



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.....OF 2026
(@ SLP (CRL.) NO. 12871 OF 2026)

**ABU SALEM ABDUL
QAYOOM ANSARI**

...APPELLANT(S)

VERSUS

**THE STATE OF
MAHARASHTRA & ORS.**

...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.
2. We have heard Mr. Rishi Malhotra, learned senior counsel appearing for the appellant.
3. The present appeal, preferred under Article 136 of the Constitution of India, assails the final judgment and order dated 15th April, 2026, passed by the High Court of Judicature at Bombay,¹ in Writ Petition No. 1586 of 2025, whereby the High Court dismissed the writ petition instituted by the appellant seeking issuance of writs of *habeas corpus* and *mandamus*

¹ Hereinafter, referred to as “High Court”.

directing the respondent-State to release him from custody. The appellant's case before the High Court was that he had already undergone the maximum sentence of 25 years upon taking into account the period spent in custody as an undertrial, the period of incarceration after conviction, as well as the remissions earned by him during his imprisonment.

4. The facts, relevant for the disposal of the present appeal, are as follows: –

4.1. The appellant was previously associated with a criminal syndicate and had been accused of involvement in several criminal activities. In this backdrop, the Union Government sought his extradition from Portugal, subject principally to two conditions: first, that he would not be prosecuted for offences other than those for which his extradition was sought; and second, that he would not be extradited to any third country. It is pertinent to note that, on 17th December, 2002, a solemn sovereign assurance was conveyed to the Government of Portugal through the then Deputy Prime Minister, Shri L.K. Advani, that the Government of India would exercise its powers under Indian law to ensure that, upon extradition to India for trial, the appellant

would neither be subjected to the death penalty nor imprisonment exceeding 25 years.

- 4.2. Pursuant to the aforesaid assurances, the Ministry of Justice, Portugal, *vide* order dated 29th March, 2003, permitted the appellant's extradition. His custody was handed over to the Indian authorities on 10th November, 2005, and he was extradited to India on 11th November, 2005.
- 4.3. Upon his extradition, the appellant was arrested on 11th November, 2005, in connection with BBC Case No. 1 of 1993. In TADA Case No. 1 of 2006, he was arrested on 24th November, 2005. Upon conclusion of the trial, the Special Court under the TADA (P) Act at Bombay,² *vide* order dated 25th February, 2015, convicted the appellant and sentenced him to rigorous life imprisonment.
- 4.4. Subsequently, upon conclusion of the trial in BBC Case No. 1 of 1993, the TADA Court, *vide* order dated 7th September, 2017, convicted the appellant and sentenced him to rigorous life imprisonment. The TADA Court, however, directed that the said sentence shall run concurrently with the sentence imposed in TADA Case No. 1 of 2006.

² Hereinafter referred to as "TADA Court".

- 4.5. Aggrieved by the aforesaid convictions, the appellant preferred appeals³ before this Court under Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987⁴.
- 4.6. This Court, *vide* judgment dated 11th July, 2022, disposed of the said appeals and held that the appellant's period of detention, for the purposes of computation of his sentence, would commence from 12th October, 2005. This Court rejected the appellant's claim for set-off under Section 428 of the Code of Criminal Procedure, 1973,⁵ holding that the period of incarceration undergone by him in another country in connection with separate proceedings could not be taken into account for computing the sentence imposed in India. The Court further rejected the appellant's contention that his formal arrest ought to be reckoned from 18th September, 2002.
- 4.7. At the same time, this Court observed that upon completion of twenty-five years of sentence, the Central Government may either advise the President of India to exercise the powers under Article 72 of the Constitution or, in exercise of its powers under Sections 432 and 433 of the CrPC, consider

³ Criminal Appeal Nos. 679 of 2015 and 180 of 2018.

⁴ For short, "TAD Act".

⁵ For short, "CrPC".

remission or commutation of the sentence, having regard to the principles of national commitment and comity of courts.

4.8. Thereafter, the appellant approached the High Court by way of a writ petition seeking issuance of a writ of *habeas corpus* and a writ of *mandamus* directing the respondent-State to release him from custody. His case was that, upon computation of the period of detention undergone by him, he had already completed twenty-five years of sentence.

4.9. The High Court, *vide* judgment dated 15th April, 2026, dismissed the writ petition, holding that the appellant had failed to demonstrate that his continued detention was unauthorised or illegal and that the period of twenty-five years fixed by this Court by judgment dated 11th July, 2022 had not yet been completed.

5. Aggrieved thereby, the appellant is before us.

6. On 27th July, 2026, when the matter was listed as a petition for special leave under Article 136 of the Constitution, we were not persuaded that any infirmity existed in the judgment passed by the High Court so as to warrant issuance of notice. We had indicated to learned counsel appearing for the appellant that the petition was premature, as the

period of twenty-five years stipulated by this Court had not yet been completed. Learned counsel, however, insisted upon a reasoned order. We, therefore, proceeded to hear the matter and reserved the same for orders.

7. We have perused the material available on record and the written submissions advanced on behalf of the appellant.
8. There is no dispute that this Court, *vide* judgment dated 11th July, 2022, disposed of the appellant's appeals⁶ after taking note of the national commitment made by the Central Government to the Government of Portugal. This Court observed that, upon completion of 25 years, the Central Government would be required to consider advising the President under Article 72 of the Constitution or exercising its powers under Sections 432 and 433 of the CrPC for suspension or remission of the life sentences imposed upon the appellant by the TADA Courts.
9. It is equally undisputed that, for the purpose of computing the aforesaid period of twenty-five years, the date fixed by this Court was 12th October, 2005,

⁶ Criminal Appeal Nos. 679 of 2015 and 180 of 2018.

being the date from which the appellant's detention was to commence.

10. The principal submission of learned counsel for the appellant is that, as on 30th June, 2026, the appellant had completed 26 years, 9 months and 22 days of incarceration. To arrive at this figure, learned counsel has divided the period of custody into three components.
11. First, it is contended that the appellant's undertrial custody commenced from 11th November, 2005, the date of his arrest upon extradition from Portugal, and continued until 7th September, 2017, when he was convicted in BBC Case No. 1 of 1993. According to the appellant, this amounts to 11 years, 9 months and 26 days.
12. Second, for the period of post-conviction custody, learned counsel has taken 25th February, 2015, the date of conviction in TADA Case No. 1 of 2006, as the starting point and 30th June, 2026 as the terminal date, thereby computing a further period of 11 years, 4 months and 4 days.
13. Third, reliance has been placed upon a total earned remission of 3 years, 6 months and 2 days.
14. The difficulty with the aforesaid computation is that the two periods have been selected on inconsistent bases. For the purpose of calculating undertrial

custody, the appellant takes the date of his arrest and carries the computation until the later of the two convictions, namely, the conviction dated 7th September, 2017 in BBC Case No. 1 of 1993. However, for calculating post-conviction custody, he commences the computation from the earlier conviction dated 25th February, 2015 in TADA Case No. 1 of 2006. This results in an overlapping computation of the very same period of incarceration 25th February, 2015 to 7th September, 2017.

15. The fact that the sentences imposed in the two cases were directed to run concurrently is of significance. Sentences granted concurrently operate simultaneously, hence the same period of incarceration cannot, therefore, be notionally counted twice for the purpose of determining completion of the sentence. The appellant cannot treat the period preceding the later conviction as undertrial custody for one sentence while simultaneously treating the same period, from the date of the earlier conviction, as post-conviction custody for the other sentence and thereby secure a double benefit.
16. The distinction sought to be drawn between the expressions “undertrial custody” and “post-conviction custody” cannot justify such overlapping

computation. The period of incarceration has to be calculated in accordance with the direction expressly issued by this Court in its judgment dated 11th July, 2022. The methodology adopted by the appellant, apart from lacking legal foundation, artificially enlarges the period of custody by counting overlapping periods more than once.

17. The gravity of these offences assumes particular significance in the present case, especially when the appellant's extradition was secured upon a solemn sovereign assurance given by the Government of India to the Government of Portugal. The offences in question were not merely directed against individual victims; they formed part of acts calculated to destabilise the country and undermine its economic progress by targeting Mumbai, the financial capital of India. The larger national and economic consequences of such acts, therefore, cannot be lost sight of while considering the appellant's claim.
18. The assurance so given was that the appellant would not be subjected to the death penalty or imprisonment beyond 25 years. This commitment was expressly taken note of by this Court in its judgment dated 11th July, 2022. The commitment, however, cannot be construed as conferring upon the appellant a right to an artificial or accelerated

computation of the period of incarceration. The assurance fixes the outer limit of imprisonment and it does not permit periods of custody to be counted twice or otherwise contrary to the manner directed by this Court.

19. The question before us is consequently not whether the appellant is entitled to the benefit of the sovereign commitment made to the Government of Portugal, of which he is as already adjudicated by this Court. The question is whether he has, in law, completed the period of 25 years prescribed for that purpose. On the computation placed before us, we are unable to hold that he has and affirm the view expressed by the High Court on this aspect.
20. Next, it was submitted by senior counsel appearing for the appellant that the appellant is entitled to the benefit of jail-earned remission of 3 years, 6 months and 2 days. In support of the submission, reliance was placed upon Jail Register No. 6 maintained by the jail authorities and the affidavit filed before the High Court by the Additional Director General of Police and Inspector General of Prisons and Correctional Services of the respondent-State. It was submitted that the said affidavit categorically records that the appellant has already been granted jail-earned remission for the aforesaid period.

21. He further placed reliance upon the Full Bench judgment of the High Court in ***Yovehel v. State of Maharashtra***,⁷ wherein reliance was placed upon the decisions of this Court in ***Union of India v. V. Sriharan @ Murugan***,⁸ and ***Swamy Shraddananda v. State of Karnataka***⁹. On the strength of these decisions, it was contended that jail-earned remission is liable to be reckoned and added to the period of actual incarceration. It was, therefore, submitted that the High Court erred in holding that the benefit of jail-earned remission was unavailable to the appellant on the ground that the sentence imposed upon him was one of life imprisonment and not a fixed-term sentence.
22. We are unable to accept this contention, primarily for two reasons. First, this Court, *vide* judgment dated 11th July, 2022,¹⁰ did not alter the two life sentences imposed upon the appellant *vide* judgments dated 25th February, 2015 and 7th September, 2017. The said judgment merely reaffirmed the sovereign assurance extended by the Union Government to the Government of Portugal in connection with the appellant's extradition to India for the purpose of

⁷ 2020 SCC OnLine Bom 1318.

⁸ (2016) 7 SCC 1.

⁹ (2008) 13 SCC 767.

¹⁰ 2022 SCC OnLine SC 852.

trial. The assurance did not have the effect of converting or modifying the sentences imposed by the competent courts. The relevant portion of the judgment reads: –

“42. We do believe that looking into the grievousness of the offence in which the appellant was involved, there is no question for this Court exercising any special privileges to commute or restrict the period of sentence of the appellant. In fact, different States in India have followed different patterns before even a case for remission is considered. We, thus, do not accept that the plea of the learned counsel for the appellant based on the judgment of this Court in Sriharan case.

43. However, we are in agreement with the submissions of the learned counsel for the appellant and do not accept the contention of the learned ASG that we should not opine on this aspect at present. The affidavit of the Union of India through the Home Secretary is clear, at least, to the effect that they will abide by the assurance given by the Government of India to Portugal. Thus, on completion of the period of 25 years of sentence, in compliance of its commitment to the courts in Portugal, it is required that the Government of India advise the President of India to exercise its powers under Article 72(1) of the Constitution to commute the remaining sentence, or that the Government of India exercise powers under Sections 432 and 433 of the Cr.P.C. We do believe that there is a necessity of making this time bound so that it does not result in an unending exercise and, thus, the Government of India must exercise the aforesaid powers or render advice on which the President of India is expected to act, within a month of the period of completion of sentence. We say so also to respect the very basis on which the Courts of Portugal observed the principles of comity of courts by recognising that there is a separation of powers in India and, thus, the Courts cannot give any

assurance. The corresponding principle of comity of courts, thus, has to be observed such that the Government of India having given the solemn assurance, and having accepted the same before us, is bound to act in terms of the aforesaid. We are, thus, taking a call on this issue now and do not want to leave it to any uncertainty in future. This is of course subject to any aggravating aspect of the appellant.

...

Conclusion:

55. In view of the aforesaid facts and circumstances, we conclude that the detention of the appellant commence from 12.10.2005 in the present case. On the appellant completing 25 years of sentence, the Central Government is bound to advice the President of India for exercise of his powers under Article 72 of the Constitution, and to release the appellant in terms of the national commitment as well as the principle based on comity of courts. In view thereof, the necessary papers be forwarded within a month of the period of completion of 25 years sentence of the appellant. In fact, the Government can itself exercise this power in terms of Sections 432 and 433 of the Cr.P.C. and such an exercise should also take place within the same time period of one month.

56. The appeals are accordingly disposed of leaving the parties to bear their own costs.”

(Emphasis supplied)

23. From the aforesaid, it is clear that this Court expressly declined to interfere with the sentences awarded by the TADA Court or to confer upon the appellant any special dispensation by way of commutation or restriction of the sentences so imposed.

24. The approach adopted by this Court is firmly rooted in the constitutional principle of separation of powers. The sovereign assurance extended by the Union Government to the Government of Portugal was an act of the Executive in the context of the appellant's extradition, whereas the sentence imposed by the TADA Court was an exercise of judicial power, determining the punishment commensurate with the offences of which the appellant stood convicted. The prescription of the nature and extent of punishment is governed by the Legislature and its application to the facts of a particular case falls within the domain of the Judiciary. The Executive, in turn, exercises such powers in relation to remission, commutation or release as are conferred upon it by law.
25. It is in this context that the judgment dated 11th July, 2022, is required to be understood. This Court did not convert the appellant's sentence of life imprisonment into a sentence of 25 years. It merely recognised the sovereign assurance given by the Union Government and directed that, upon completion of 25 years, the Executive would be required to consider the exercise of its powers under Article 72 of the Constitution or, as the case may be, Sections 432 and 433 of the CrPC. Thus, the

judgment did not alter the sentence, it only delineated the consequence of the sovereign assurance upon the appellant completing the stipulated period of incarceration.

26. We are, therefore, unable to appreciate how the appellant can claim the benefit of “jail-earned remission” when the sentence imposed upon him continues to be one of life imprisonment. The stipulation regarding consideration of his release upon completion of 25 years cannot be construed to mean that the appellant was sentenced to a term of 25 years. The said stipulation operates only as a consequence of the sovereign assurance extended by the Union Government and requires the Central Government to consider the exercise of its powers in accordance therewith. It does not alter the nature or duration of the sentence imposed by the TADA Court and affirmed by this Court. The High Court was, therefore, justified in declining to extend the benefit of “jail-earned remission” to the appellant on the ground that no fixed-term sentence had been imposed upon him.
27. The reliance placed by the appellant upon the affidavit dated 5th May, 2025, filed by the Additional Director General of Police and Inspector General of Prisons and Correctional Services of the respondent-

State before the High Court is equally misplaced. The very same affidavit categorically records the stand of the respondent-State that the computation sought to be made by the appellant would confer a two-fold benefit, which is impermissible in law. Further, the respondent-State, in paragraph 8 of the said affidavit, has furnished a calculation chart indicating 31st January, 2046 as the probable date of release of the appellant. The relevant portion thereof is reproduced hereinbelow: -

“Calculation Chart of Probable Date of Release as per recommended category of 50 years

		Date	Month	Year
Date of Sentence		25	02	2015
Recommended Category	+			50
	=	24	02	2065
Set Off Period	-	14	04	09
	=	10	10	2055
Remission Earned (From March 2015 to December 2045)	-	10	08	09
The probable date of release of the prisoner after remission earned, set off period and after payment of fine	=	31	01	2046

”

28. The calculation chart reproduced above makes it clear that the sentence imposed upon the appellant continues to be one of life imprisonment. When his

case was considered for premature release under Rule 25(iii) of Chapter XXXIX of the Maharashtra Prison Manual, 1979, it was placed in the category of prisoners sentenced to 50 years. It is in the context of this sentence that the respondent-State has calculated the jail-earned remission accruing to the appellant. Such remission cannot, however, be treated as a benefit proportionately available for the purpose of advancing the appellant's release in the peculiar circumstances of the present case.

29. The appellant continues to stand convicted for life imprisonment, as imposed by the competent courts and affirmed by this Court. The stipulation that he cannot be detained beyond twenty-five years is a consequence of the sovereign assurance extended by the Union Government to the Government of Portugal. It does not convert the sentence of life imprisonment into a fixed-term sentence of twenty-five years. Consequently, the jail-earned remission cannot be notionally added to the period of incarceration so as to further advance the appellant's release. To permit such a course would, in effect, confer a benefit over and above the consequence already flowing from the sovereign assurance, notwithstanding that the sentence itself remains one of life imprisonment.

30. The reliance placed by learned senior counsel on **Yovehel** (*supra*), **Swamy Shraddananda** (*supra*) and **V. Sriharan** (*supra*) is, in our considered view, misplaced. The factual and legal context in those cases was materially different. None of those cases involved a sovereign assurance pursuant to which the Executive had undertaken, in the context of extradition, that the prisoner would not be detained beyond a stipulated period. The principle governing the computation of remission in those cases cannot, therefore, be mechanically applied to the present case, where the appellant's sentence remains one of life imprisonment and the twenty-five-year stipulation operates by virtue of the sovereign assurance.
31. The law of precedent operates upon the *ratio decidendi* of a decision read in the context of its material facts and the legal issue arising therein. A precedent cannot be applied divorced from the factual and statutory setting in which it was rendered. The decisions relied upon by the appellant, therefore, do not advance his case.
32. We, therefore, find no infirmity in the judgment dated 15th April, 2026, passed by the High Court of Judicature at Bombay in Writ Petition No. 1586 of 2025. The impugned judgment is accordingly upheld.

33. Consequently, the present appeal stands dismissed
in limine.

34. Pending application(s), if any, are disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

**NEW DELHI;
SEPTEMBER 10, 2026**

ITEM NO.1501

COURT NO.2

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 12871/2026

[Arising out of impugned final judgment and order dated 15-04-2026
in WP No. 1586/2025 passed by the High Court of Judicature at
Bombay]

ABU SALEM ABDUL QAYOOM ANSARI

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

IA No. 205003/2026 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 204122/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT

IA No. 204125/2026 - EXEMPTION FROM FILING O.T.

Date : 10-09-2026 This matter was called on for
pronouncement of judgment today.

For Petitioner(s) : Mr. Prem Malhotra, AOR

For Respondent(s) :

Hon'ble Mr. Justice Vikram Nath pronounced the
reportable judgment of the Bench comprising His
Lordship and Hon'ble Mr. Justice Sandeep Mehta.

Leave granted.

The present appeal stands dismissed *in limine*,
in terms of the signed order.

Pending application(s), if any, are disposed of.

(NEETU KHAJURIA)
ASSISTANT REGISTRAR-CUM-PS

(RANJANA SHAILEY)
ASSISTANT REGISTRAR

(Signed reportable judgment is placed on the file.)