

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

**WRIT PETITION NO.4330 OF 2018
AND
CRIMINAL APPLICATION NO.117 OF 2019**

Harish Tomara Devadiya

...Petitioner

vs.

The State of Maharashtra

...Respondent

Mr. Karna Vivan for the Petitioner/Applicant.

Mr. S. R. Shinde, APP for the Respondent/State.

**CORAM : B. P. DHARMADHIKARI &
N. R. BORKAR, JJ.**

DATE : 24/1/2020.

PC.:

1. Heard learned counsel (appointed) and learned APP. Prisoner/Convict under sections 394 and 397 of IPC has been denied benefit of remission available under the remission scheme on account of 125th birth anniversary of Dr. Babasaheb Ambedkar.

2. The contention of learned counsel for the petitioner is the reason given is not supported by the policy which allows such remission.

3. Learned APP states that the convicting Court has given a negative recommendation on 2/2/2018 and therefore the benefit could not be extended.

4. The negative recommendation sent by the Additional Sessions Judge, Greater Bombay reveals that because of punishment under section

397 of IPC the said Court has opined that accused is not entitled to benefit of remission.

5. Perusal of remission scheme itself reveals that after amendment only few IPC offences are excluded from remission scheme. Section 397 is not included in it. The opinion expressed therefore is not correct. We therefore find the petitioner entitled to benefit of remission scheme.

6. Accordingly, we direct Respondent to extend to him that benefit.

7. The petition is partly allowed and disposed of.

8. Order be communicated to the prisoner in jail.

(N. R. BORKAR, J.)

(B. P. DHARMADHIKARI, J.)