was himself ill. Considering this explanation, penalty of forfeiture of remission of 745 days was ordered, after the judicial appraisal by the District and Sessions Judge, Amravati. The petitioner had remission of 405 days at his credit which was forfeited and it was ordered that he shall not earn any remission during the period of 3 years.

3. This order is subject matter of challenge in this petition. The learned Advocate for the petitioner urged before me that the penalty imposed is too harsh, taking into consideration the fact that the petitioner had, infact, applied for extension and no reply was sent to him though the same was ultimately rejected on 16-4-1999 and that the petitioner was sick during that period as a result of which he could not report back. The learned Advocate for the petitioner has relied upon the judgment of the Apex Court in the case of "Navneet v. State of Maharashtra and another" reported in 2000 SCC (Cri) 88.

4. The learned A. P. P. urged before me that the petitioner had initially sought extension on the ground of illness of his mother, but no material in relation to the illness of the mother for the purpose of extension of parole was filed; nor sufficient material was filed regarding his own illness. He, therefore, contends that the penalty which is imposed in terms of Section 48-A of the Prisons Act, 1894 read with Statutory Rules made by I.G. Prisons, vide Notification No. MJM/1561/39466 dated 2nd July, 1964, is fully justified and does not call for any interference.

5. Section 48-A of the Prisons Act, 1894, reads as under:--"If any prisoner fails without sufficient cause to observe any of the conditions on which his sentence was suspended or remitted or furlough or release on parole was granted to him, he shall be deemed to have committed a prison offence and the Superintendent may, after obtaining his explanation, punish such offence by

- (1) a formal warning as provided in Clause (1) of Section 46;
- (2) reduction in grade if such prisoner has been appointed an officer of prison;
- (3) loss of privileges admissible under the remission or furlough or parole system or
- (4) loss of such other privileges as the State Government may by a general or special order directed".

6. Para 2 of the Notification referred to above, reads as under:--"2. In each case of late surrender from furlough or breach of any of the conditions of parole, the punishment mentioned below or specified in Section 48(A) of the Act may be awarded by the Superintendent at his discretion with due regard to the circumstances of the case and after obtaining the prisoner's explanation and the prior approval of the Inspector General or the Deputy Inspector General if required under Clause 1. If the Superintendent is satisfied that the contravention was for good or sufficient reasons, he may excuse the prisoner.

(a) A maximum cut of 5 days" remission for each day of overstay provided that, where the prisoner has not sufficient remission to his credit he shall cease to earn remission for such period as the Superintendent may direct.

(b) Stoppage of canteen concession for a period of not less than one month, but not more than three months.

(c) Withholding concession of either interviews or letters or both for a period not exceeding three months.

(d) In cases of furlough, the furlough period not to be counted for shortening the sentence."

7. Para 2(a) prescribes for a maximum cut of 5 days" remission for each day of overstay, provided that where the prisoner has not sufficient remission to his credit, he shall cease to earn remission for such period as the Superintendent may direct. The petitioner had been granted parole for 15 days w.e.f. 14-1-1998 and within 3 days of his release on parole, he sought for extension of 75 days on the ground of illness of his mother. It appears that no further proof of the illness of his mother was filed by the petitioner. Therefore, unless the extension was granted, the petitioner was duty bound to report back after completion of 15 days. The request for extension was ultimately rejected only on 16-4-1999. The explanation given by the petitioner that he was sick is not actually supported by any medical certificate though one prescription and 2 reports have been filed.

8. Taking into consideration the facts and circumstances of the case, I am of the opinion that the penalty imposed is somewhat harsh and I feel that ends of justice would be met by restricting the penalty to forfeiture of remission of 405 days, which was at the credit of the petitioner and the imposition of penalty that he shall not earn remission for next 3 years is set aside.

9. Petition is accordingly allowed in the aforesaid terms. The imposition of penalty of forfeiture of remission for 405 days is maintained but the imposition of penalty that the petitioner shall not earn remission for 3 years is set aside.