

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.108 OF 2019

Nilesh s/o Sukhlal Karosiya
(Convict No.-06),
Open Prison, Dhule.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary, Home Department,
Mantralaya, Mumbai,
- 2) The State of Maharashtra,
Through Superintendent,
Open Prison, Dhule.

...RESPONDENTS

...

Mr.Rupesh A. Jaiswal Advocate for Petitioner.
Mr.A.A. Jagatkar, A.P.P. for Respondent
Nos. 1 and 2.

...

**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

DATE OF RESERVING JUDGMENT : 22ND FEBRUARY, 2019

DATE OF PRONOUNCING JUDGMENT: 4TH MARCH, 2019

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. The Petitioner, who is a prisoner undergoing a sentence of life imprisonment, for having committed an offence punishable under Section 302 read with 34 of the Indian Penal Code, has filed this Petition, seeking benefit of remission of three months declared by the State Government by Resolution dated 3rd June, 2017, on account of 125th birth anniversary of Dr. Babasaheb Ambedkar. However, the learned Additional Sessions Judge, Jalgaon in his report dated 23rd October, 2017 [Exhibit-B] 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 3rd June, 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 Criminal Procedure Code, *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 of 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.

4. It is thus apparent that except the prisoners of the afore-stated categories, the rest of the prisoners are entitled to the benefit of remission under this Government Resolution dated 3rd June, 2017.

5. *Ex facie*, the Petitioner, who is a prisoner undergoing a sentence of life imprisonment, does not fall into any of the afore-stated categories. Still, the learned Additional Sessions Judge, Jalgaon, in his opinion dated 23rd October, 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, Jalgaon, for the reasons best known to him has not at all referred to the Government Resolution dated 3rd June, 2017. Had his attention been brought to it, we are sure that the learned Judge would not have given a negative opinion. Be that as it may, the opinion expressed by the learned Additional Sessions Judge, Jalgaon in ignorance of or by overlooking the Government Resolution is clearly faulty.

6. In the light of discussion herein above, the Petition is partly allowed. The matter is remitted back to the Additional Sessions Judge, Jalgaon, for re-consideration. The Additional Sessions Judge, Jalgaon, to re-consider the entire

issue, keeping in view the Government Resolution dated 3rd June, 2017, and take decision as expeditiously as possible, however, within eight weeks from the date of receipt of this order.

7. Rule is made absolute on above terms. Accordingly, the Petition stands disposed of.

[R.G. AVACHAT, J.]

asb/MAR19

[S.S. SHINDE, J.]