

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

CRIMINAL WRIT PETITION NO.540 OF 2020

SHAIKH RAZZAK SHAIKH SALIM (C-8125)

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for the Petitioner : Shri Rupesh A. Jaiswal.

APP for the Respondent: Shri K.S. Patil

...

CORAM : RAVINDRA V. GHUGE

&

B. U. DEBADWAR, JJ.

DATE :- 18th March, 2021

Per Court :-

1. By this petition, the petitioner has put forth the prayer for seeking direction to the Jail Authorities to grant him special remission as prayed for.

2. On 24.07.2020, we had briefly heard the learned advocate for the petitioner and had passed the following order:-

"1. We have briefly heard the learned Advocate for the petitioner and the learned APP. The issue before us is with regard to the Government Resolution dated 03/06/2017 introduced by the Government of Maharashtra aimed at granting special remission to the convicts undergoing jail sentence on the occasion of 125th Birth Anniversary of Bharatratna Dr.Babasaheb Ambedkar.

2. It is not in dispute that the petitioner falls in one of the categories mentioned on page No.2 of the said GR which would, per se, disentitle him for any remission. However,

this Court (Coram : T.V.Nalawade and Mangesh S.Patil, JJ.) have passed an order on 12/03/2019 in Criminal Writ Petition Nos. 273/2019 to 276/2019 (Yovchel s/o Vijaykumar and others Vs. The State of Maharashtra and others), vide which, 4 points were formulated under paragraph no.6 for reference to a Larger Bench. The learned APP submits that a Full Bench was constituted and the matter was reserved for judgment in December 2019. The judgment is awaited.

3. *In view of the above, this matter is adjourned with liberty to the petitioner to circulate the same after the Learned Full Bench decides the points under reference.”*

3. On 08.12.2020, this Court had passed the following order:-

- “1. *Learned Counsel Shri Nagargoje for the petitioner submitted that some other Counsel may be appointed. Due to his submission, learned Counsel Shri Rupesh Jaiswal is appointed to represent the prisoner/petitioner. Learned Counsel Shri Jaiswal submits that he has gone through the Full Bench decision on the point involved in the present matter. He submits that there are some Apex Court decisions, like, AIR 1961 Supreme Court page No.600 - Gopal Godse Vs. State of Maharashtra and others and (2016) 7 SCC page No.1- Union of India Vs. V. Shriharan, in which it is laid down that it is a power of the Government, it is to be exercised under statute in respect of remission and the Court has no power in the matters of remission. He submits that he wants to apply for reconsideration of the decision given by the Full Bench and for that, he seeks time. Keep the matter on 25th January, 2021.*
2. *Copy of the Full Bench decision in Writ Petition No.273/2019 - Yovehel Vijaykumar Gouri Vs. The State of Maharashtra and others, is taken on record.”*

4. We have gone through the judgment delivered by the learned Full Bench dated 09.10.2020 in Criminal Writ Petition No.273/2019 filed

by *Yovehel s/o Vijaykumar Gouri vs. The State of Maharashtra and others*

and a group of petitions. In paragraph 42 of the judgment, the learned Full Bench has quoted the questions and their answers, which read as under :-

“42. *In view of the discussion made herein above and the ratio laid down by the Supreme Court in various authorities as cited above, as referred in the foregoing paragraphs, we answer the question Nos.(i) to (iv) as follows:-*

Question No. (i): Whether it is necessary to obtain the opinion of the Presiding Officer mentioned in Section 432(2) of the Code of Criminal Procedure in respect of convicts mentioned in Government Resolution dated 3rd June, 2017 to whom the benefit of remission is to be given.

Answer: In view of the ratio laid down by the Constitution Bench of Supreme Court, in the case of Union of India vs. V. Sriharan @ Murugan & Others (supra) this question is no more res-integra. The Constitution Bench of the Supreme court in the said case has recorded the answer to the question formulated in para 52.6 by the Referral Bench and recorded that suo motu exercise of power of remission under Section 432(1) is not permissible and exercise of power under Section 432(1) must be in accordance with the procedure under Section 432(2) of Cr.P.C.

Question No. (ii): Whether the application given by the convicts, who fall under the excepted categories, can be rejected straightway by the authority.

Answer: In view of the discussion above, we record our answer to question No.(ii) in the affirmative.

Question No.(iii): Whether the opinion given by the Presiding Officer mentioned in Section 432(2) of the Code of Criminal Procedure and also the record of trial, need to be considered by the authority created for grant or refusal of remission as relevant circumstances or

whether the opinion is binding on the authority.

Answer: The opinion given by the Presiding Judge of the court in terms of provisions of Section 432(2) of the Cr.P.C. is binding on the authority.

Question No. (iv): Whether under such policy without any scrutiny as provided in the Code of Criminal Procedure, the benefit, remission must be given.

Answer: In view of the discussion above, we record our answer to question No.(iv) in negative.”

5. The case of the petitioner is covered by question No.(iii) reproduced above and the answer delivered by the learned Full Bench. There is no dispute on this count. In the light of the same, we have gone through the report of the learned District Judge-2 and Additional Sessions Judge, Aurangabad, which is sought by the Jail Superintendent in view of the request of the petitioner for seeking benefit of remission of sentence on account of the 125th Birth Anniversary of Bharatratna Dr.Babasaheb Ambedkar. The said report is taken on record and marked as “X” for identification. The conclusions set out in the report dated 22.03.2018 read as under :-

“Subject :- Report regarding under trial Shaikh Rajjak Sayed Saleem (C-8125) for getting benefit at the eve of 125 Birth Anniversary of Dr.Babasaheb Ambedkar.

Sir,

Apropos the subject noted above, I have to state that on receiving your letter I have gone through judgment and order in Sessions Case No.136/1996 wherein above named under trial is convicted for the offence under section 302 of the Indian Penal Code. On

going through the same it reveals that above named under trial inhumanly killed his wife by pouring kerosene over her person. As such considering cruelty on is part he is not entitled for any benefit. Hence, submitted for your information.”

6. In view of the above, since the learned Full Bench has concluded that the information given by the Presiding Judge of the Court in terms of the provisions of Section 432(2) of the Code of Criminal Procedure, 1973, would be binding on the authority, that this Criminal Writ Petition is dismissed.

7. Shri Jaiswal, learned advocate, who has been appointed by this Court as an amicus curiae, submits that he would not be claiming fees from the High Court Legal Services Sub-Committee, Aurangabad.

kps

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)