

(2005) 09 BOM CK 0132
In the Bombay High Court
Case No : Criminal W.P. No. 249 of 2001

Shaikh Mohobulla

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 23-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 433A

Penal Code, 1860 (IPC) — Section 302

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 22, 23

Citation : (2006) 2 MhLj 251

Hon'ble Judges : R.C. Chavan, J;J.N. Patel, J

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; D.B. Yengal, Additional Public Prosecutor, for the Respondent

Judgement

J.N. Patel, J.—The petitioner is a convict, who has invoked the extra ordinary jurisdiction of this Court for his release mainly on the ground that he has already undergone the sentence imposed by the trial Court.

2. The petitioner came to be convicted by the learned Additional Sessions Judge, Nagpur, vide his judgment and order dated 31-7-1987 for having committed offence punishable u/s 302 of Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs. 200/-, in default, to undergo further RI for two months.

3. The case of the petitioner was examined by the State Government in the light of Section 433A of the Code of Criminal Procedure and he was placed in category 3(b) of the Guidelines for premature release under the "14-Year Rule" of Prisoners serving life sentence after 18th December, 1978, which provides that the total term of imprisonment, which the prisoner is required to undergo, was 24 years.

4. Shri Jaiswal, the learned counsel for the petitioner, submitted that the prisoner is wrongfully detained in the prison in spite of his having completed the period of

24 years. In support of this submission, Shri Jaiswal has tendered a table giving the particulars of the period, which the petitioner has spent in prison, and according to him, while calculating this period of imprisonment, the State has not considered the remission for good behaviour, special remission and State remission.

5. Another ground taken by the learned counsel for the petitioner is that the petitioner has been convicted for overstaying his furlough and parole for a period of more than 60 days by the Superintendent of Central Prison, Nagpur, without seeking prior sanction of I.G. (Prisons), as required by Rule 23 of Chapter XXXVIII of the Prisons Rules relating to punishment, as provided under the Government Notification, Home Department, No. RJM-1058 (XL)-IV, dated 8th March, 1962 and, therefore, such punishment stands vitiated. In support of his contention, the learned counsel for the petitioner has not only placed reliance on the rule, which itself provides that if any punishment forfeiting any ordinary or special remission for a period exceeding 60 days, then the same can be imposed only with the previous sanction of I.G. (Prisons) and award such higher punishment including permanent removal from the remission system, which is not the case.

6. Shri Jaiswal, the learned counsel for the petitioner, has placed reliance on an unreported judgment of this Court in Criminal Writ Petition No. 990 of 1988, Yusuf Badshah Abdul Hamid v. The State of Maharashtra, which was decided on 21st October, 1988, and also the reported judgment of this Court in the case of Kusum Devidas Wankhede Vs. State of Maharashtra, .

7. According to Shri Jaiswal, the actual sentence undergone, including all types of remissions to which the petitioner is eligible as on 30-6-2005, is as under:

Year Month Day 1. (A) Actual Jail Sentence 19 - 15 Sentence Undergone. (Inclusive of set off of 1 year 1 month 15 days) (B) (-) Overstay period. - 8 -
----- 18 4 15 2. (A) Furlough period: - 3 - (B) Parole period: - 6
14 (Parole and furlough leave is to be included in remission)

3. Remissions: (A) Ordinary Remission from Aug. 1987 to Feb. 1992 at the rate of 7 days P.M. as convict. (B) March 1992 to 3 1-7-94 (8 days P.M. being Night Watchman) - - 224 (C) 1-8-94 to 30-6-05 (9 days P.M.) as overseer) -
- 1170 ----- (Total of abovesaid Ordinary Remission) 4 11 9
(A) Ordinary Remission 4 11 9 (B) Annual Good conduct (of 16 years) 1 4 -
(C) Special Remission - - 10 (D) State Remission 2 9 - -----
(Total of All Remissions) 9 - 19

4. (A) Total Jail sentence undergone including Parole and Furlough and excluding overstay days. 19 1 29

(B) Total of all Remissions. 9 - 19 ----- Total Period undergone including Remissions. 28 2 18 It is, therefore, submitted by Shri Jaiswal that the petitioner has been detained for more than 25 years and

according to the case of the petitioner, he has been detained for 28 years 2 months and 18 days.

8. Shri Jaiswal further submitted that in the first instance, when the petitioner was released on furlough on 15-11-2000 and he was late in surrendering to jail by 237 days and, he was punished for 1185 days and in the second instance, when he was released on furlough on 4-5-2002 and he surrendered to jail late by 8 days, he was imposed punishment for forfeiture of remission of 90 days, which punishments have to be quashed and set aside.

9. The petitioner has also sought for compensation in the matter.

10. In the reply, it is the contention of the respondents that the actual sentence undergone by the petitioner with all types of remissions granted to him as on 30-6-2005, is as under :

Year	Month	Day	1. Actual period undergone upto 30-6-2005	17	11	00	2. (-)
Excluding unauthorised period overstayed (1+237+18) i.e. 256 days.							
00 08 16							
----- 17 02 14 3. Undertrial Period w.e.f. (1) 7-1-86 to 1							
1-7-86 = 0-06-06. (2) 23- 1 2-86 to 30-7-87 = 0-07-09 01 01 15 Total actual							
period undergone 18 03 29 4. State Remission granted as on date. i.e. (1)							
24-1 1-88 -90 days (2) 15-4-91 -90 days (3) 15-8-97 - 720 days (Total = 900							
days) 02 06 00 5. Ordinary Remissions (From 30-07-1987 to 30-6-2005) 02 05							
08 ----- Total							
period	undergone	with	Remission	23	03	07	The

respondents submitted that the total period undergone with all types of remissions is 23 years 3 months and 7 days and, therefore, the contention of the petitioner that he should be released forthwith and compensated, is not justified, as he is yet to complete 24 years" of imprisonment.

11. So far as the grievance of the petitioner that he was not granted benefits of annual good conduct, special remission and State remission is concerned, we do not find it to be so, as it has been considered by the State while calculating the period of sentence undergone by the petitioner.

12. On examining the rival contentions, what we find is that in case of imposing of punishment in accordance with Chapter XXXVIII of the Prisons Rules, which relates to remission system, the respondent - Superintendent of Central Prison, Nagpur - has exceeded his jurisdiction while awarding punishment on two counts, as contended by Shri Jaiswal, the learned counsel for the petitioner The respondents have tried to justify the same by taking a stand that the punishment was imposed after it was sent for judicial appraisal from the District and Sessions Judge and further the Jail Authorities have also obtained approval of the Deputy Inspector General of Prisons, which is communicated to the Superintendent of Central Prison, Nagpur, by his letter dated 23-3-2005.

13. In our view, appraisal of the proposed punishment does not meet the

requirements of Rule 23 of Chapter XXXVIII of the Prisons Rules. Rule 23 reads as under:

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

A plain reading of Rule 23, and particularly proviso to the said Rule, makes it very clear that where the Superintendent is of the opinion that the 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 of Prisons (now the powers have been delegated to the Deputy Inspector General of Prisons), award such higher punishment (including permanent removal from the remission system) (Emphasis supplied). This also is the view taken by this Court in the two decisions rendered by this Court in the cases of Yusuf Badshah Abdul Hamid v. The State of Maharashtra Criminal Writ Petition No. 990 of 1988, decided on 21-10-1988 and Kusum Devidas Wankhede Vs. State of Maharashtra, . There is no provision under the Prison Rules that the irregularity on the part of the Superintendent of Prison does not vitiate the sentence if post sanction is obtained by the Superintendent of Prison from the Competent Authority. Though the order dated 23-3-2005 granting post sanction for the punishment on these two counts, that is forfeiture of remissions of 1185 days and 90 days, records that the punishment to be given effect after passing of the order, it does not in any manner regularise the illegality committed by the Superintendent of Central Prison, Nagpur. It is very clear from the affidavit-in-reply filed on behalf of respondent No. 2 that the punishment was implemented immediately after it was imposed and the post sanction for the same is an afterthought, which is evident from the order passed by the Deputy Inspector General of Prisons, the copy of which is placed on record along with the affidavit-in-reply filed on behalf of respondent No. 2, as Annexure R-X. Therefore, this period of forfeiture of remission will have to be excluded for calculating the period undergone by the petitioner/prisoner.

14. Shri Yengal, the learned Additional Public Prosecutor for the respondents, submitted that the petitioner/prisoner should not get the advantage for the lapse

on the part of the Jail Authorities, as, admittedly, in the first instance, the petitioner/prisoner has overstayed furlough when he was released on furlough on 15-11-2000 and surrendered late by 237 days, that is on being arrested by police and brought back to the Prison on 30-11-2000, and in the second instance when he was released on furlough on 4-5-2000 and surrendered late by 18 days, that is on 10-6-2002. It is, therefore, submitted that at least the period for which the petitioner surrendered late, he is not entitled to seek any exemption and that the actual period will not include the period when the petitioner had unauthorisedly stayed away from the Prison, According to Shri Jaiswal, the learned counsel for the petitioner/prisoner, as the punishment has been found to be without jurisdiction, the respondent/State cannot take this plea.

15. We do not accept the submission of Shri Jaiswal, as the petitioner can only be released from the Prison after he suffers the actual period of imprisonment and his late surrender to Prison in the first instance by 237 days and in the second instance by 18 days will have to be made up by the petitioner/prisoner by remaining in Prison for the said period.

16. Therefore, we direct the respondents to calculate the period undergone by the petitioner/prisoner in the light of our observations and if he has completed his period of sentence, he should be forthwith released from the Prison.

17. So far as the grant of compensation is concerned, we are of the view that the respondent/State has not detained the petitioner/prisoner unauthorisedly, in the sense - without any authority, but it was under a bona fide belief that the punishment imposed by the Superintendent of Central Prison, Nagpur beyond the period of 60 days was approved by the District & Sessions Judge on being sent for appraisal and sanction from the Deputy Inspector General of Prisons, Eastern Region, Nagpur, was also obtained and thus the period required to be undergone by the petitioner/prisoner was accordingly calculated.

18. Rule is made absolute in the aforesaid terms with no order as to costs.