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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1979 OF 2018

Ahmed Mohd. Jilani Shaikh ..Petitioner.

V/s.

The State of Maharashtra ..Respondent.

Mr.Prosper D'souza *Amicus Curaie* for the Petitioner.

Mr.J.P.Yagnik, APP for the Respondent-State.

***CORAM: R.M.SAVANT AND
N.J. JAMADAR, JJ.***

DATE : NOVEMBER 28, 2018

P.C.:-

The Petitioner is incarcerated in the Nashik Road Central Prison as he is undergoing his sentence for the offences punishable under sections 394 and 397 of the Indian Penal Code. The Petitioner *vide* his letter dated April 2, 2018 had pleaded for remission of three months in terms of the Government Resolution dated June 3, 2017 under which Resolution, a prisoner is entitled to remission of three months on account of the 125th Birth

Anniversary of Dr.Babasaheb Ambedkar. The said resolution *inter alia* carves out categories of punishment on the basis of their duration, as also spells out the remission available to each of the category. The Petitioner has been sentenced to 8 years of imprisonment for offence punishable under section 394 of the I.P.C. and 7 years for offence punishable under section 397 of the I.P.C. which sentence has to run concurrently. The Petitioner, therefore, falls under this category as appearing from the said Government Resolution dated June 3, 2017 as the Petitioner has been sentenced for over 5 years imprisonment. In so far as the said category is concerned, the remission to which the present Petitioner is entitled is for a period of three months.

2. In terms of the procedure laid down in section 432 of the Criminal Procedure Code, the opinion of the convicting Court was obtained. The learned Additional Sessions Judge, City Civil and Sessions Court, Mumbai *vide* his letter dated February 3, 2018 has informed the Superintendent of Central Prison, Nashik Road that the convict cannot be granted pardon as having regard to the nature of the offence, no exceptional case or circumstance exists

for granting pardon. Hence, the report of the convicting Court is negative in so far as the Petitioner is concerned.

3. Pursuant to the directions which were issued by the earlier Bench, the learned APP has submitted the report of the Superintendent, Nashik Road Central Prison dated June 5, 2018 wherein the report of the convicting Court has been referred to and on the said basis, it is stated that the remission has not been granted to the convict.

4. The learned counsel appearing through Legal Aid, Mr. Prosper D'souza would submit that the report of the convicting Court cannot be treated as conclusive and it is for this Court to consider whether the remission is required to be granted to the Petitioner. The learned counsel would next submit that the Petitioner has been punished for offences punishable under sections 394 and 397 of the I.P.C. and it is not a case where any gruesome act has been committed by the Petitioner. The learned counsel would, therefore, submit that the Petitioner be given the benefit of the policy which has been announced by the State *vide*

the Government Resolution dated June 3, 2017.

5. *Per contra*, the learned APP Mr. Jayesh Yagnik would submit that in terms of the law laid down by the Apex Court in the case of *Sangeet and Another V/s. State of Harayana*¹, the opinion of the convicting Court is a *sine qua non* for consideration of an application for remission. The learned APP would contend that the requirement of obtaining the opinion of the convicting Court is still intact, though the judgment in *Sangeet's case (supra)* has been overruled on one aspect, which does not have any effect in so far as the requirement of obtaining the opinion of the convicting Court is concerned. The learned APP would submit that in the instant case where the convicting Court has submitted a negative report, the remission cannot be granted to the Petitioner.

6. We have heard the learned counsel Mr. Prosper D'souza appointed for the Petitioner through the Legal Aid and the learned APP Mr. Jayesh Yagnik. We have also gone through the papers i.e. the Government Resolution dated June 3, 2017 as also the opinion of the learned Additional Sessions Judge, Mumbai. The question

¹ (2013) 2 Supreme Court Cases 452

that is posed before us is, whether the Petitioner is entitled for remission in terms of the said Government Resolution dated June 3, 2017. The policy guidelines were issued to commemorate the 125th birth anniversary of Dr. Babasaheb Ambedkar, the Architect of our Constitution. As indicated above, the said Government Resolution contemplates remission of three months to the convicts who are undergoing sentence of more than 5 years or life sentence. There can be no dispute of the fact that the Petitioner belongs to the said category. No doubt, the convicting Court has given negative recommendation in so far as the Petitioner is concerned. In our view, having regard to the nature of the offence and the opinion expressed in the said recommendation, the same would not impede us while exercising our writ jurisdiction under Article 226 of the Constitution of India. In terms of the law laid down in the *Sangeet's case (supra)*, the procedural requirement is of obtaining the opinion of the convicting Court. The rational for the same appears to be that since the convicting Court is the Court which has imposed the punishment, it is appropriate that its opinion be obtained prior to grant of remission. In our opinion, the said opinion cannot be said to be conclusive so as to foreclose the

matter in so far as the grant of remission is concerned once such an opinion has been given by the convicting Court. The Writ Court can obviously go into consideration on the aspect as to whether the convict is entitled to remission which would undoubtedly depend upon the facts and circumstances of each case.

7. In the instant case, as indicated above, the Petitioner has been sentenced for offences punishable under sections 394 and 397 of the I.P.C. As per the statement submitted by the learned APP, which statement has been furnished to him by Superintendent, Nashik Road Central Prison, the Petitioner has already undergone sentence of 6 years, one month and 2 days. It would have to be borne in mind that the Petitioner has to undergo the sentence of 8 years in the aggregate. It is also required to be borne in mind that the Petitioner has not been involved in any gruesome act. In our opinion, therefore, the benefit of the policy as enunciated in the Government Resolution dated June 3, 2017 is required to be extended to the Petitioner.

8. The petition, therefore, requires to be allowed.

Resultantly, the Petitioner would be entitled to remission of three months as per the Government Resolution dated June 3, 2017. The same would be without prejudice to the rights of the Petitioner to other remissions, if he is otherwise entitled to in law.

9. The petition is allowed to the aforesaid extent and to stand disposed of.

10. A copy of the order be forwarded to the Superintendent, Nashik Road Central Prison.

11. The Superintendent, Nashik Road Central Prison to communicate the said order to the Petitioner.

(N.J. JAMADAR, J.)

(R.M.SAVANT, J.)