IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1586 OF 2025

Abu Salem Abdul Qayoom Ansari.]
C-13729]
Age: 49 Years. Occu : Nil.]
R/o Mohalla Pathantola,]
Kasba Saraimir, Dist: Azamgarh,]
State : Uttar Pradesh.]
Presently confined in Nashik Road]
Central Prison.] … Petitioner

V/s.

1. The State of Maharashtra.]

2. The Supt. of Prison,]
Nashik Road Central Prison, Nashik.]

3. The Supt. of Prison,]
Taloja Central Prison, Navi Mumbai.]

4. The Union of India,]
Law & Justice Dept., Aaybar Bhavan,]
Marine Lines, Mumbai.]

5. The DIGP, CBI, STB,]
5th Floor, CBI Bldg., Near MTNL]
'G' Block, BKC, Mumbai-400 051.] … Respondents.

Mr. Rishi Malhotra, Senior Advocate a/w Ms. Farhana Sahah, Mr. Shivaansh Maini, Ms. Darshana Gurjar, Mr. Yatish Desale, Ms. Ansuiya for the Petitioner.
Ms. M. M. Deshmukh, Acting PP for the Respondent-State.
Mr. Kuldeep Patil a/w Ms. Saili Dhuru, Mr. Anay Joshi, Mr. Digviajy Kachare, Mr. Sumitkumar Nimbalkar, Ms. Sanika Joshi for Respondent–CBI.
Mr. Anil C. Singh, ASG a/w Mr. Aditya Thakkar, Mr. D.P. Singh, Mr. Ayush Kedia, Mr. Krishnakant Deshmukh for Respondent No.4-UOI.

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HIGH COURT OF JUDICATURE AT BOMBAY

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 26th March, 2026.
PRONOUNCED ON : 15th April, 2026.

JUDGMENT (PER : KAMAL KHATA, J.) :

1) By the present Writ Petition, the Petitioner seeks issuance of a Writ of Habeas Corpus and/or Writ of Mandamus directing his release from custody on the ground that, he has completed the maximum sentence of 25 years, computed by taking into account his undertrial detention, post-conviction incarceration and earned jail remissions.

2) The Petitioner was extradited from Portugal and brought to India in November, 2005. He was arrested and produced before the TADA Court on 11th November, 2005 in connection with the Bombay Bomb Blast Case (TADA Special Case No.1B of 1993). He was under further arrest from 24th November 2005 in connection with C.R. No 144/1995 (TADA Spl. Case No. 1 of 2006).

3) The Petitioner faced trial in both cases. He was convicted on 25th February, 2015 in TADA Case No.1 of 2006 and sentenced to life imprisonment. He was also convicted on 7th September, 2017 in TADA Case No. 1B of 1993 and sentenced to life imprisonment. Both sentences were ordered to run concurrently.

4) The Petitioner challenged his convictions before the Hon'ble Supreme Court. By Judgment dated 11th July, 2022, the Hon'ble Supreme

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HIGH COURT OF JUDICATURE AT BOMBAY

Court, while upholding the convictions, in view of the solemn sovereign assurance dated 17th December, 2002 given by the Government of India to the Government of Portugal, commuted the life sentences to a total sentence of 25 years, with directions to the Government to consider remission under Sections 432 and 433 of the Cr.P.C. to ensure the sentence is brought in conformity with the sovereign assurance given to the Government of Portugal. Crucially, the Hon'ble Supreme Court directed that, this exercise be undertaken one month prior to the completion of the 25-year period.

5) The Petitioner thereafter, approached the TADA Court seeking set-off of his undertrial period in BBC Case No. 1-B/1993. By an Order dated 29th June, 2024, the TADA Court allowed the Petitioner's plea and granted set off of the period from 11th November, 2005 to 7th September, 2017 being a period calculated from the date of arrest until the date of final Judgment.

6) Thereafter, the Petitioner was transferred from Taloja Central Prison to Nashik Road Central Prison. The Petitioner, pursuant to the Order dated 11th July, 2022, applied for determination of his date of release. By Order dated 10th December, 2024, the TADA Court rejected the Petitioner's application.

7) Aggrieved thereby, the present Petition has been filed.

8) The short question that arises for determination is whether the

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HIGH COURT OF JUDICATURE AT BOMBAY

Petitioner is entitled to reduction of the 25 years sentence on account of earned remission and set-off.

9) Mr. Malhotra, learned senior counsel appearing on behalf of the Petitioner strongly contended that, sentence imposed by the Hon'ble Supreme Court is a fixed term sentence of 25 years inclusive of undertrial detention, post- conviction imprisonment and earned remission.

10) He places on record the following computation of the Petitioner sentence:

a) Undertrial Period: From 11th November 2005 to 7th September 2017, totaling 11 years, 9 months and 26 days.

b) Post-conviction Period: From 25th February, 2015 to 27th February, 2024, approximately 9 years and 3 days.

c) Earned Remissions: As per the Jail Remission Register No. 6, the Petitioner claims to have earned 2 years, 9 months, and 29 days of remission for good conduct.

11) On this basis, it is contended that, the Petitioner has undergone a total period of 23 years, 7 months and 28 days as of 27th February, 2024 and has completed 25 years by March, 2025, entitling him to release.

Learned counsel for Petitioner relies on the full bench decision of

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HIGH COURT OF JUDICATURE AT BOMBAY

this Court in *Yovehel vs. State of Maharashtra* reported in *2020 SCC OnLine Bom 1318* in support of his contention.

12) Mr. Anil Singh, learned ASG appearing for Union of India-Respondent No.4 strongly contended that, the present Petition is premature and misconceived. According to him, the 25-year period, specified by the Hon'ble Supreme Court, refers to actual incarceration and not a notional period liable to reduction by earned remissions. This is so, because the sentence of life imprisonment awarded to Petitioner has been reduced from life imprisonment to a fixed term of 25 years on account of the solemn assurance given by the Government of India.

12.1) He submitted that, the Supreme Court's Judgement dated 11th July, 2022 directs the Government to exercise powers of remission only one month prior to the completion of 25-year period.

12.2) He further submitted that, the remission under prison Rules is distinct from statutory remission or commutation under Sections 432 and 433 of Cr.P.C. The Petitioner’s release is subject to Government decision, exercise of statutory powers and consideration of relevant factors. He submitted that, as per official calculation, the Petitioner’s sentence would complete in the month of October, 2030 and not prior to it.

13) Smt. Deshmukh, APP for the State and Mr. Patil for Respondent – CBI, also opposed the Petition, adopting the arguments of the learned ASG.

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HIGH COURT OF JUDICATURE AT BOMBAY

14) We have carefully considered the submissions and perused the material on record. In our view, the submissions advanced by Mr. Singh and adopted by the State and CBI on behalf of other Respondents merit acceptance.

15) The fulcrum of the controversy lies in the interpretation of the “25-year” sentence imposed by the Hon’ble Supreme Court. In our view, the said period constitutes the substantive sentence which the Petitioner is required to undergo. It is not a ceiling capable of reduction by application of ordinary prison remissions.

16) The Hon'ble Supreme Court, while taking note of the sovereign assurance given to the Government of Portugal, restricted the Petitioner’s incarceration to a maximum of 25 years. The direction issued to the executive is limited, to consider the exercise of statutory powers under Sections 432 and 433 of the Cr.P.C. one month prior to the completion of the said period.

17) The Petitioner's attempt to include "earned remissions" to shorten the 25-year cap is legally unsustainable. The 25-year limit itself functions as a massive remission to a life sentence, necessitated by international treaty obligations. To allow further ordinary jail remissions to reduce this already capped 25-year period would violate the spirit of the Supreme Court's directions. The Apex Court explicitly noted the "grievousness of the offence" and stated there was no question of granting

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HIGH COURT OF JUDICATURE AT BOMBAY

special privileges to further restrict the sentence period. There is no indication that, the Hon'ble Supreme Court intended that earned remissions under prison rules would operate to reduce the said 25-year period. To accept such a contention would defeat the very basis of the sentence structure arising from international obligations.

18) It is well settled that, remission earned under prison Rules is administrative in nature and does not *ipso facto* reduce the sentence imposed by a Court. Any reduction in sentence must follow from an Order passed in exercise of statutory powers under Sections 432 or 433 of the CrPC.

19) The present case arises from a life sentence, the duration of which has been restricted to 25 years in view of sovereign assurances. In such circumstances, the period from 2005-2017 as undertrial is pre trial detention and the 25 years includes the said period.

20) The Petitioner cannot claim an automatic reduction of the 25-year term by inclusion of earned remissions. Earned remissions are under the prison Rules and therefore, it has no application.

21) Furthermore, the Petitioner was first arrested on 11th November 2005. A simple calculation of the 25-year period from the said date will be expiring in November, 2030. The Petitioner's contention that, he is entitled to release in early 2025 is based on a flawed aggregation of

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HIGH COURT OF JUDICATURE AT BOMBAY

remissions. The remissions cannot be applied to reduce the fixed 25-year threshold applied as a result of the extradition treaty.

22) The TADA Court, in its Order dated 10th December, 2024, rightly observed that the Supreme Court's directions regarding the 25-year period are clear and that the Petitioner remains a convict undergoing sentence for heinous crimes against the state.

23) The reliance placed on the full bench decision in *Yovehel vs. State of Maharashtra* (supra) is totally misplaced. The said decision turns on a distinct factual and legal framework and has no application at all to the present case.

23.1) Relying on the decision in *Raghbir Singh v. State of Haryana* reported in *(1984) 4 SCC 348,* the Court held that, an accused cannot claim double benefit under Section 428 of the CrPC i.e. the same period being counted as a part of the period of imprisonment imposed for committing the former offence and also being set-off against the period of imprisonment imposed for committing the latter offence as well.

24) The Supreme Court in its decision dated 11th July, 2022, considering the Judgments in *Raghbir Singh* (supra)*, State of Maharashtra vs. Nazakat Ali Mubarak Ali* reported in *2 (2001) 6 SCC 311* and *Atul Manubhai Parek vs. CBI* reported in *(2010) 1 SCC 603,* concluded that, they were unable to concur with the view propounded by the counsel for the Appellant. It categorically held that, one could not lose sight that, when a

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HIGH COURT OF JUDICATURE AT BOMBAY

reference is made in a set-off for adjustment of periods, the reference is to proceedings within the country. The criminal law of the land does not have any extraterritorial application. Thus, what happens in another country for some other trial, some other detention, would not be relevant for the purposes of proceedings in the country. It recorded that, the factual scenario was that the present Appellant was charged with having a fake passport. He was found guilty and convicted of a sentence from 18th September, 2002. This had nothing to do with the proceedings against him in India. His sentence would have been completed on 18th March, 2007, *de hors* the aspect of Remission or commutation. He was granted conditional release for the remaining sentence on 12th October, 2005. The mere fact that, there was also a detention order under the Red Corner notice was of no significance. He was again imprisoned from 12th October, 2005 till 10th November, 2005, i.e. when he was handed over to the Indian Authorities. The period till 10th December, 2005 when he was serving out the sentence, certainly could not have been counted. That leaves the period of less than a month only, which is really more of an academic exercise. In paragraph 54, the Supreme Court concluded that, the detention of the Appellant commenced from 12th October, 2005 in the present case.

25) On the Appellant completing 25 years of sentence, i.e., 10th November, 2030, taking into account the Apex Court's observation about the date of arrest being 11th November, 2005, the Central Government is

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HIGH COURT OF JUDICATURE AT BOMBAY

bound to advise the Hon'ble President of India for exercise of its powers under Article 72 of the Constitution and release the Appellant in terms of the commitment given by the State, as well as, the principle based on comity of Courts. In this context, it observed that, the necessary papers be forwarded within a month of the period of completion of 25 years, i.e., one month prior to the 25 years of sentence being complete. The Court also observed that, the Government can itself exercise the power in terms of Section 432 and 433 of the Cr.P.C. and that such an exercise should take place within the same time period of one month prior to the completion of the 25 years. Since, the 25 years would be completed on 10th November, 2030, the present application seeking to include the Remission is clearly misconceived. The claim of the Petitioner for reduction of the term based on the Remission earned will have no application in the present case.

26) In our view, neither the Remission as enumerated in Rule 4(a), (b) and (c) of the Maharashtra Prisons (Remission System) Rules, 1962 apply to the present case nor, the Remission under Section 432 of the Cr.P.C. As explained by the Supreme Court in *Swami Shraddananda (2) vs. the State of Karnataka* reported in 2008 13 SCC 767 the jail earned remission earned on monthly, quarterly and annual basis, for good conduct and for performing certain duties etc., are a part of actual imprisonment and to be applied where fixed term sentence is given.

27) The present case does not involve a fixed term sentence. The

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HIGH COURT OF JUDICATURE AT BOMBAY

Government of India, on the basis of the Constitution of India, the Indian Extradition Act, 1962 and the Code of Criminal Procedure of India, 1973 solemnly assured the Government of Portugal that, it will exercise its powers conferred by the Indian laws to ensure that, if extradited by Portugal for trial in India, the Appellant and his wife would not be visited by death penalty or imprisonment for a term beyond 25 years.

28) The Appellant has been found guilty of the offences punishable under section 302 of the IPC and section 3 sub-section (2) sub-clause (i) of the TADA (P) Act, for which he was likely to be sentenced to death. However, that punishment stood commuted to imprisonment for life, to run concurrently. It is by virtue of the sovereign assurance furnished by the Government of India that, his imprisonment was restricted to 25 years.

29) In so far as the Appellant's claim for remissions is concerned, the same must be considered in the context of the applicable local laws. In that case, while considering a sentence of life imprisonment, the Appellant would be entitled to remission in that period. However, there is no question the sovereign assurance of 25 years being further reduced on account of remissions earned. In other words the Appellant is not entitled to any reduction of sentence below the minimum period of 25 years by invoking either the Maharashtra Prisons (Remission System) Rules, 1962 or Section 432 of the CrPC. The decision of the Supreme Court is clear, unambiguous and self-explanatory. It cannot be read in a manner as being interpreted by

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HIGH COURT OF JUDICATURE AT BOMBAY

the Petitioner, that would permit remissions to curtail the assured period of 25 years.

30) The Petitioner has failed to demonstrate that, his current detention is unauthorized or illegal. The 25-year term, as envisioned by the Hon'ble Supreme Court, has not yet completed. The executive's duty to pass formal remission orders only arises one month before the completion of the said 25 years. In our view therefore, any modification or grant of Remission lowering the term of the Appellant below 25 years ought to be decided only after the completion of 25 years i.e. in November, 2030. The Apex Court has categorically reserved the rights to decide on any other reductions to itself.

31) Therefore, the present petition, seeking immediate release by incorporating earned remissions into the computation of the 25-year term, is premature, totally misconceived and devoid of merit.

32) In view of the above, the Writ Petition is dismissed.

(KAMAL KHATA, J.) **(A.S. GADKARI, J.).**

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