

Mubinkhan vs The State Of Maharashtra on 28 October, 2021

Bench: Chief Justice, Surya Kant, Hima Kohli

CrI.A.No.1434/12

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ITEM NO.102

COURT NO.1

SECTION

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Criminal Appeal No(s).1434/2012

MUBINKHAN

Appella

VERSUS

THE STATE OF MAHARASHTRA

Respond

Date : 28-10-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MS. JUSTICE HIMA KOHLI

For Appellant(s)

Mr. Shekhar G.Devasa, Adv.
Mr. Manish Tiwari, Adv.
Mr. Shashi Bhushan Nayar, Adv.
Mr. Ramesh Jadhav, Adv.
For M/S. Devasa & Co., AOR

For Respondent(s)

Mr. Sachin Patil, AOR
Mr. Rahul Chitnis, Adv.
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The instant appeal by way of special leave is directed against order dated 02.09.2010 passed by the Bombay High Court whereby the High Court partly allowed the appeal filed by the appellant herein thereby acquitting him under Section 498A of the Indian Penal Code and upholding his conviction under Section 302 IPC.

Heard learned counsel appearing on behalf of the appellant as also the learned counsel appearing on behalf of the respondent – State.

On 27.10.2021, at the request of learned counsel for the respondent – State to enable him to get

instructions, the matter was directed to be listed on 28.10.2021.

Today, when the matter came up for hearing, learned counsel for the respondent – State has produced the Surrender Certificate dated 27.10.2021, which indicates the total period of sentence undergone by the appellant as under:

	Years	Months	Days
Under trial period from 10.09.2007 to 00 12.08.2008		11	03
The actual imprisonment undergone by 11 the prisoner from 13.08.2008 to 15.05.2020		08	05
Remission (including annual good 05 conduct remission and general remission) till date		03	28
Total period of imprisonment 17 undergone by the prisoner including remission and excluding out days till Dt.30.09.2021		11	06

It has also been mentioned in the said Surrender Certificate that the appellant was released on Emergency Covid Parole Leave on 15.05.2020 as per Government Notification dated 08.05.2020 and he is still on parole leave. Learned counsel further submits that the case of a convict, who has been awarded life imprisonment, is considered by the State Government for pre-mature release after completion of 14 years of actual sentence as per the Prisoners Act. But in the present case, the appellant has undergone actual sentence of 11 years, 08 months and 05 days because he was granted Emergency Covid Parole Leave on 15.05.2020 and he is still on parole leave. Thus, the appellant is on a parole for 1 year and 5 months.

Regard being had to the above submission, we are of the view that had the appellant not been granted parole on 15.05.2020, he would have completed 14 years of actual sentence and, thus, his case would have been considered for pre-mature release.

Now, the question before us is that the appellant was granted Emergency Covid Parole Leave on 15.05.2020 and he is on parole leave till date and this period has not been counted while calculating his total period of actual sentence.

During the course of hearing, learned counsel for the respondent – State submits that there are about 20,000 prisoners, whose cases are similar to the appellant.

In view of the above, we grant liberty to the State to take a policy decision as to whether the Covid Leave period of parole of a convict can be considered for calculating his period of actual sentence or not and whether such a decision is to be applied to all the prisoners or some exceptions are required to be made.

Let the needful be done within four weeks.

List the matter after four weeks.

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR

(R.S. NARAYANAN)
COURT MASTER (NSH)