

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 737 OF 2017

Sayed Jalaluddin S/o Syed Allahuddin.
C-34) Central Prison Aurangabad.

PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary Home Department,
Mantralaya – Mumbai-32.
2. The State of Maharashtra
Through Superintendent Central Prison,
Aurangabad.

RESPONDENTS

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Mr. R.A Jaiswal, Adv. for Petitioner.
Mr. K.D. Munde, APP for Respondent
nos. 1 & 2 /State.

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**CORAM : S.S. SHINDE &
S.M. GAVHANE JJ.**

Reserved on :- 17.07.2017
Pronounced on :- 20.07.2017

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JUDGMENT : (Per S.S. Shinde, J.) :

1. Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. This petition is filed under Article 226 of the Constitution of India, Seeking direction to respondent no.1 to give benefit of State Remission of two years to petitioner on eve of Indian Independence, in view of Government Resolution dated 06.08.1997.

4. Background facts for filing the writ petition are as under :-

(a) The petitioner has been convicted on 30.08.2003 in Session Case No.135 of 1998; he is directed to undergo imprisonment for Seven years for the offence punishable under Section 304 II of the Indian Penal Code by Judgment and order passed by the Additional

Session Judge, Aurangabad. He was under-trial prisoner since 15.07.1996. He was released on bail by the High Court on 04.11.1996. That the State Government as well as informant had filed an appeal for enhancement of Sentence before the High Court and the appeal filed by the State was allowed by the High Court by judgment and order dated 17.12.2004 and petitioner was convicted for offence U/sec. 302 of I.P.C instead of Sec.304 II and was directed to suffer life imprisonment.

(b) It is further the case of the petitioner that, as per Government Resolution dated 06.08.1997, a convict who has been directed to suffer life imprisonment, should be given a State Remission of two years on account of Golden Jubilee of Indian Independence.

(c) It is further the case of the petitioner that, the petitioner was an under-trial since 15.07.1996. He was released on bail by this Court on 04.11.1996. That, the petitioner has been convicted on 30.08.2003; he was directed to undergo imprisonment for seven years for the offence punishable under Section 304 II of the Indian Penal Code by Judgment and order passed by the Additional Session Judge, Aurangabad. Thus, he was under-trial prisoner on the day of Government Resolution dated 06.08.1997, and hence entitled for State Remission of two years on eve of Golden Jubilee of Indian Independence, but Respondent No.1 has not given the benefit of the said Government Resolution.

5. Learned counsel appearing for the petitioner submits that, in the case **Rajubhau Gaddalwar V/s State of Maharashtra** in

Cri.W.P. No. 244 of 2008 and also in the case of **Chotu Puneekar V/s State of Maharashtra** in Cri. W.P. No. 163 of 2008, the Bombay High Court Bench at Nagpur, has held that even the prisoner, who is not convict, who is under-trial on relevant date i.e. 06.08.1997, would be entitled to State Remission on eve of Golden Jubilee of India's Independence, and hence petitioner is also entitled for State remission of two years on eve of Golden Jubilee of Independence of India. The State Government also filed the Special Leave to Appeal (Cri.) No. 1798 of 2009 (State of Maharashtra V/s Chottu Ratanlal Puneekar) before the Hon'ble Supreme Court of India against the decision of High Court of Bombay, Bench at Nagpur, which came to be dismissed by order dated 09.03.2016.

It is further submitted that, the petitioner has completed 20 years and 2

months imprisonment including remission, and he had already undergone actual imprisonment of 13 years 11 months. On 23.06.2017, the State Government, through Department of Home, communicated its decision to the Superintendent, Central Jail Aurangabad that the petitioner be released from jail on completion of 22 years imprisonment. Therefore, he submits that petition deserves to be allowed.

6. Pursuant to notices issued to the respondents, the respondent no.2 had filed affidavit in reply on behalf of both the respondents. It is stated in the said affidavit in reply that, as per the State Government Letter (GR/Notification) dated 06.08.1997, the Government has directed to give state remission only to convicted prisoner and the effect of the same is to be given from 15.08.1997. As per the Government

Letter dated 06.08.1997, all prisoners who were convict (and are sentenced for Life Imprisonment) as on or before 15.08.1997 should be given remission of 02 years.

. The petitioner was under-trial from 15.07.1996 to 04.11.1996. So, when Government Resolution dated 06.08.1997, is issued at that time the petitioner was under-trial and not convicted. He is held guilty and convicted on 30.08.2003 by the Adhoc Addl. Session Judge-1, Aurangabad. Thus, when the State Government letter (GR/Notification) dated 06.08.1997 was issued, at that time the Petitioner was not prisoner and he was an under-trial prisoner (MCR Custody) and was on bail. Hence also he is not eligible to avail the said state remission.

. Therefore, learned APP appearing for the State relying upon the Judgment of the

Bombay High Court at Principal Seat in the case of **Saikee Mazar and others V/s B.N.Patel and others**, reported in 1989 CRI.L.J.1257 submits that petition may be dismissed.

7. We have given careful consideration to the submissions of the counsel appearing for the petitioner and also the learned APP appearing for the Respondent - State. We have carefully perused the pleadings in the petition annexures thereto and also reply filed by by the respondents. The point / issue raised in this petition is no longer res-integra and covered by the reported Judgment of the Bombay High Court Bench at Aurangabad in the case of **Nandkumar s/o. Shivmurti Mundhe V/s The State of Maharashtra and another** pronounced on 27.03.2017. In the said case similar facts were involved and issue / question of law which was raised in the petition has been answered by the

Division Bench of the High Court. The Division Bench in paragraph nos. 4 to 9 has extensively referred to the facts of the said case and arguments advanced by the counsel appearing for the petitioner therein. The contentions and arguments advanced on behalf of respondents therein have been extensively referred from paragraph nos. 10 to 12. There is a discussion on merits from paragraph nos. 13 and 14 and thereafter, recording the reasons, directions are issued to the respondents in paragraph no. 16 of the said Judgment. It would be apt to reproduce herein below to paragraph nos. 13 and 14 from the said judgment which reads as under :-

"13. We have heard the learned counsel appearing for the petitioner, and the learned APP appearing for the respondent – State at length. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, reply

filed by the respondents, and also the judgments cited across the Bar by the learned counsel appearing for the petitioners, and the learned APP appearing for the respondent – State. In the present case, it is not in dispute that on 6th August, 1997, the State of Maharashtra issued a Notification, thereby making provision to grant State remission to the prisoners on the occasion of 'Golden Jubilee of Indian Independence'. However, according to the learned APP appearing for the respondent – State, the benefit is extended only to the convicted prisoner and effect of the same is to be given from 15th August, 1997, and on 6th August, 1997, the petitioner was not convicted. It is true that on 6th August, 1997, the petitioner was not convicted, however, it is admitted position that the petitioner was under-trial prisoner. However, he was released on bail after his arrest. It is also true that on 15th August, 1997, the petitioner was on bail, however, he was under-trial

prisoner.

14. The Division Bench of the Bombay High Court, Bench at Nagpur, in the case of **Chottu Ratanlal Punekar Vs. State of Maharashtra**¹ had occasioned to consider the communication dated 6th August, 1997, issued by the Desk Officer, Home Department, Government of Maharashtra, informing the Inspector General of Prisons, Pune under the orders of the Governor of Maharashtra that State remission is to be given to the convicts on the eve of Golden Jubilee of Indian Independence with effect from 15th August, 1997. The Division Bench recorded the grievance of the petitioner in para 4. After assigning the reasons in para 5 and 6, allowed the said Petition. Para 4 to 6 of the said Judgment, reads thus:

4. The grievance of the petitioner is that benefit of the said State remission is not extended to him

1 2009 [1] Mh.L.J. [Cri.] 209

though he is entitled for it. It was urged on behalf of the respondent / State that State remission can be extended only to those persons who were convicts on 15-8-1997 and it cannot be extended to those who were not convicts on that date. Since the petitioner was not a convict on 15-8-1997 and was merely an undertrial, he is not entitled to get benefit of the State remission. The logic, according to the learned APP is that had the petitioner been acquitted, there was no question of giving him benefit of the State remission.

5. The logic in the submissions of learned APP is difficult to accept. The fortuitous circumstance of one Court deciding a comparatively new matter before 15-8-1997 and the another Court deciding a very old matter thereafter cannot be permitted to be utilized to distinguish between convicts / prisoners for the purposes of extension of said benefit. Section 432 of Criminal Procedure Code empowers the State Government to pass

appropriate orders and to remit sentences. In view of Golden Jubilee of Indian Independence, the decision dated 6-8-1997 has been taken. The decision is made operative from 15-8-1997. Thus the above referred fortuitous circumstance is totally relevant and if any classification is permitted on the basis of such circumstance, it would be wholly arbitrary. For an undertrial prisoner languishing in jail, after he is found guilty and is sentenced, section 428 of Criminal Procedure Code permits set off of the period spent by him as undertrial prisoner against the period of sentence ultimately imposed. Thus for all practical purposes after he is found guilty and sentence, he becomes convict and as such is covered by the policy decision dated 6-8-1997 mentioned above. The effort to contend that the period spent in jail as undertrial prisoner is wholly irrelevant for the purposes of the said circular, is without any basis and in fact it violates the spirit of

said decision. An undertrial prisoner who is ultimately acquitted is not a convict at all and hence he is not entitled to benefit of remission.

6. We, therefore, hold that the present petitioner is entitled to benefit of the said State remission and accordingly direct respondent / State Government to extend its benefit to him. Rule is made absolute in the above terms."

8. Therefore, the grievance/controversy raised in the present Petition is the same like raised by the petitioner therein in the case of **Chottu Ratanlal Punekar** [cited supra]. The State Government, being aggrieved by the judgment of the Division Bench in the case of *Chottu Ratanlal Punekar*, filed Petition for Special Leave to Appeal [Cri.] No.1798/2009 [State of Maharashtra Vs. Chottu Ratanlal Punekar]. The said Petition was heard by the Hon'ble Supreme Court on 9th

March, 2016, and for the reasons stated in the order, the said Petition was dismissed.

9. In the light of the discussion in the foregoing paragraphs, though we are not inclined to issue any mandatory directions to the respondents to accept the prayer of the petitioner, however, we are inclined to give directions to the respondents to consider the case of the petitioner afresh, in the light of the judgment of the Division Bench in the case of **Chottu Ratanlal Punekar [cited supra]** and also the observations made hereinbefore, and the office record in relation to the case of the petitioner maintained by the respondents, and to take decision afresh. We make it clear that the earlier order, if any, passed by the respondents, refusing benefit to the petitioner of the Circular dated 6th August, 1997, stands quashed and set aside.

We direct respondents to consider the case of the petitioner afresh, and take the decision as expeditiously as possible, however, within 06 weeks from today and communicate the same to the petitioner.

10. For the reasons afore-stated, the Writ Petition is partly allowed. Rule is made absolute on above terms and the Writ Petition stands disposed of accordingly.

(S.M. GAVHANE, J.)

(S.S. SHINDE, J.)

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