

(2008) 03 BOM CK 0082

In the Bombay High Court

Case No : Criminal Writ Petition No. 637 of 2007

Sanjay Kini

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Maharashtra Prisoners (Remission System) Rules, 1962 — Rule 22, 23
Penal Code, 1860 (IPC) — Section 302, 34
Prisons Act, 1894 — Section 11(1), 46, 48A, 59, 59(5)

Citation : (2008) 03 BOM CK 0082

Hon'ble Judges : P.R. Borkar, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : V.D. Rakh, for the Appellant; S.D. Kaldate, Additional Public Prosecutor, for the Respondent

Judgement

Naresh H. Patil, J.—Rule. Rule made returnable forthwith.

2. The petitioner, a convict undergoing sentence of life imprisonment, prays for a writ of mandamus or orders to quash and set aside the orders passed by the respondents -authorities forfeiting the period of remission on the ground of late surrender to the jail authorities beyond the sanctioned leave period of furlough and parole.

3. The petitioner contends that he was convicted for an offence punishable u/s 302 read with Section 34 of the Indian Penal Code by the Sessions Judge Thane and sentenced to suffer imprisonment for life. By an order dated 12th April 2006 the Government of Maharashtra, Home Department, directed release of the petitioner on completion of 24 years of imprisonment including all remissions, subject to the good conduct in the prison upto the time of release.

4. The petitioner was released on furlough on 29-3-2001 for two weeks and was to surrender on 13-4-2001. But the petitioner surrendered on 18-4-2001. By an order dated 5-9-2001 the Superintendent, Nasikroad Central Prison awarded punishment in the ratio of 1 : 5 against the period of 5 days late surrendering to

the jail authorities (5 days X 5 = 25 days). The said period of 25 days was directed to be forfeited from the remissions earned by the petitioner (except State remissions). The petitioner was again released on furlough on 29-11-2002 for a period of two weeks and he was supposed to surrender on 13-12-2002. But the petitioner surrendered 18 days late i.e. on 1-1-2003. The petitioner filed an application dated 12-3-2003 to the Superintendent, Central Prison Nagpur, giving details for his late surrender to the jail authorities. A medical certificate dated 7-12-2002 issued by the Primary Health Centre Saphale, Taluka Palghar was produced by the petitioner. After issuing a show cause notice dated 7-2-2003 to the petitioner as to why the remission earned by the petitioner should not be deducted in the ratio of 1 : 5, the Superintendent, Nagpur Central Prison, Nagpur by an order dated 21-3-2003 awarded punishment of forfeiture of remission in the ratio of 1 : 5 (i.e. 18 days x 5 = 90 days). The said period of 90 days was directed to be deducted from the remission earned by the petitioner.

5. The petitioner's contention is that he was not absconding but could not surrender in time due to health problems suffered by him in support of which medical certificate was attached. Though the petitioner does not specifically raise ground of want of sanction by the Deputy Inspector General of Prisons to the proposal initiated by the Superintendent, Central Prison Nagpur for imposition of punishment for more than 60 days, the learned Counsel appearing for the petitioner has raised the said ground before us which we have considered at the time of hearing of this petition.

6. In response to the notice issued by this Court two Affidavits-in-Reply are filed by the Jailor, Group II of Open District Prison, Paithan. One is filed on 6th December 2007 and another on 4th February 2008. As the petitioner was put in the Open District Prison, Paithan in District of Aurangabad the Jailor Group II filed these two affidavits-in-reply. The deponent contended that the petitioner was entitled for 7 years 4 months and 18 days remission upto November 2007 and the probable date of release of the petitioner is 31-7-2008. Both the punishments imposed by the authorities against the petitioner for late surrender to the jail were approved by the concerned Sessions Judge.

7. In the second affidavit-in-reply filed by the jail authorities it is contended that the punishment proposed by the Superintendent of Central Prison was subject to appraisal by the District and Sessions Judge which was appraised by an order dated 29-3-2003 by the District and Sessions Judge Nagpur and was approved by the Deputy Inspector General of Prison Nagpur on 15-1-2008. This proceeding relates to petitioner's 18 days late surrender.

8. The learned Counsel appearing for the petitioner submitted that the order of punishment passed by the authorities in relation to petitioner's late surrender by 5 and 18 days was in violation of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, "the Rules, 1959"). Appropriate prior sanction was not obtained from the Deputy Inspector General of Prisons by the Superintendent of Central Prison. Neither the concerned papers were placed before the District and

Sessions Judge for the purpose of appraisal. The grievances of the petitioner regarding ill-health were also not considered.

9. The learned Additional Public Prosecutor Shri. S.D. Kaldate submitted that the jail authorities did follow the procedure as prescribed under the rules and after considering the facts of the case and the explanation of the petitioner after giving a show cause notice the authorities reached appropriate conclusions for imposing punishment.

10. In exercise of powers conferred by Sub-clause (5) of Section 59 of the Prisons Act, 1894 the Government of Maharashtra under Notification of the Home Department, dated 8th March 1962 framed rules namely the Maharashtra Prisons (Remission System) Rules, 1962 which came into force on the 1st day of April 1962. Rule 23 of these Rules reads thus:

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 Inspector General, award such higher punishment (including permanent removal from the remission system).

11. In exercise of the powers conferred by Sub-section (1) of Section 11 of the Prisons Act, 1894 (IX of 1894), and of all other powers enabling in this behalf, the Inspector General of Prisons, has issued an Order vide Notification No. MJM 1561/39466, dated 2nd July 1964. As per this Order, the Superintendent of the Central Prison is authorised under the provisions of Section 46 of the Prisons Act to impose punishment enumerated under the Order with prior approval of the Inspector General of Prisons in the case of Central Prison and Deputy Inspector General of Prisons in the case of any other prisons. Clause 1 (1) (a) of the Order is relevant for our purposes which reads thus:

1.(1) The Superintendent may award the following punishments in exercise of the powers conferred on him by Section 46 of the Prisons Act 1894 (IX of 1894), with the prior approval of the Inspector General of Prisons in the case of a Central Prison and of the Deputy Inspector General of Prisons (Regional) hereinafter referred to as "the Deputy Inspector General") in the case of any other Prison, namely:

(a) Forfeiture of remission earned in excess of 60 days. Clause 2 of the Order

stipulates that in each case of late surrender from furlough or breach of any of the conditions of parole, the punishment mentioned therein or specified in Section 48 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.

12. Obviously the Superintendent did not obtain in time prior sanction of the Deputy Inspector General of Prisons before imposing punishment in the case of 18 days late surrender which is mandatory under the law.

13. The learned Counsel appearing for the petitioner submitted that the proposal for imposing punishment has to be necessarily placed before the District and Sessions Judge for appraisal after the Deputy Inspector General sanctions the proposal mooted by the Superintendent of Central Prison. Learned Additional Public Prosecutor Shri. Kaldade fairly submitted that on this aspect a clear view does not seem to be emerging as to whether the proposal initiated by the Superintendent for imposing punishment is to be placed before the District and Sessions Judge first and then be forwarded to the Deputy Inspector General or whether the proposal be placed first before the Deputy Inspector General and after appropriate orders are obtained the same shall be placed before the District and Sessions Judge. Learned A.P.P. Shri Kaldade brought to our notice a communication dated 2-2-2008 of the office of the Inspector General of Prisons Pune addressed to the learned A.P.P. and submitted that this Court may issue appropriate orders so that the authorities would be in a position to follow appropriate procedure as prescribed by the Apex Court in the case of Sunil Batra Vs. Delhi Administration and Others etc., .

14. We have perused the judgment of the Apex Court in Sunil Batra's case (cited supra). This judgment is of 3-Judge Bench of the Apex Court (Coram: V.R. Krishna Iyer, R.S. Pathak and O. Chinnappa Reddy, JJ.). The Apex Court issued certain directions in para 79 of the judgment. Direction No. 6 reads as under:

6. No solitary or punitive cell, no hard labour or dietary change as painful additive, no other punishment or denial of privileges and amenities, no transfer to other prisons with penal consequences, shall be imposed without judicial appraisal of the Sessions Judge and where such intimation, on account of emergency, is difficult, such information shall be given within two days of the action.

His Lordship R.S. Pathak, J. (as he then was) observed in para 88 as under:

88. Besides this, I am in general agreement with my learned brother on the pressing need for prison reform and the expeditious provision for adequate facilities enabling the prisoners, not only to be acquainted with their legal rights, but also to enable them to record their complaints and grievances, and to have confidential interviews periodically with lawyers nominated for the purpose by the District Magistrate or the Court having jurisdiction subject, of course, to

considerations of prison discipline and security. It is imperative that District Magistrates and Sessions Judges should visit the prisons in their jurisdiction and afford effective opportunity to the prisoners for ventilating their grievances and, where the matter lies within their powers, to make expeditious enquiry therein and take suitable remedial action. It is also necessary that the Sessions Judge should be informed by the jail authorities of any punitive action taken against a prisoner within two days of such action. A statement by the Sessions Judge in regard to his visits, enquiries made and action taken thereon shall be submitted periodically to the High Court to acquaint it with the conditions prevailing in the prisons within the jurisdiction of the High Court.

The word "appraisal" used by the Apex Court in the judgment (*supra*) is defined in Black's Law Dictionary as under:

Appraisal, The determination of what constitute a fair price, valuation, estimation of worth.

15. The learned Counsel appearing for the petitioner submitted that in the first case of 5 days late surrender there is absolutely no record of imposition of punishment in accordance with law and in the second case of 18 days late surrender, for want of prior sanction by the Deputy Inspector General of Prisons the order of punishment is vitiated. The learned Counsel relied on a judgment of this Court in *Shaikh Mohobulla Vs. State of Maharashtra and Another*, . We have perused the said judgment wherein the Division Bench of this Court set aside the punishment in the facts and circumstances of the said case. We have been pointed out unreported judgment of Division Bench of the Aurangabad Bench of the Bombay High Court in Criminal Writ Petition No. 238 of 2007 dated 22nd June 2007. We have perused the said judgment. In the said case though the Superintendent did not obtain prior sanction from the Deputy Inspector General of Prisons the Division Bench preferred to restrict the period of forfeiture of remission upto 60 days. Considering the scheme of the Prisons Act and the Rules framed thereunder we find that the violation of the prison laws is required to be viewed with all its seriousness. Therefore, we would prefer to adopt the view taken by the Division Bench of Aurangabad Bench of the Bombay High Court in the said case to restrict the punishment of forfeiting the remission upto 60 days.

16. As regards punishment imposed against the petitioner for 5 days late surrender in the first case we find that the Superintendent of Central Prison was empowered under the Remission System Rules 1962 to pass order of forfeiture of remission and accordingly after considering the circumstances the Superintendent passed order of forfeiture of remission in the ratio of 1:5 days which comes to 25 days. We do not find any error in the decision making process reached by the Superintendent of Central Prison.

17. As regards petitioner's 18 days late surrender to the jail authorities, we find that the Superintendent of Central Prison Nagpur had issued show cause notice on 7-2-2003 to the petitioner and after considering the reply of the petitioner

had passed order on 21-2-2003 under which the petitioner was penalised for late surrender in the ratio of 1 : 5 days which comes to 90 days. The said period of 90 days was directed to be forfeited from the remission period of the petitioner. We find that by an order dated 29th March 2003 the District and Sessions Judge Nagpur approved the proposal. But it is surprising to notice that the Deputy Inspector General of Prisons of the concerned Region passed order on 15th January 2008 approving the proposal of the Superintendent and sanctioned the proposed punishment.

18. In the present case also the Superintendent Central Prison placed on record sanction order issued by the Deputy Inspector General of Prisons. The Superintendent did not obtain prior sanction to the proposal of punishment for forfeiting remission for 90 days. The sanction was obtained from the Deputy Inspector General of Prisons at a belated stage on 15th January 2008. We are, therefore, of the view that in stead of quashing and setting aside the entire order of punishment it would be appropriate and in the fitness of the scheme of punishment to restrict the order of punishment imposed by the Superintendent, Central Prison, upto 60 days. The order of punishment which was passed by the Superintendent was placed before the Sessions Judge for appraisal and the same was approved.

19. The question is whether in the facts of this case the appraisal of the Sessions Judge must be first sought or prior approval of the Deputy Inspector General of Prisons. Under the provisions of Rule 23 of the Maharashtra Prisons (Remission System) Rules, 1962 it is clearly stipulated that before imposing higher punishment by way of forfeiture of remission exceeding 60 days the Superintendent shall obtain prior sanction of the Deputy Inspector General of Prisons. In view of the directions issued by the Apex Court in the case of Sunil Batra (cited supra) and considering the scheme of the provisions of the Prisons Act and the Rules framed thereunder we find that in matters where the Superintendent of Central Prison proposes punishment in excess of 60 days the proposal is required to be placed before the Deputy Inspector General of Prisons and thereafter the said proposal shall be placed before the District and Sessions Judge of the concerned district for appraisal. The Superintendent of Central Prison shall place the proposal of punishment at the earliest for appraisal of the District and Sessions Judge in cases where prior sanction is not required to be obtained from the Deputy Inspector General of Prisons.

20. We, therefore, direct the respondents to punctually place before the District and Sessions Judge the case papers in matters of imposition of punishment for appraisal. In case the District and Sessions Judge finds any error of law in the order of punishment or notices any serious infirmity then the same shall be immediately brought to the notice of the concerned authorities so that the purpose of placing the relevant papers before the District and Sessions Judge is served. The respondents prison authorities shall maintain appropriate record of the same. The matters in which punishments are imposed shall be dealt with

diligently and the papers thereof shall be placed for appraisal and sanction without much loss of time. In the light of the discussions and observations made above, we hold that in the second case of petitioner's 18 days late surrender the punishment of forfeiture of remission shall be restricted upto 60 days only.

21. The writ petition is partly allowed. Rule is made partly absolute.

22. The Registry is directed to forward copy of this order to all the Principal District and Sessions Judges in the State of Maharashtra and the respondents herein at the earliest.