

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

CRIMINAL WRIT PETITION NO. 1331 OF 2019

Vankat s/o Govind Yenjane,  
Age : 59 years, Occu. Nil Convict No. 6203.  
R/o at Present in Central Prison Harsul,  
Dist. Aurangabad.

... PETITIONER

VERSUS

1. The State of Maharashtra,  
Through Secretary Home Department  
Mantralaya Mumbai.
2. The Additional Director General/  
Inspector General of Prison,  
Maharashtra State Pune
3. The Dy. Inspector General,  
Central Prison, Aurangabad.
4. The Superintendent of Central Prison,  
Aurangabad.

... RESPONDENTS

Mrs. Bharati B. Gunjal, Advocate for petitioner  
Mrs. V. S. Choudhary, APP for the respondents/Staste.

**CORAM : T. V. NALAWADE &  
S. M. GAVHANE, JJ.**

**DATED : 11-11-2019**

**ORAL JUDGMENT (PER T. V. NALAWADE, J.):**-

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties for final disposal.
2. The proceeding is filed for giving direction to respondents to

give the petitioner the benefit of Government Resolution dated 03/06/2017 which is in respect of Special Remission for cultural activity like Bandi Kala Rajanee Programme. Learned counsel for the petitioner took this court through a list showing the names of beneficiaries who completed Yoga training. She submitted on instruction that to the prisoners like Namdev Kamble and Satish Shinde who had undergone Yoga training and also to Kashinath Puyad and Shivraj Pawar, the benefit of both general remission and special remission was given and that order was made by DIG, Prison Central Division, Aurangabad. She submitted that when there is nothing in rule 14 and 15 of Chapter XXXVIII to prevent giving of special remission and general remission, for cultural activity like Bandi Kala Rajanee Programme, general order is passed to the effect that the benefit of special remission is to be given only to the prisoners who are eligible for general remission. Rule 15 is as under :-

*"15. Subject to the provisions of sub-rule (ii) special remission (in addition to ordinary remissions) may be granted to prisoners who are eligible for ordinary remission. (ii) Where the Superintendent is of the opinion that a prisoner, notwithstanding that he is not eligible for ordinary remission, should be granted special remission under rule 14, he shall submit a report in that behalf with his recommendation in Form II to the Inspector General for orders, and on receipt of orders from the Inspector General, grant special remission to the prisoner."*

3. The aforesaid rule shows that if the superintendent finds

that the prisoner is not eligible for ordinary remission but he needs to be granted special remission under rule 14, he should submit report in that behalf with his recommendation to Inspector General for orders and Inspector General may consider the same for granting special remission to the prisoner. Rule 15 is applicable to rule 14(f) and (g) also. When the such provision is made which is for promoting the good activities of the prisoners, it is difficult to digest that ADG by passing general order declared that the prisoners who are entitled to ordinary remission, whose name are not removed for remission register will only be entitled to special remission in the matters like cultural activities.

4. When under circular or rule discretion is given to the authority, discretion cannot be used in favour or as against all the persons who can be considered for matter like remission by one common order and each case needs to be considered separately otherwise there will be no meaning to the discretion given to the authority. The order made by ADG dated 02/01/2016 shows that he refused to grant special remission to all those prisoners who are removed from remission register. For Yoga training, both kinds of remissions viz., general remission and special remission came to be given and even to the prisoners who were removed from remission register. So the aforesaid general order cannot sustain in law. This court holds that the matter should be reconsidered by the authority and that

reconsideration should not be only in respect of the present petitioner, but in respect of all those who can be considered for the special remission, who had participated in Bandi Kala Rajanee Programme. So the following order.

### **ORDER**

1. Petition is allowed.
2. The aforesaid order of the ADG is quashed and set aside. ADG is hereby directed to reconsider the matter and each case is to be considered separately. The decision is to be taken within 30 days from today.
3. The activities mentioned in rule 14(g) and 14(f) are not be distinguished for use of the discretionary power.
4. Rule is made absolute in those terms.

**[ S. M. GAVHANE, J. ]**

**[ T. V. NALAWADE, J. ]**