

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

CRIMINAL WRIT PETITION NO.1710 OF 2018

Santosh s/o. Suryabhan Kale
[C-6552]
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

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Mr.R.A.Jaiswal, Advocate for the petitioner
Mr.D.R.Kale, APP for the Respondent/State

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

Reserved on : 06.02.2019
Pronounced on : 08.02.2019

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

2] The petitioner, who is a prisoner undergoing a sentence of 23 years imprisonment, for having committed an offence punishable under Sections 376, 395, 354, 342, 324, 509 of the I.P.C., 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 in his report dated 17.07.2017 [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.

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 3rd June, 2017.

4] *Ex facie*, the petitioner, who is a prisoner undergoing a sentence of 23 years imprisonment, does not fall into any of these categories. Still, the learned Additional Sessions Judge in his opinion dated 17th July, 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 3rd June, 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.

5] In the light of discussion herein above, the Petition is partly allowed. The matter is remitted back to the Additional Sessions Judge, Ahmednagar, for re-consideration. The Additional Sessions Judge, Ahmednagar, 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.

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

[R.G.AVACHAT]
JUDGE

[S.S.SHINDE]
JUDGE

DDC