

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

WRIT PETITION NO.537 OF 2020

Bahadursingh Jitendrasingh Kesi	... Petitioner
Vs.	
The State of Maharashtra	... Respondent

Mr. Jagdish Shetty - Advocate for Petitioner.
Mr. J. P. Yagnik – APP for Respondent – State.

**CORAM : PRASANNA B. VARALE, J. &
S.M. MODAK, J.**

DATE : 20th April, 2022

P.C. :

1. Heard learned advocate Mr. Shetty for Petitioner and learned APP Mr. Yagnik rule.

2. The present Petitioner is a convict in Charkop Police Station Crime No.110 of 2006 and he is punished for the offences punishable under Sections 302, 381, 120-B of Indian Penal Code.

3. He has been sentenced to life imprisonment and a fine of Rs.500 on 7th February, 2009 by the Court of Additional Sessions Judge, in Sessions Case No.908 of 2006. At present present he is undergoing

sentence in Nashik Road Central Prison.

4. There is Government Resolution issued by Government of Maharashtra, dated 3rd June, 2017 on the occasion of 125th Birth Anniversary of Dr. Babasaheb Ambedkar. Its copy is placed before us for our perusal. We have read it with the assistance of both sides. There are categories of the prisoners depending upon the quantum of punishment depending upon that the period of remission is also prescribed. The present Petitioner being a lifer is entitled for 3 months remission. Government Resolution further says that certain prisoners are not entitled for remission. There are in all 6 categories. It is not the case of the respondent that the Petitioner falls in either of these categories.

5. The 3rd part of G.R. says that the appraisal from the Court who has convicted the prisoner is required to be sought. It further says that an entry is required to be made in the remission register. So far as the case of the Petitioner is concerned Court of Additional Sessions Judge, Mumbai vide report dated 18th January, 2019 has opined that the Petitioner is not entitled for remission as he is convicted for a serious offence under Section 302 of IPC.

6. Herein the Petitioner does not come with the case that his request for remission has been rejected by written communication. Learned APP brought to our notice, the signature of the prisoner taken on the appraisal report and according to him it amounts to refusal of the request. It is true that obtaining appraisal report is one part at the same time the principle of natural justice suggest that the prisoner must be communicated of the order refusing remission, otherwise he will not be in a position to challenge that order. In this case there is no written communication. However on the basis of submission by Learned APP we presume that the Jail authorities have refused to grant remission to the prisoner. We are not going into the technicality by insisting upon passing of an written order.

7. When we have gone into the issue of entitlement to remission, we find that the Petitioner has fulfilled the first part of the G.R. and he does not fall within the disqualification clause. Merely because he has been convicted for an offence under Section 302 of IPC. It does not meant that he is not entitled for remission. In the Government Resolution the lifer are not included in the disqualification clause. So we have to understand the purpose behind issuing the such G.R. on the occasion of 125th Birth Anniversary of Dr. Babasaheb Ambedkar. Ultimately if the remission is granted that will be considered

at the time of total period of sentence a particular prisoner has undergone. So we are of the opinion that the Petitioner is entitled for remission as per that G.R. Along with reply the Respondent – State has filed one table giving the details of period undergone and not availing parole and furlough leave. There is also a remark that the conduct of the Petitioner inside the jail is satisfactory. We have also considered this fact. Hence the following Order is passed:-

ORDER

- a) The Criminal Writ Petition No.537 of 2020 is allowed.
- b) The Respondents are directed to give benefit of remission for the period of 3 months to the Petitioner and also to make necessary entry in the remission register.
- c) Petition is disposed of.
- d) Parties to Act on an authenticated copy of this Order.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)