

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1106 OF 2017

Milind @ Manoj @ Sharukh Khan
Mahadu Thorat, (C-7188),
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

...

Mr. Rupesh A. Jaiswal Advocate for Petitioner.
Ms. P.V. Diggikar, A.P.P. for Respondent
Nos. 1 & 2.

...

**CORAM: S.S. SHINDE AND
MANGESH S. PATIL, JJ.**

DATE OF RESERVING JUDGMENT : 9TH OCTOBER, 2017

DATE OF PRONOUNCING JUDGMENT: 12TH OCTOBER, 2017

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. By way of filing this Writ Petition under Article 226 of the Constitution of India, the Petitioner seeks directions to Respondent Nos.1 and 2 to grant the State remission of 14 (Fourteen) months to the Petitioner on the eve of Golden Jubilee Independence day, in view of the Government Circular dated 6th August, 1997.

3. It is the case of the Petitioner that he is undergoing sentence for imprisonment of seven years as per order dated 30th November, 1998, passed by the Additional Sessions Judge, Parbhani in Sessions Case No.84 of 1995. The Petitioner has contended that on 20th October, 1994, he was

arrested in connection with a crime for the offence punishable under Section 376 of the Indian Penal Code. He was released on bail by the Sessions Judge, Parbhani on 9th November, 1994. After full-fledged trial, the Sessions Court at Parbhani, by order dated 30th November, 1998, has held the Petitioner guilty for the offence punishable under Section 376 of the Indian Penal Code and he has been sentenced to suffer imprisonment for seven years. It is submitted that the Petitioner has filed an appeal before this Court being aggrieved by the Judgment and order passed by the Additional Sessions Judge, Parbhani and thereafter he was released on bail on 26th January, 1999 and his sentence was suspended. It is submitted that unfortunately the appeal filed by the Petitioner was dismissed by this Court by Judgment and order dated 5th April, 2011 and he was convicted and sentenced to suffer imprisonment for seven years. Thus, since 5th April, 2011 the Petitioner is in jail.

4. It is submitted that in exercise of powers under Section 432 (1) of the Code of Criminal Procedure, the Government of Maharashtra, Home Department, Mantralaya, Mumbai issued one Circular dated 6th August, 1997, granting the State remission to the prisoners on the occasion of Golden Jubilee Independence day. The said remission is to take effect from 15th August, 1997. In para 2 of the said Government Circular, there are some exceptions wherein the benefit of remission should not be given. Para 4 of the said Circular states that on 15th August, 1997, the prisoners, who were unauthorizedly, out of prison should not be given the benefit of the said Circular but the prisoners who were out of prison authorizedly, such as on parole and furlough etc., they be given the benefit of the State remission.

5. Learned counsel appearing for the

Petitioner submits that, in the case of Rajubhau Gaddalwar vs. State of Maharashtra in Criminal Writ Petition No.244 of 2008 and also in the case of Chotu Puneekar vs. State of Maharashtra, in Criminal Writ Petition No.163 of 2008 the High Court has held that even the prisoner, who is not convict, who is under-trial on relevant date i.e. 6th August, 1997, would be entitled to State Remission on the eve of Golden Jubilee of India's Independence, and hence the Petitioner is also entitled for State Remission of fourteen months on eve of Golden Jubilee of India's Independence.

6. Learned counsel appearing for the Petitioner has further relied upon the Government Circular dated 28th April, 1999 wherein it is stated that every convict who is on bail at the time of grant of State Remission, would be entitled for such State Remission. Learned counsel submits that at the time of grant of State Remission, the Petitioner was on bail which was

granted by the Sessions Court, Parbhani and therefore, as per the provisions of Government Circular dated 28th April, 1999, the Petitioner is entitled for State Remission of fourteen months. Therefore, he submits that the Petition may be allowed.

7. Learned A.P.P. appearing for the State submits that the Petitioner is convicted by Additional Sessions Court, Parbhani by order dated 30th November, 1998, for the offence punishable under Section 376 of the Indian Penal Code and he is sentenced to undergo imprisonment for seven years. It is submitted that as per the Government Circular/letter dated 6th August, 1997, the Government has directed to give State remission only to convicted prisoners and the effect of the same is to be given from 15th August, 1997. As per the Government letter dated 6th August, 1997, all prisoners, who were convict for imprisonment of seven years as on or before 15th August, 1997,

should be given remission of fourteen months. When the State Government letter dated 6th August, 1997 was issued, at that time the petitioner was not convict prisoner and since 9th November, 1994, 1990, he was enlarged on bail. Learned A.P.P., relying upon the exposition of law by the Supreme Court in the case of State of Haryana and others vs. Jagdish¹ and in particular Para 43 thereof, submits that the Supreme Court has made it clear that the convict is entitled for the provisions in the policy that was existing on the date of his conviction. She submits that the policy to grant remission on account of Golden Jubilee of Indian Independence would necessarily apply from the date of coming into force the said policy.

8. We have heard 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

¹ 2010(4) S.C.C. 216

the Petition, annexures thereto, 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 prisoners 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 and 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.

9. The Division Bench of the Bombay High Court, Bench at Nagpur, in the case of *Chottu Ratanlal Punekar Vs. State of Maharashtra*² had occasion 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 and 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 though he is entitled for it. It was urged on behalf of the respondent / State that State remission can be extended only to those

2 2009 [1] Mh.L.J. [Cri.] 209

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."

10. 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 reason stated in the order, the said Petition was dismissed.

11. Learned counsel appearing for the Petitioner also relied upon Government Circular dated 28th April, 1999, wherein it is stated that:

"उपरोक्त प्रकरणाच्या अनुषंगाने शासनाने आता असा निर्णय घेतला आहे की, शासनाने यापूर्वी प्रस्तुत केलेल्या सर्व राज्यमाफीचा फायदा संबंधित आदेश न्यायालयाच्या काढण्यात आले त्या काळावधीमध्ये जे कैदी न्यायालयाने मंजूर केलेल्या जामीन (Bail) रजेवर असतील अशा सर्व

कैदयांना त्या त्या कालावधीतील राज्यमाफीचा फायदा देण्यात
यावा."

. Thus it is provided in the said Government Circular that benefit of all State Remissions should be given to the convicts who were enlarged on bail by the competent Court on the relevant date.

12. 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 herein above, 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, and the Circular dated 28th April, 1999, stands quashed and set aside. We direct the Respondents to consider the case of the Petitioner afresh, and take the decision as expeditiously as possible, however, within TEN weeks from today and communicate the same to the Petitioner.

13. The Writ Petition is partly allowed. Rule is made absolute partly on above terms. The Writ Petition stands disposed of accordingly.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]

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