
(2005) 09 BOM CK 0131

Bombay High Court (Nagpur Bench)

Case No: Criminal W.P. No. 148 of 2002

Kailash Papadas Kuril

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: Sept. 2, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 428
- Penal Code, 1860 (IPC) - Section 302

Citation: (2005) CriLJ 4663

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

Bench: Division Bench

Advocate: Kalshi, Amicus Curiae, for the Appellant; D.B. Yengal, Addl. P.P., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Heard Ms. Kalshi, Amicus Curiae for the petitioner and Shri. Yengal, learned Additional Public Prosecutor for the Respondent/State.

2. The convict Kailash Papadas Kuril addressed a letter dated 8-3-2002 to this Court which was treated as Criminal Writ Petition.

3. It is the contention of the petitioner that he was sentenced to suffer imprisonment for life by the 2nd Additional Sessions Judge, Wardha, by judgment and order dated 19-3-1987, for having committed offence punishable u/s 302 of the Indian Penal Code. It is his contention that from 10-6-1986 he is in custody and by virtue of the set off granted to him u/s 428 of the Code of Criminal Procedure his date of commencement of the sentence will have to be w. e. f. 10-6-1986. Further after his conviction he was placed by the State in category 6(a) of the Guidelines, whereas the period of imprisonment to be

undergone including remission subject to 14 years of actual imprisonment including the set off period was 24 years.

4. It is the contention of the petitioner that during the period of sentence as his parents died and his brother Motilal mentally disordered is missing and his younger sister was continuously waiting for his release. He availed furlough and parole on different occasions.

5. On first occasion he was released on furlough on 16-2-1992 for a period of two weeks. He had surrendered to the jail Authorities on 6-3-1992 i.e. late by 4 days and for that his remission was cut by 20 days in the ratio of 1:5, which was approved by the learned Sessions Judge, by order dated 29-5-1992. Thereafter he was released on parole on 22-1-1994 for a period of 15 days and he was surrendered to the jail on 24-2-1994, and as he surrendered late, his remission was cut by 51 days. Third time he was released on furlough on 24-6-1995 for a period of two weeks and he was required to be arrested by the Police and brought back to Jail after 127 days. And for that overstay, by way of punishment, his remission was cut by 635 days by applying same ratio i.e. 1:5, the said punishment was also approved by the Sessions Judge by his order dated 28-5-2002. On other occasion he was released on furlough on 12-1-2002 for a period of two weeks and he was surrendered late by one day and again his remission was cut by 5 days, which was also approved by the learned Sessions Judge by order dated 15-3-2002.

6. It is the case of the Petitioner, in this backdrop, that he has been categorized in Category 6 (a) of the Guidelines of the Premature Release of Prisoners Sentenced to Life Imprisonment or to Death Penalty committed to life imprisonments after 18th December 1978. It is the contention of the learned Counsel appearing on behalf of the petitioner that the petitioner has already been punished for overstaying his furlough and parole leave and he was never absconded while on leave. Therefore, he has been wrongly put in the category 6 (a) of the Guidelines. Therefore, categorization of the petitioner deserves to be quashed and set aside.

7. On the other hand, the learned Additional Public Prosecutor submitted that the petitioner has been rightly categorized in Category 6 (a) of the Guidelines because on one occasion he absconded for a period of 127 days and only after arrest he was brought back to the prison and on three occasions the petitioner himself surrendered late to the Prison Authorities by 22 days and therefore, in all the petitioner absconded for a period of 149 days.

8. We have examined the case of the petitioner and found that there is no material placed before us to show that the petitioner has escaped from custody while undergoing imprisonment nor absconded while on furlough or parole leave. The undisputed facts go to show that the petitioner overstayed his furlough leave on various occasions and out of four instances cited, on three occasions the petitioner himself surrendered to the prison and it is only on one occasion that he was arrested and brought back to the prison after

127 days. It appears that the respondent Jail Authorities have not made any inquiry so as to ascertain whether the petitioner has escaped or absconded and in absence of any material on record we are afraid that the petitioner cannot be labelled as an Escaper or Absconder.

The learned Counsel for the petitioner has placed reliance on the case of [Ashok Vasudeo Shetye Vs. State of Maharashtra and others](#), wherein this Court had an occasion to consider a case of prisoners who are categorized as escapers or absconders. In the said case the Court has clearly laid down that "It is important to note that in "absconding" there should always be an element of concealing or hiding and as there was no iota of evidence or material to show that while on parole and/or furlough the petitioner in that case concealed himself with a view to avoid process of law." It cannot be said that the petitioner is an escaper. The decision in Ashok's case (cited supra) squarely covers the case of the petitioner.

The learned Counsel for the petitioner has submitted that the petitioner has taken a plea that he was required to overstay for certain reasons but was not absconding or available to the police or in any manner concealing or hiding from the authorities to avoid his arrest.

In our opinion, for want of any such material with the Prison Authorities, it would not be proper on their part to have recommended to the State Government to categorise a prisoner under Category 6 (a).

In so far as the punishment imposed by the Prison Authorities for petitioner's overstay is concerned, as the same has not been challenged, we need not express our opinion over it. But it would be worthwhile to mention that the Prison Authorities did not exercise their discretion in judicious manner and even on the very first occasion when the petitioner/prisoner overstayed his prison leave by 20 days he was given maximum punishment in the ratio of 1:5. The discretion vested with the Prison Authorities has to be exercised judiciously and the procedure adopted for punishment ought to be just and proper.

Therefore, we quash and set aside the impugned order of categorizing the petitioner as an escaper i.e. category 6 (a). As a result of which the petitioner is entitled to be released after completion of 24 years of imprisonment and after undergoing jail punishment imposed upon him.

We, therefore, direct the respondent to release the petitioner/prisoner Kailash Papadas Kuril, if he has undergone sentence as observed by us maintaining his punishment required to be undergone in the category which requires a person to undergo imprisonment for 24 years.

Rule made absolute in the aforesaid terms.