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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1414 OF 2018

Satish Dada Londhe

..Petitioner

Vs

The State of Maharashtra

..Respondent

Mrs. Nasreen S.K. Ayubi (appointed Advocate) for the Petitioner.
Mr. Arfan Sait, APP for the State.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

DATE : 1st February 2019.

ORAL JUDGMENT (Per A.S. Oka, J.) :-

1] The question in the petition under Article 226 of the Constitution of India which arises before us for consideration is whether the petitioner is entitled for remission under the Government Circular dated 3rd June 2017 as amended by the Government Circular dated 19th November 2018.

2] The Government Circular dated 3rd June 2017 is an Order issued in exercise of powers under sub-section (1) of Section 432 of the

Code of Criminal Procedure, 1973 (for short “Cr. P.C”). It provides for granting remission to the prisoners who are in jail for more than five years or for a longer period. The said Circular provides for granting remission for a period of three months. There are six categories of prisoners who are excluded from the benefits under the said Circular. Further provision of the said Circular is that the judicial appraisal of the prisoners should be sought on the question whether they are entitled to remission.

3] In the present case, there is an Order of judicial appraisal dated 25th January 2018 by the learned Additional Sessions Judge, Vaduj in which it is mentioned that an appeal preferred by the petitioner against the Order of conviction has been dismissed by this Court and considering the nature and the gravity of offence, the petitioner is not entitled to remission. Accordingly, remission has been denied to the petitioner. The opposition of the learned APP to this petition is on the ground that in view of the Order of judicial appraisal, the benefit of remission under the Circular dated 3rd June 2017 has been rightly denied to the petitioner.

4] As far as the remission under Section 432 of Cr.P.C is concerned, in the case of *Sangeet Vs. State of Haryana*¹, the Apex Court held that granting remission is always statutory. In the case of the State of

1 (2013) 2 SCC 452.

*Haryana Vs. Mohinder Singh & Ors.*², the Apex held that the exercise of power of remission cannot be arbitrary and the decision to grant remission has to be well-informed, reasonable and fair to all the concerned.

5] By exercising the Rule making powers under sub-section (5) of Section 59 of the Prisons Act, 1894, the State has framed rules known as the Maharashtra Prisons (Remission System) Rules, 1962 (for short “the Remission Rules”). Rule 4 of the Remission Rules provides for four categories of remissions. Fourth category is of the State remissions which is provided under Rule 18 reads which thus:

“18. The State Government may, on such occasions of national importance or public rejoicing as the State Government may determine grant remission to such prisoners for such number of days as the State Government may by order specify in this behalf.”

6] The power to grant remission is under sub-section (1) of Section 432 of Cr. P.C. For giving effect to the said power, now there are statutory rules in the form of the Remission Rules.

7] On the plain reading of the Government Circular dated 3rd June 2017 it is an order under sub-section (1) of Section 432 of Cr. P.C. It appears that the State remission was granted on account 125th Birth

² (2003) 3 SCC 394.

Anniversary of Dr. Babasaheb Ambedkar. On plain reading of said the Order contained in the said Government Circular, it is apparent that only six categories are excluded from the applicability of grant of remission. Admittedly, the present case does not fall in any one of the six exceptions which are to be read with the Government Circular dated 19th November 2018. A copy of the judgment in appeal preferred by the petitioner against the Order of conviction is available on record. After perusing the same, we are satisfied that the case of the applicant does not fall in any of the six exceptions.

8] It is true that no prisoner can seek remission as a matter of right. However, if a statute or statutory Rule or a Policy of the State Government provides for grant of remission in terms thereof a prisoner is entitled to be considered for grant of remission. The right of the prisoner is confined to the consideration his case for granting remission in accordance with law.

9] In the present case, the grant of the State remission will be governed by the Order contained in Government Circular dated 3rd June 2017. There is no dispute that the said Government Circular is applicable to the case of petitioner. The decision of the State Government is based on

the judicial appraisal.

10] As observed earlier, in the case of *State of Haryana Vs. Mohinder Singh & Ors (supra)*, the decision to grant remission has to be reasonable and fair to all the concerned and that the grant of remission is statutory. The object of providing for judicial appraisal is to ensure that the Order or the Policy or the Rules of the State Government for grant of remissions are applied and implemented reasonably and fairly. When a Judicial Officer makes a judicial appraisal of the entitlement of the prisoner for grant of the State remission under the said Government Circular, the scope of judicial appraisal is to examine whether the case of the prisoner is covered by the Order contained in the said Government Resolution/Circular.

11] In the present case, we find that the learned Additional Sessions Judge has not even adverted to the said Government Circular with a view to ascertain whether the petitioner is entitled to the benefit of remission. He has merely observed that considering the nature of the offence committed by the petitioner, he should be denied remission.

12] In the circumstances, the petition must succeed and we pass the following Order:

(a) We direct the State Government to consider the case of the petitioner for grant of remission in terms of orders/policy contained in the Government Circular dated 3rd June 2017 as amended by the Government Resolution dated 19th November 2018 after submitting the case for a fresh judicial appraisal;

(b) The judicial appraisal shall be made in the light of observations made in this Judgment;

(c) The State shall take appropriate decision within a period of one month from the date on which the judicial appraisal is received:

(d) Rule is made absolute in the aforesaid terms;

(e) A copy of the said Judgment and Order shall be forwarded to all the Superintendents of the jails in the State as well as to the Principal District Judges of all the District Courts in the State.

(A.S.GADKARI, J.)

(A.S. OKA, J.)