



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1307 OF 2025

Sahebrao Sudam Divekar,  
Age : 61 Years, Occu : Nil,  
Convict No.:C/9798,  
Presently lodged at  
Chhatrapati Sambhajanagar Central Prison,  
R/o. Gokhalewadi Shivar,  
Tq. Shrirampur, Dist. Ahmednagar. **...PETITIONER**

**Versus**

1. The State of Maharashtra,  
Through the Principal Secretary,  
Home Department,  
Mantralaya, Madam Cama Road,  
Hutatma Rajguru Chowk, Mumbai – 400032.
  2. The Additional Director General of Police and  
Inspector General of Prisons,  
Maharashtra State, Yerwada, Pune – 411006.
  3. The Superintendent  
of Central Prison, Chhatrapati Sambhajanagar,  
Aurangabad, Maharashtra – 431001.
  4. The Advisory Board,  
Chh. Sambhajanagar Central Prison,  
at Chh. Sambhajanagar  
Central Prison, Chh. Sambhajanagar **...RESPONDENTS**
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- Mr. Rahul M. Gaikwad, Advocate for the Petitioner (Appointed through Legal Aid.)
  - Mrs. Chaitali R. Choudhari, APP for Respondents.

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**CORAM : SANDIPKUMAR C. MORE AND  
ABASAHEB D. SHINDE, JJ.**

**RESERVED ON : 26<sup>th</sup> FEBRUARY 2026**

**PRONOUNCED ON : 06<sup>th</sup> March 2026**



**JUDGMENT (PER – ABASAHEB D. SHINDE, J.) :**

1. Heard learned counsel for the petitioner and the learned App for respondent Nos.1 to 4.

2. By this writ petition under Article 226 of the Constitution of India, the petitioner, who has been convicted for an offence under Section 302 of the Indian Penal Code, 1860 (IPC) and sentence to suffer life imprisonment with a fine of ₹ 5,000/- by the learned Additional Sessions Judge-2 in Sessions Case No.13 of 2009 vide judgment and order dated 25.03.2011, which sentence has been confirmed by this Court vide order dated 12<sup>th</sup> June 2012 in Criminal Appeal No.227 of 2011, has put forth the following main relief.

*B] By issuing appropriate writ, order or direction in the like nature, the Respondents Authority may kindly be directed to grant remission and compute all entitled remission for the purpose of premature release.*

*BB] By issuing appropriate writ, order or direction in the like nature, the impugned Report dated 13/11/2022 & consequent Order dated 13/03/2023 may kindly be set aside & the Respondent Authorities may be directed to consider the premature release by granting remission in sentence in the interest of justice & oblige.*



*C] The petitioner is in jail, therefore his Affidavit may kindly be dispensed with.*

3. The learned counsel for the petitioner submits that, after suffering life imprisonment and confirmation of the conviction at the hands of this Court, the petitioner has undergone actual imprisonment of 14 years and 7 days as on 31<sup>st</sup> March 2025. He would further submits that the actual sentence undergone by the petitioner is 16 years 3 months and 3 days. The contention of the learned counsel for the petitioner is that the petitioner has completed the total period of sentence of 18 years, 2 months and 12 days, including remission.

4. He would further submit that the name of the petitioner has been removed from the remission register solely on the ground that the petitioner has overstayed for 111 days after being released on parole. He would submit that, in fact, the petitioner was released on parole during Covid-19 pandemic. He would further submit that the petitioner had, in fact, approached the jail authorities to surrender on 26<sup>th</sup> June 2020; however, for want of an RT-PCR test, he could not surrender. He would also submit that due to outburst of covid-19 the parole leave was extended vide Circular dated 08.05.2020, which was continued from time to time.



5. He would further submit that, in the meanwhile, the State Government came with Government Notification dated 04<sup>th</sup> May 2022, wherein, vide clause (iii) of the said Government Notification, the inmates were permitted to surrender after 45 days from the date on which the parole period is over.

6. The learned counsel for the petitioner would further submit that, in the light of order passed by the Hon'ble Supreme Court dated 03<sup>rd</sup> June 2022 in Suo Motu Writ Petition (C) No.1 of 2020, a further period of 15 days was extended. He further submits that after the expiry of the said extended period, when the petitioner been to the jail authorities, instead of permitting the petitioner to surrender, the jail authorities registered a First Information Report against the petitioner under Section 224 of the IPC. He would further submits that not only the FIR has been registered against the petitioner, but even the name of the petitioner has also been removed from the register for granting remission. He, therefore, submits that by setting aside the impugned orders, the petitioner be granted remission and compute all entitled remission by virtue of Government Resolution dated 15<sup>th</sup> March 2010.



7. Per contra, learned APP would submit that after exhausting the parole leave, the petitioner was expected to surrender on 26<sup>th</sup> June 2020. She would further submits that the petitioner overstayed for a period of 111 days from the date of granting parole as well as the extended period. She further submits that even assuming that the petitioner was entitled for an extension of parole leave by virtue of the order passed by the Hon'ble Supreme Court (supra), however, the petitioner did not surrender even within the extended period, on the contrary, made an application on 23<sup>rd</sup> May 2022 for extension of parole leave. The said application was rejected by the Superintendent of Paithan District Open Prison. Despite this fact, the petitioner did not surrender, as a result of which an FIR came to be registered against the petitioner under Section 224 of the IPC, bearing Crime No.406 of 2022 dated 13<sup>th</sup> September 2022. She would further submits that the authorities issued a show cause notice to the petitioner on 21<sup>st</sup> September 2022, calling upon him to explain his failure to surrender within the stipulated period and also calling upon him to explain why his name should not be removed from the remission register for a period of three years.

8. She would submit that the petitioner submitted his reply



on 26<sup>th</sup> September 2022, stating that though the petitioner had been to the jail authorities, he was sent back on account of obtaining an RT-PCR report. He has also stated in his reply that, as a result of illness, he did not surrender. She, however, submits that the petitioner has not produced any medical certificate in support of his contention that he was ill, as a result of which he could not surrender in time. She would further submit that the authorities, have, therefore, rightly taken a decision to remove the name of the petitioner from the remission register for overstaying by 111 days after being granted parole leave. She would further submit that though the name of the petitioner has been removed from the remission register for a period of three years, which commenced from September 2023 to August 2026, the name of the petitioner will be enlisted in the remission register after August 2026 and the petitioner will be granted the benefit of remission in accordance with the applicable rules. She therefore urge that the writ petition deserves to be dismissed.

9. Having heard the learned counsel for the petitioner as well as the learned APP for respondent Nos.1 to 4, we find that the petitioner, who was sanctioned parole leave from 12<sup>th</sup> May 2020 and though was given benefit of extension, did not surrender even after the



respondent authorities called upon him to surrender. Admittedly, the petitioner, who was supposed to surrender within a period of 30 days from the extended period, did not surrender and has given lame excuses for overstay by contending that he was ill. The petitioner has failed to place on record the medical certificate showing that he was ill for almost 111 days.

10. It is pertinent to note that on account of failure to surrender, though an application was moved by the petitioner seeking extension of 30 days on account of Covid-19 pandemic, the said application had already been rejected by the respondents. Despite this fact, the petitioner failed to surrender, as a result of which the respondents were required to lodge an FIR under Section 224 of the IPC against the petitioner and also issue show cause notice to the petitioner as to why his name should not be removed from the remission register for a period of three years. It was ultimately thereafter that the petitioner surrendered on 21<sup>st</sup> September 2022 before the Superintendent, Paithan Open District Prison.

11. We find that the petitioner has overstayed for 111 days and nothing has been placed on record to justify the said overstay. We find that the respondent authorities were justified in removing the name of



the petitioner from remission register for a period of three years. We also find that the said period of three years would expire in August 2026 and, in view of the contention of respondent No.1 in its affidavit-in-reply that after August 2026 the request of the petitioner for grant of remission would be considered in accordance with the applicable rules, we do not find any merit in the writ petition and the writ petition therefore stands dismissed.

**12.** Learned advocate Mr. Rahul M. Gaikwad was appointed to represent the petitioner and we quantify his fees at Rs.5000/- (Rs. Five Thousand only) to be paid through the High Court Legal Aid Services Authority.

**(ABASAHEB D. SHINDE)**

**(SANDIPKUMAR C. MORE)**

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