

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.954 OF 2019

Vishal s/o Dagaduji Gawai .vs. Superintendent, Central Prison, Amravati and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.L. Jaiswal, Advocate (Appointed) for the petitioner,
Shri A.D. Sonak, APP for the respondents.

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CORAM : SUNIL B. SHUKRE AND
MADHAV J. JAMDAR, JJ.

DATED : 17th FEBRUARY, 2020.

Heard the learned counsel for the parties.

The petitioner, as seen from the reply of the respondents-State, has been convicted for the offences punishable under Section 376 (2)(i) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

The petitioner is seeking remission in the sentence of imprisonment awarded to him by relying upon the Government Resolution, dated 3.6.2017. The benefit of this resolution can be given in appropriate cases by the government provided opinion from the concerned Sessions Court is obtained.

In the present case, the reference has been made to the learned Sessions Judge for giving his opinion, but the opinion is still awaited. Reference was made on 30.11.2019. Now, the period of more than two months has lapsed and yet opinion has not been given.

This petition seeks a direction to the concerned Sessions Court for issuing appropriate opinion, in accordance with law. We see no difficulty for allowing the petition considering the fact that the opinion of the concerned Sessions court is concerned.

However, it appears to us that the issue is not going to be resolved by obtaining opinion of the concerned Sessions Court, because of the fact that the GR dated 3.6.2017 contains some contradictory guidelines on the first page of the GR. A table has been provided which gives categorization of various sentences awarded to the prisoner and the period of remission to be given in each of the categories which is prescribed for prisoner who has been sentenced to examine term of imprisonment of three months, would be eligible for seven days remission, a prisoner getting term of imprisonment upon three months and up to 12 months, would get 15 days remission and so on. This table prescribes that those prisoners which is term of imprisonment is more than five years or is of life imprisonment, would be eligible to receive remission in their sentence for a period of three months. On going by this table, one would expect that prisoners, who have been convicted for the Indian Penal Code and the life offences would be liable to be considered for grant of remission or otherwise in terms of this table, but when we consider the second page which specifically deals with a category of prisoners to whom the benefit of GR is not to be granted. We would come across a contradiction

in the GR itself, one such category which is category (iii) is of the prisoners, who have been convicted under Central Enactment. It is not clarified in this GR as to what is meaning of Central Enactment, which has been disclosed “केंद्रीय कायद्यांतर्गत शिक्षा झालेले बंदी”. A strict interpretation of this clause is made, it would render the table given on the first page regarding the prisoners eligible for grant of remission nugatory and as such enactment like Indian Penal Code, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Negotiable Instruments Act etc. are all central legislation and experience is that in the past, the prisoners, who have been sentenced under various provisions of all these acts, have been granted benefit of GR, dated 3.6.2017. Therefore, in our opinion, this issue is required to be dealt with by going to its root and for this purpose, clarification from the State Government would be required. The State Government can also think of introducing suitable modification to the GR, dated 3.6.2017. Meanwhile, as the purpose of this petition are going to serve this direction, we would dispose of the petition by issuing the following direction.

The learned Additional Sessions Judge, Khamgaon, District - Buldhana is requested to give his opinion, as required in the GR, dated 3.6.2017, in accordance with law, within a period of one month, from the date of receipt of this order.

Copy of the order be furnished to the learned APP for doing the needful in the matter.

This petition be listed on board for further consideration on 23.03.2020.

JUDGE

JUDGE

Gulande