

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

CRIMINAL WRIT PETITION NO. 263 OF 2020

Sandeep Sarjerao Vaidya (c-4549)

Age: 28 years, Occ: Convict,
R/o. Open Prison, Nashik Road,
Nashik, Dist. Nashik.

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through Secretary Home Department,
Mantralaya, Mumbai – 32.

2. The State of Maharashtra,
Through Superintendent,
Open Prison, Nashik Road,
Nashik, Tq. & Dist. Nashik.

.. **Respondents**

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Mr. Rajendra N. Chavan, Advocate for the Petitioner.
Mr. K.D. Mundhe, APP for the Respondent-State.

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**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**
DATE : 20.02.2020

ORAL JUDGMENT :- (*Per: T.V. Nalawade, J.*)

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. The present proceeding is filed for giving direction to respondents to grant benefit of the State remission of two months to the petitioner-

prisoner in respect of the scheme of the Government to give remission on the eve of 125th Birth Anniversary of Dr. Babasaheb Ambedkar.

3. This Court has gone through the relevant record. It appears that initially the petitioner was convicted for the offence punishable under Section 304 (II) of the I.P.C. and sentence of imprisonment of seven years was given to him. In the appeal bearing no.747 of 2016 (The State of Maharashtra V/s. Sandip Sarjerao Vaidya) this Court reduced the sentence to make it R.I. for five years. This decision was given on 10.09.2018. The submissions made and the record show that the petitioner was convicted in the year 2016 and since then he has been behind the bars for undergoing the sentence.

4. This Court has carefully gone through the scheme of the Government dated 03.06.2017. The scheme shows that if there is the sentence of imprisonment for a period ranging between one to five years the prisoner is entitled to get remission of two months. There is specific mention of the cases which are covered by this scheme and the present case is covered by the scheme.

5. It appears that as per the procedure the respondents had called the opinion of the learned Sessions Judge. The learned Sessions Judge considered the aforesaid record and gave opinion that he is not entitled to this

concession / remission. The judgment given by this Court is considered and that circumstance is only considered by the learned Judge of Sessions Court. Giving conviction and giving sentence is the job of the Court. Remission is the power of the State. Though as per the procedure, opinion of the Sessions Court is obtained that opinion is ordinarily not binding on the State as giving remission or commutation which can be done under Cr.P.C. is the power of the State.

6. In view of these circumstances, this Court holds that only on the basis of the opinion given by the learned Sessions Judge the authority could not have refused to give the benefit of aforesaid scheme to the petitioner. This Court holds that the petitioner is entitled to the benefit of that scheme. There is no adverse thing against him due to which the benefit can be refused to him. It appears that he has already undergone the sentence of more than four years and ten months including previous regular remission and present will be the special remission in view of the aforesaid scheme of the Government. In the result following order is passed. The petition is allowed. The respondents are hereby directed to give the benefit of aforesaid scheme of the Government and if after considering the period of two months of remission to which he is entitled, the petitioner has completed his term he needs to be released

forthwith from jail, if he is not required in any other case. Authenticate copy allowed. Rule made absolute in those terms.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]