

(2011) 05 BOM CK 0029

In the Bombay High Court

Case No : Criminal Writ Petition No. 272 of 2011

Mukesh Ramaji Yadav (in Jail)

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Citation : (2011) 05 BOM CK 0029

Hon'ble Judges : V.K. Tahilramani, J;M.L. Tahaliyani, J

Bench : Division Bench

Advocate : Nitesh H. Samundre, for the Appellant; T.A. Mirza, for the Respondent

Judgement

V.K. Tahilramani, J.—Rule. Rule is made returnable forthwith and heard finally with the consent of Shri Samundre, learned Counsel for the Petitioner and Shri Mirza, learned APP for the Respondents.

2. The case of the Petitioner is that in the year 2003, the Petitioner was released on furlough leave. He did not report back in time and there was overstay on his part by 237 days, hence, prison punishment was imposed of cutting of remission of 5 days for each day of overstay. Being aggrieved by this order, this petition has been preferred. In the petition, the Petitioner has prayed that the punishment be reduced to cutting of remission of one day for each day of overstay. He has also prayed that the Respondents be directed to file show cause notice, reply, order of Superintendent of Prison, approval of D.I.G. of Prisons and appraisal of District & Sessions Judge, approving of cutting of remission for overstay of 237 days.

3. As far as release of the Petitioner on furlough for the year 2003 is concerned, it is noticed that the Petitioner absconded and he did not report back to prison in time. He was eventually traced by the police, arrested and brought back to prison. Even if the Petitioner is arrested from his house it does not make his case stand on a better footing. Admittedly, he is arrested after 237 days, police would

have been keeping a watch for the Petitioner and when he came home, he was arrested. Just because he was arrested from his house on the 237th day, it does not mean, he was available in his house during all those 237 days.

4. As far as cutting of remission in relation to overstay of 237 days is concerned, the Petitioner was issued a show cause notice. The Petitioner replied to the said notice. The learned APP submitted that after considering the reply, prison punishment was proposed of cutting of remission of 5 days for each day of overstay. This proposal was thereafter submitted to D.I.G., D.I.G. approved the proposed punishment. Thereafter District and Sessions Judge also approved the said punishment. The Petitioner is now challenging this cutting of remission which had occurred almost six years prior to filing this petition. There is tremendous delay and laches on the part of the Petitioner in approaching this Court, hence on this count alone, the petition deserves to be rejected. Moreover, it is noticed that after following due procedure, the prison punishment has been imposed on the Petitioner. Hence, on all these counts no case is made out for interference in relation to cutting of remission for overstay of 237 days. Moreover, it is noticed that the Petitioner has also admitted the fault on his part which is seen from the fact that he has prayed that lesser punishment be imposed on him. On going through the petition, we have noticed that he has not specifically raised any contention that he was not given any opportunity to put up his case before the authorities. In fact the Petitioner has admitted in the petition that his reply was considered but it was not considered "seriously" by the authorities and the punishment is too harsh, hence, there is non application of mind. On going through the facts of this case, we find no merit in this submission.

5. In the present petition, the Petitioner has also raised a grievance that in the year 2009, he was released on furlough. He overstayed for 31 days but he surrendered on his own. He further submitted that he had requested for extension of furlough period by filing an application, well within time. According to the learned Counsel for the Petitioner, as the reason for seeking parole was genuine, the Petitioner expected that the said period of extension will be extended. However, he immediately reported back to prison, after the application was rejected. Despite this fact, he has received show cause notice stating that it is proposed to impose prison punishment on him of cutting of remission of five days for each day of overstay.

6. As far as this grievance is concerned, it is noticed that show cause notice has been issued to the Petitioner and he has replied to the same. The reply will be considered by the Superintendent of Jail and thereafter it will be decided whether punishment is to be imposed and if it decided to impose punishment, what would be the proper punishment looking to the facts of the case. The matter does not end here. The procedure requires that thereafter the D.I.G. Prisons, is required to approve the said punishment and thereafter the matter has to be put up before the District & Sessions Judge for approval. It is only after following all these procedures that prison punishment can be imposed on the Petitioner. As

the procedure in relation to cutting of remission for overstay of 31 days is not complete, we find that this petition is premature on this count.

7. As stated earlier, as there is tremendous delay and laches in approaching this Court in relation to punishment for overstaying of 237 days, we are not inclined to entertain the same. Rule discharged.