

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1499 OF 2018

Dayanand Changdeo Zende (C-8)
Through Jail

... **Petitioner**

Versus

The State of Maharashtra

... **Respondent**

Mr. D.R. Kale, APP for Respondent-State.

**CORAM : R.M. BORDE &
MANGESH S. PATIL, JJ.
DATE : 01.11.2018**

JUDGMENT: (*Per Mangesh S. Patil*)

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P. waives service for both the respondents. With the consent of the parties the matter is heard finally.

2. The petitioner who is a prisoner undergoing a sentence of life imprisonment for having committed an offence punishable under Section 302 of the I.P.C. has filed this petition seeking benefit of remission of three months declared by the State Government by resolution dated 03.06.2017 on account of 125th birth anniversary of Dr. Babasaheb Ambedkar. However, the learned Additional Sessions Judge in his report dated 02.08.2017 gave an opinion that he was not entitled to the remission under that Government resolution. Being

aggrieved, the petitioner is before this Court.

3. The Government Resolution dated 03.06.2017 (Exhibit-A) provides that on account of 125th birth anniversary of Dr. Babasaheb Ambedkar, under the enabling provision contained in Section 433(A) of the Cr.P.C. *inter alia* a prisoner who has been sentenced to life imprisonment is entitled to remission to the extent of three months. However, some categories of prisoners have been excluded from the benefit of such remission which have been enlisted as under:

- i) Prisoners undergoing sentence under the provisions of 106 to 110 of the Cr.P.C.
- ii) Prisoners undergoing sentence for the offence punishable under Section 121 to 130 of the I.P.C.
- iii) Prisoners undergoing sentence for the offences under the Central enactment.
- iv) Prisoners in the Civil Prison.
- v) Children from the remand home.
- vi) Prisoners who are outside the jail unauthorisedly.

It is thus apparent that except the prisoners of these categories the rest of the prisoners are entitled to the benefit of remission under this Government resolution dated 03.06.2017.

4. *Ex facie*, the petitioner who is a prisoner undergoing a sentence of

life imprisonment does not fall into any of these categories. Still, the learned Additional Sessions Judge in his opinion dated 02.08.2017 has overlooked these aspects and for the reasons *de hors the* Government Resolution has opined that the petitioner is not entitled to any remission. He seems to have misdirected himself in considering the gravity of the crime when the Government Resolution does not admit of any such parameter for extending the benefit. Even a life convict is entitled to remission to the extent of three months. It is also apparent that the learned Additional Sessions Judge for the reasons best known to him has not at all referred to the Government Resolution dated 03.06.2017. Had his attention been brought to it, we are sure the learned Judge would not have given a negative opinion. Be that as it may, the opinion expressed by the learned Additional Sessions Judge in ignorance of or by overlooking the Government Resolution is clearly faulty and needs to be corrected by this Court under the writ jurisdiction.

5. The writ petition is allowed. The petitioner is entitled to a remission of three months in view of Government Resolution dated 03.06.2017. The respondents shall extend the benefit to him.

6. The rule is made absolute in above terms.

[MANGESH S. PATIL, J.]

[R.M. BORDE, J.]