

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 673 OF 2017

Raosaheb Ramchandra Thombare
aged 56 years, occ. nil
r/o Godhegaon, Tq. Newasa
Dist. Ahmednagar

Petitioner

Versus

1. The State of Maharashtra
through the Principal Secretary
Home & Prisons Government of
Maharashtra, Mantralaya,
Mumbai 400 032.

2. The Superintendent,
Paithan Open Prison,
Aurangabad

Respondents

Mr. N.N. Gawankar, advocate holding for Mr. N.R. Thorat, advocate
for petitioner.

Mr. V.M. Kagane, A.P.P. for respondents.

**CORAM : R.M.BORDE &
A. M. DHAVAL, JJ.
DATE : 4th JULY, 2017**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.

2. Heard finally with the consent of learned counsel for the
petitioner.

3. Petitioner is praying for quashment of order dated 19.08.2016
passed by the State Government holding that petitioner is liable to

be release on completion of imprisonment for a period of 30 years inclusive of period of remission, in view of guidelines issued 11.05.1992 and 15.03.2010.

4. Petitioner was arrested in connection with offence punishable under sections 302, 323, 504, 506 of the Indian Penal Code on 12.04.2000 and, on completion of trial in Sessions Case No. 44/2000, he has been convicted for the same. Petitioner is accused of committing murder of his three sons. Accused was sentenced to death penalty however, on consideration of appeal presented by petitioner being Criminal Appeal No. 303/2002, the sentence has been altered to imprisonment for life by judgment and order dated 20.10.2002. Considering the case of petitioner, in view of guidelines dated 11.05.1992 and 15.03.2010, he has been categorised under category 7(a) and 6(b) for pre-mature release and a such, it was directed that petitioner shall undergo 30 years of imprisonment with remission.

5. Learned counsel for petitioner has invited our attention to guidelines 6(c), 7(a) as well as 6(d) contained in the Government Resolutions dated 11.05.1992 and 15.03.2010 whereunder it has been recorded that the convict whose death sentence is commuted to life imprisonment, shall be released on completion of imprisonment of 30 years inclusive of the period of remission, subject to minimum 14 years of actual imprisonment. It is submitted that the sentence of petitioner has not been commuted by the State and as such, a serious mistake has been committed in categorisation of petitioner and directing his release on completion of 30 years of imprisonment. Section 433 of the Code of Criminal

Procedure relates to power to commute the sentence, which is invested with the appropriate Government. In the instant matter, there is no order within contemplation of section 433 of the Code of Criminal Procedure and as such, conclusion arrived at by the State Government under order dated 19.08.2016 is erroneous.

6. Affidavit-in-reply has been presented on behalf of the State Government wherein it has been recorded that the decision has been taken in conformity with the recommendations made by the learned District Judge 1 & Additional Sessions Judge, Shrirampur. It is further recorded in the reply that petitioner has completed 25 years 8 months and 23 days of imprisonment with remission as on 30.06.2017 and he would be released after completion of 30 years of imprisonment with remission.

7. As has been recorded above, the decision taken by the State Government is erroneous since petitioner has not been extended benefits within contemplation of section 433 of the Code of Criminal Procedure and no order of commutation has been issued. The sentence imposed against petitioner has been altered in appeal presented by him and he has been sentenced to imprisonment for life. The opinion expressed by the learned Additional Sessions Judge appears to be on erroneous interpretation of the concerned Government Resolution.

8. In view of above, the order issued by the State Government impugned in the instant petition is quashed and set aside. Respondent-State is directed to re-consider the case of petitioner for his pre-mature release in consonance with the relevant

resolution as well as applicable directives. The State Government shall take appropriate decision as expeditiously as possible, within a period of six weeks from today. Rule made absolute to the extent as specified above.

(A.M. DHAVALA)
JUDGE

(R.M.BORDE)
JUDGE

dyb