



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

WP (CRL.) NO. 82 OF 2025

PETITIONER:

SHYNA PA, AGED 52 YEARS,
SHINA MANZIL, P.O VALAPPAD
THRISSUR DISTRICT, PIN - 680567

BY ADV V.T.RAGHUNATH

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY.
SECRETARIATE, THIRUVANANTHAPURAM,
PIN - 695005

2 THE SUPERINTENDENT, CENTRAL PRISON,
VIYYUR CENTRAL PRISON, VIYYUR,
THRISSUR, PIN - 680010

BY ADVS.
SHRI.P.NARAYANAN, SR.G.P.
SHRI.SAJJU.S., SR.G.P.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 11.04.2025, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



“C.R.”

J U D G M E N T

The petitioner is the wife of Mr. Roopesh, a convict, who has been undergoing sentence in Central Prison, Viyyur, from 12.04.2024 onwards.

2. The convict was the 1st accused in S.C.No. 3 of 2016 of the Special Court for the trial of NIA Cases, Ernakulam (for short, the trial court), which arose out of Crime No.142 of 2014 of Vellamunda Police Station. He was formally arrested in Crime No. 142 of 2014 on 09.07.2015 while he was undergoing judicial custody in another crime. After his formal arrest on 09.07.2015, he was undergoing pre-trial detention till he was sentenced in S.C.No. 3 of 2016 on 12.04.2024.

3. The convict faced trial for the offences punishable under Sections 120B, 124A, 143, 147, 148, 149, 427, 435, 452 and 506(ii) of IPC, Section 25 of the Arms Act, 1959 and Sections 10, 13, 16, 20, 38 and 39 of the Unlawful Activities (Prevention) Act,



1967. After trial, the trial Court convicted him for the offences punishable under Sections 120B, 143, 147, 148, 149, 427, 435, 452 and 506 (ii) of IPC, and Sections 16, 18, 20, 38 and 39 of Unlawful Activities (Prevention) Act, 1967. He was sentenced to various terms of imprisonment and fine with default sentences as per the judgment of sentence dated 12.04.2024. He was allowed set-off for the period from 09.07.2015 to 11.04.2024. The judgment also directed the substantive sentences to run concurrently.

4. The set-off period allowed was 8 years, 9 months and 3 days from 09.07.2015 to 11.04.2024. The highest term of imprisonment awarded to the convict was 10 years. According to the petitioner, the set-off allowed for the period from 09.07.2015 to 11.04.2024 has to be counted for the purpose of remission of the sentence as provided under Section 72 of the Kerala Prisons and Correctional Services (Management) Act 2010, (for short 'the Kerala Prisons Act') and Rules 376, 379, 381 and 382 of the



Kerala Prisons and Correctional Services (Management) Rules 2014, (for short, 'the Kerala Prisons Rules').

5. The convict filed a petition before the trial court as CMP No.120/2024 to give directions to the prison authorities to provide remission under Section 72 of the Kerala Prisons Act to him for the set-off period. The trial court allowed the said petition and gave directions to the prison authorities to consider the set-off period as well while fixing the time from which remission entitlement is calculated under Rule 380 of the Kerala Prisons Rules. Thereafter, the matter was considered by the jail authorities and Ext.P3 order was passed, finding that the convict cannot be granted remission during the set-off period. The said order is under challenge in this writ petition.

6. I have heard Sri. Raghunath, the learned counsel for the petitioner and Sri. P.Narayanan, the learned Special Public Prosecutor.

7. The learned counsel for the petitioner submitted that



Ext.P3 order excluding the period of set off for allowing remission to the convict is illegal and against the provisions of the Kerala Prisons Act and the Rules. The learned counsel further submitted that as per Section 428 of Cr.P.C, the period of set-off has to be treated as the period of sentence and hence the finding in Ext.P3 that the set-off period should be excluded in computing the remission cannot be sustained. Reliance was placed on the decision of the Patna High Court in ***Satish Kr.Gupta and Others v. State of Bihar and Others*** [1991 KHC 1350]. On the other hand, the learned Special Public Prosecutor submitted that the period underwent by the convict in jail during the remand period cannot be treated as part of the sentence so as to count for the remission entitled by him under the provisions of the Kerala Prisons Act and the Kerala Prisons Rules. The learned Special Public Prosecutor further submitted that Ext.P3 order is in tune with the provisions of the Kerala Prisons Act and the Kerala Prisons Rules, and it does not warrant any interference.



8. Section 428 of Cr.P.C. (Section 468 of BNSS) deals with set off. It provides that where an accused person has, on conviction, been sentenced to imprisonment for a term, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him. As stated already, in this case, the convict was entitled to set off for a total period of 8 years, 9 months and 3 days.

9. Section 72 of the Kerala Prisons Act deals with remission to prisoners. It says that remission may be granted to convicted prisoners as may be prescribed in the Rules and a Remission Committee consisting of the Superintendent and such other officers to oversee the calculation and computation of



remission to convicted prisoners shall be constituted. Rule 376 of the Kerala Prisons Rules stipulates that all convicted prisoners who have good behaviour and conduct are eligible to be granted ordinary remission. As per Rule 379 (a), remission shall be awarded two days per month for thoroughly good conduct and scrupulous attention to all Jail regulations and two days per month for industry and the due performance of the daily task imposed. Similarly, Rule 381 deals with additional remission to prison servants. It provides that prisoner employed in Jail services, such as cooks, who are engaged in farm duty and who work on Sundays and holidays, may be awarded two days of ordinary remission per quarter in addition to any other remission earned under the Rules. Rule 382 deals with the award of remission for good conduct. It says that a prisoner who has committed no prison offence whatsoever shall be awarded fifteen days of ordinary remission in addition to any other remission earned under the Rules. According to the convict, he is entitled to



the remission provided under Rules 376, 379, 381 and 382 of the Kerala Prisons Rules.

10. The crucial question that falls into consideration is whether the period of set-off should be treated as part of the period of confinement of the prisoner who is undergoing the sentence imposed on him and whether the set-off period should be included in computing the quantum of remission.

11. A prisoner can seek remission of sentence only in accordance with statutory provisions dealing with remission. As per Section 72 of the Kerala Prisons Act, remission is granted only to a convicted prisoner. Rule 376 of the Kerala Prisons Rules stipulates that all the prisoners who are convicted and have good behaviour and conduct are eligible for ordinary remission. Rule 380 of the Kerala Prisons Rules provides that remission under Rule 376 shall be granted from the first day of the next calendar month after the conviction of the prisoner. Thus, entitlement of remission arises only when an accused is convicted and admitted



to prison as part of undergoing the sentence of imprisonment. So much so, the period of detention prior to the conviction cannot be counted for remission. The very same issue came up for consideration before the Supreme Court in ***Government of Andhra Pradesh and Another v. Anne Venkatesware and Others*** [(1977) 3 SCC 298]. The question posed before the Supreme Court was whether the period of detention undergone by the convict before his conviction could be treated as a part of the period of imprisonment on conviction so as to entitle him to remission of his sentence under the Prisons Act. Interpreting Section 428 of Cr.PC and the provisions of the Prisons Act, it was held that a prisoner has no right to benefit from remission for the period during which he was an under-trial prisoner prior to his conviction. The High Court of Patna in ***Satish Kr. Gupta*** (supra) took the view that set-off must be regarded as part of the sentence, and as such, the set-off period should be included in computing the remission. However, the said judgment was



delivered without noticing the decision of the Supreme Court in ***Anne Venkatesware*** (supra).

12. Section 428 of Cr.P.C.(Section 468 of BNSS) provides that the period of detention of an accused prior to the date of conviction as an undertrial prisoner shall be set off against the term of imprisonment imposed on him on conviction. The Section only provides for 'set off', it does not equate an undertrial detention or remand detention with imprisonment on conviction. Thus, the set-off period under Section 428 cannot be regarded as part of the sentence imposed. Nor could the set-off period be counted in computing the quantum of remission. Therefore, the contention of the petitioner that the set-off allowed for the period from 09.07.2015 to 11.04.2024 has to be counted for the purpose of remission of the sentence as provided under Section 72 of the Kerala Prisons Act and Rules 376, 379, 381 and 382 of the Kerala Prisons Rules cannot be accepted. As the convict was convicted in April 2024, he is eligible for



remission only with effect from May, 2024.

For the reasons stated above, the finding in the impugned order that remission cannot be granted to the convict during the set-off period does not call for any interference. The writ petition fails, and accordingly, it is dismissed.

Sd/-

DR.KAUSER EDAPPAGATH, JUDGE

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APPENDIX OF WP (CRL.) 82/2025

PETITIONER EXHIBITS

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| EXHIBIT P1 | TRUE PHOTOSTAT COPY OF THE ORDER IN CMP
120/2024 IN SC 3 OF 2016 NIA DATED
09.05.2024 OF THE SPL. COURT II NIA
ERNAKULAM |
| EXHIBIT P2 | TRUE PHOTOSTAT COPY OF THE APPLICATION
FILED BY ROOPESH DATED 17.05.2024 BEFORE
THE 2ND RESPONDENT |
| EXHIBIT P3 | TRUE COPY OF THE PROCEEDINGS/ORDER NO.
CPV 01 (R) 01/2024 DATED 24.05.2024 OF
THE 2ND RESPONDENT |