

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1018 OF 2022

Bhansingh s/o Harinamsingh Bunde
Age: 58 years, Convict No.11782 presently
At the Nashik Road Central Prison. .. Petitioner

Versus

1. The State of Maharashtra
Through Secretary Home Department,
Mantralaya - Mumbai-32.
2. The State of Maharashtra
Through Superintendent of Nashik
Road Central Prison, Nashik,
Tq. and Dist. Nashik .. Respondents

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Mr. Govind A. Kulkarni, Advocate for petitioner (Appointed).
Mr. S. D. Ghayal, APP for respondents - State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : DECEMBER 19, 2022.

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. The petitioner, who is a convict, has prayed that the directions be issued to respondent No.2 to give him benefit of State Remission of Three months on eve of 125th Birth Anniversary of Dr. Babasaheb Ambedkar in view of Government Resolution dated 03.06.2017.

2. Heard learned Advocate Mr. Govind A. Kulkarni for the petitioner (Appointed) and learned APP Mr. S. D. Ghayal for respondents - State.

3. At the outset, it is to be noted that the petitioner was convicted by the learned Sessions Judge, Parbhani for the offence punishable under Sections 366, 376(2)(G), 342 read with Section 34 of Indian Penal Code (for short "IPC") and sentenced to suffer 10 years of rigorous imprisonment. Thereafter, being aggrieved and dissatisfied with the said order the petitioner has preferred Criminal Appeal No.158 of 1999. This Court by judgment dated 21.11.2017 dismissed the said appeal, thereby confirming the judgment and order passed by the learned Sessions Judge, Parbhani. The petitioner has undergone imprisonment for 4 years and 4 months of actual imprisonment.

4. Learned Advocate Mr. Govind A. Kulkarni, who is appointed to represent the cause of the petitioner, invited our attention to the communication dated 30.07.2019 by learned Principal District and Sessions Judge, Parbhani. He submitted that the opinion expressed by the learned Principal District Judge, Parbhani in regards to the benefits in the nature of remission on account of 125th Birth Anniversary of Dr. Babasaheb Ambedkar under the Government Resolution dated 03.06.2017, is unsustainable.

5. Learned APP strongly opposed the petition and submitted that taking into consideration the facts of the case, the prayer for granting benefit in the nature of remission on account of 125th Birth Anniversary of Dr. Babasaheb Ambedkar under the Government Resolution dated 03.06.2017 to the petitioner needs to be rejected.

6. At the outset, reliance can be placed on the decision in ***Life Convict Laxman Naskar Vs. State of West Bengal and anr., [2000 ALL MR (Cri.) 1526]***, wherein it has been observed by the Hon'ble Supreme Court that :-

" The reasons given by the Government are palpably irrelevant or devoid of substance. Firstly, the views of the witnesses who had been examined in the case or the persons in the locality cannot determine whether the petitioner would be a danger if prematurely released because the persons in the locality and the witnesses may still live in the past and their memories are being relied upon without reference to the present and the report of the jail authorities to the effect that the petitioner has reformed himself to a large extent. Secondly, by reason of one's age one cannot say whether the convict has still potentiality of committing the crime or not, but it depends on his attitude to matters, which is not being taken note of by the Government. Lastly, the suggestion on that the incident is not an

individual act of crime but a sequel of the political feud affecting society at large, whether his political views have been changed or still carries the same so as to commit crime has not been examined by the Government. On the basis of the grounds stated above the Government could not have rejected the claim made by the petitioner"

7. Further reliance can be placed on the recent decision in ***Ram Chander Vs. The State of Chattisgarh and Anr., [2022 LiveLaw (SC) 401]***, wherein which factors are required to be considered while considering remission under Section 432(2) of the Code of Criminal Procedure (for short "Cr.P.C.) have been enumerated. It has been observed in this case that "it cannot be said that the opinion of the presiding judge is only a relevant factor, which does not have any determinative effect on the application for remission. The purpose of the procedural safeguard under Section 432(2) of the Cr.P.C. would stand defeated if the opinion of the presiding judge becomes just another factor that may be taken into consideration by the government while deciding the application for remission...

An opinion accompanied by inadequate reasoning would not satisfy the requirement of Section 432(2)."

In the said case, the Hon'ble Supreme Court had observed the relevant factors to be considered to include while assessing the point of remission (i) whether the offence affects the society at

large; (ii) the probability of the crime being repeated; (iii) the potential of the convict to commit crimes in future; (iv) if any fruitful purpose is being served by keeping the convict in prison; and (v) the socio-economic condition of the convict's family. It was held that all these factors should be considered by the presiding judge also. Then it has been opined that if the opinion of the presiding officer does not comply with the requirements of Section 432(2) or if the judge does not consider the relevant factors for grant of remission that have been laid down in ***Laxman Naskar (Supra)***, the government may request the presiding judge to consider the matter afresh." The Hon'ble Supreme Court had reiterated the decision in ***Union of India Vs. Sriharan @ Murugan, [(2014) 4 SCC 242]***. Further, reliance can be placed on the decision in ***Sharafat Ali Vs. State of Uttar Pradesh and Another, [2022 LiveLaw (SC) 179]***, which is the full Bench decision of the Hon'ble Supreme Court. It reiterates that prior criminal history, conduct and behaviour in jail, possible danger to society etc. are relevant considerations for premature release of a convict. Reliance can be placed on the decision in ***Mr. Dilip S. Shetye Vs. State Sentence Review Board, Chief Secretary Govt. of Goa, [Criminal Writ Petition No.255 of 2019]*** decided on 06.11.2020, wherein the petitioner was directed to be released prematurely. Similar decisions were taken in ***V. V. Mohan Vs. State of Goa and others, [2022 (2) Bom. C.R.(Cri.) 72]***, ***Ravi***

Patil Vs. State of Goa and others, [2020 DGLS (Bom.) 1314], Anup Pratapsingh Varma Vs. State of Maharashtra, [2007 (Supp.) Bom.C.R. 794], Satish @ Sabbe Vs. The State of Uttar Pradesh, [2020 CJ (SC) 550], Shor Vs. State of Uttar Pradesh and Another, [Writ Petition (Criminal) No.58 of 2020] decided by the Hon'ble Supreme Court on 05.08.2020.

8. We have perused the file and the documents those are produced by the petitioner. As regards the petitioner is concerned, his present age is 58 years and as aforesaid, he has undergone a substantial imprisonment. Perusal of the impugned communication would show that the learned Sessions Judge was pleased to deny him the benefit of Three months remission by way of impugned communication dated 30.07.2019 thereby communicating that the grant of remission is the domain of the State Government.

9. Whatever opinion that has been given by the learned Sessions Judge does not appear to be in consonance of the requirements as laid down in ***Laxman Naskar*** (Supra) and ***Ram Chander*** (Supra). Note was taken in ***Laxman Naskar*** (Supra) and guidelines were issued which should be the basis for the release of a convict prematurely and they are as follows :-

"1. Whether the offence is an individual act of crime without affecting the society at large.

2. Whether there is any fruitful purpose of confining of this convict anymore.

3. Whether there is any chance of future reoccurrence of committing crime.

4. Socio-Economic condition of the convict's family."

10. Further, note will have to be taken in respect of the guidelines given in **Sriharan's** case (Supra). It was held that the government is bound to seek the opinion of the sentencing Court under Section 432(2) of the Cr.P.C. Thereafter, in **Sangeet Vs. State of Haryana, [(2013) 2 SCC 452]**, the Hon'ble Supreme Court held that the opinion of the presiding judge of the sentencing court must be accompanied by reasons. Here, in the present case, whatever reason has been given is vague and similar opinion was deprecated by the Hon'ble Supreme Court in **Bhagwat Saran Vs. State of UP, [Writ Petition (Criminal) Nos.1145-1149 of 19782]** decided on 06.12.1982. In that case also, the presiding judge had simply stated that in his opinion in view of all the facts and circumstances, it is not appropriate to allow the application of remission. There is nothing to indicate that the judge took into consideration the following three factors to grant remission, which were (i) antecedents of the petitioner, (ii) conduct of the petitioner in prison; and (iii) the likelihood of the petitioner of committing crime if released and, therefore, the Hon'ble Supreme Court

observed, "bald statement without any attempt to indicate how law and order is likely to be adversely affected by their release cannot be accepted."

11. All these decisions of the Hon'ble Supreme Court were considered in **Ram Chander** (Supra) and it was then further considered that there appears to be a difference of opinion between the High Courts on whether the opinion of the presiding judge is binding on the government and in that respect following observations are important :-

"20. In **Sriharan** (Supra), the Court observed that the opinion of the presiding judge shines a light on the nature of the crime that has been committed, the record of the convict, their background and other relevant factors. Crucially, the Court observed that the opinion of the presiding judge would enable the government to take the 'right' decision as to whether or not the sentence should be remitted. Hence, it cannot be said that the opinion of the presiding judge is only a relevant factor, which does not have any determinative effect on the application for remission. The purpose of the procedural safeguard under Section 432(2) of the Code of Criminal procedure would stand defeated if the opinion of the presiding judge becomes just another factor that may be taken into consideration by the government while deciding

the application for remission. It is possible then that the procedure under Section 432(2) would become a mere formality

21. However, this is not to say that the appropriate government should mechanically follow the opinion of the presiding judge. If the opinion of the presiding judge does not comply with the requirements of Section 432(2) or if the judge does not consider the relevant factors for grant of remission that have been laid down in ***Laxman Naskar*** (Supra), the government may request the presiding judge to consider the matter afresh."

12. In ***Ram Chander*** (Supra) thereafter the Hon'ble Supreme Court found that there was nothing to indicate that the presiding judge took into account the factors, which were laid down in ***Laxman Naskar*** (Supra) and held that the petitioner's application for remission therefore needs to be sent for reconsideration. It will not be out of place to mention here that the petition filed by *Ram Chander* was under Article 32 of the Constitution of India, yet the law laid down in that decision has not been followed in this case. Hence, in view of above observations in paragraph No.21 in ***Ram Chander*** (Supra), the matter needs to be sent back to respondent No.2 with a direction that the opinion of the presiding judge should be called afresh and then a decision be arrived at.

13. As regards the present petitioner is concerned the presiding judge had given opinion vide communication dated 30.07.2019. It was opined by the learned Principal District and Sessions Judge, Parbhani that "the grant of remission is the domain of State Government." At the cost of repetition it can be said that the learned Judge had not considered the relevant factors. Even the petition filed by present petitioner deserves to be remitted for the above reasons.

14. This Court is again and again coming across such kind of petitions. When guidelines have been issued by the Hon'ble Apex Court then those are binding on all the authorities, yet it appears that the authorities are mechanically giving their opinions and not considering the guidelines, then, once again it is required to be harped upon all those who are involved in the process of the act of remission that they should adhere the guidelines those have been given in various decisions of the Hon'ble Apex Court. The presiding officers, when such opinion is called from them, should be armed with all the necessary documents and it would be then the job of the prison authorities, who call their opinion to place before them the necessary documents including the behaviour of the convict while undergoing imprisonment. Considering this position, this Court has already given directions in that regard to the Joint Director, Maharashtra Judicial Academy, Uttan to hold periodical

training of the judicial officers as to how they should give opinion when such applications under Section 432(2) of the Cr.P.C. are forwarded to them.

15. In view of the aforesaid discussion, the following order is passed :-

ORDER

- I) The writ petition stands partly allowed.
- II) The impugned communication dated 30.07.2019 by learned Principal District and Sessions Judge, Parbhani stands quashed and set aside.
- III) Respondent No.1 to consider petitioner's application for remission afresh by calling upon the opinion from the Judge of the sentencing Court.
- IV) Such request letter from respondent No.1 or the appropriate authority under the directions of respondent No.1 be sent to the concerned judge of the sentencing court afresh on or before 31.01.2023 along with all the necessary documents. It would be necessary for the concerned Judge to form opinion.
- V) The concerned presiding officer of the sentencing Court should give the opinion afresh accompanied by adequate reasoning taking into consideration all the relevant factors that govern the grant of remission as laid down in **Laxman Naskar** (Supra) and **Ram Chander** (Supra).

VI) After receipt of such application, the concerned presiding officer of the sentencing Court should give his opinion before 15.02.2023.

VII) After receipt of the said opinion, respondent No.1 to take final decision on the petitioner's application for remission afresh within a period of a month i.e. on or before 15.03.2023.

VIII) Fees of learned Advocate Mr. Govind A. Kulkarni, who came to be appointed to represent the cause of petitioner, is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm