

UMESH  
SHRINIWAS  
MALANI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1239 OF 2020

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Date: 2022.01.04  
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Rajendra Bhaurao Gaikwad ...Petitioner

**Versus**

The State of Maharashtra ...Respondent

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Ms. Hemlata Whaval for the Petitioner.

Ms. Sangeeta D. Shinde, APP, for the Respondent –  
State.

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CORAM : PRASANNA B. VARALE &  
ANIL S. KILOR, JJ.

DATE : JANUARY 03, 2022.

JUDGMENT (PER PRASANNA B. VARALE, J) :

1. **Rule.** Rule made returnable forthwith and heard finally with the consent of learned Counsel appearing for respective parties.

2. Learned Counsel Ms. Hemlata Whaval appointed for Petitioner invited our attention to the opinion placed on record in the Petition. Learned Counsel for Petitioner vehemently submitted that the negative opinion expressed by the learned District Judge 6 and Additional Sessions Judge, Nashik in regards to the benefits in the nature of relaxation / remission on

account of 125<sup>th</sup> Birth Anniversary of Dr. Babasaheb Ambedkar under the Government Circular dated 03.06.2017, is clearly unsustainable.

3. It is submitted by learned Counsel for Petitioner that when the Government Resolution is not making out any distinction between the convicts suffering life imprisonment and the convicts suffering imprisonment for lessor period, the learned District Judge 6 and Additional Sessions Judge, Nashik carved out an artificial category of the convict and gave negative opinion that the accused Rajendra Gaikwad is not fit to get relaxation in the sentence awarded to him.

4. Learned Counsel for Petitioner by placing heavy reliance on the judgment of this Court in the matter of Nilesh Sukhlal Karosiya Vs. State of Maharashtra and Ors<sup>1</sup>, submitted that the reasoning assigned by the learned District Judge in his opinion is unsustainable and the Petitioner can be set to be similarly circumstanced with the Petitioner Nilesh Karosiya.

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1 Criminal Writ Petition No. 108 of 2019 (At Aurangabad bench)

5. On going through the material placed on record as well as on going through the judgment of this Court in the matter of Nilesh Karosiya (supra), we are of the opinion that learned appointed Counsel for Petitioner made out the case.

6. The Petitioner was an accused before the learned Additional Sessions Judge, Nashik in Sessions Case No. 138/2015 and was charged for commission of offences under Sections 302, 326 and 506 of IPC. Learned Additional Sessions Judge, Nashik, on appreciation of evidence recorded the judgment and order of conviction to the Petitioner under Section 304-II of IPC and awarded him the sentence to suffer RI for 8 years and to pay fine of Rs. 10,000/- and in default of payment of fine he was directed to suffer simple imprisonment for one year. He was also convicted for commission of offence under Section 324 of IPC and sentenced to suffer RI for two years and along with fine of Rs. 4,000/- and in default to suffer simple imprisonment for 6 months.

7. The Petitioner submitted an application seeking relaxation/remission in sentence under

Government Circular dated 03.06.2017 on account of 125<sup>th</sup> Birth Anniversary of Dr. Babasaheb Ambedkar. Learned District Judge 6 and Additional Sessions Judge, Nashik formed an opinion that the Petitioner had accused for culpable homicide not amounting to murder and was guilty under Section 304-II as well as 324 of IPC and accordingly was directed to suffer sentence of RI of 8 years, and hence, Petitioner is not entitled for further leniency. The Circular of the State Government dated 03.06.2017 takes into consideration.

8. It will not be out of place to state here that even the life convicts are also entitled for the remission. The pre-requisite is of submitting each case to the competent Court and seeking the opinion of the Court and then making the appropriate entries in the registers maintained in the prison.

9. The Division bench of this Court in the matter of Nilesh Karosiya (supra) referred to the Government Circular in detail. Petitioner – Nilesh Karosiya was suffering a life imprisonment for commission of an offence under Section 302 read with Section 34 of IPC and his request for remission under said circular dated

03.06.2017 was rejected.

10. On the backdrop of these facts, the Division bench was pleased to observed as follows:

5. *Ex facie*, the Petitioner, who is a prisoner undergoing a sentence of life imprisonment, does not fall into any of the afore-stated categories. Still, the learned Additional Sessions Judge, Jalgaon, in his opinion dated 23<sup>rd</sup> October, 2017, has overlooked these aspects and for the reasons *de hors* the Government Resolution, has opined that the Petitioner is not entitled to any remission. He seems to have misdirected himself in considering his gravity of the crime when the Government Resolution does not admit of any such parameter for extending the benefit. Even a lift convict is entitled to remission to the extent of three months. It is also apparent that the learned Additional Sessions Judge, Jalgaon, for the reasons best known to him has not at all referred to the Government Resolution dated 3<sup>rd</sup> June, 2017. Had his attention been brought to it, we are sure that the learned Judge would not have given a negative opinion. Be that as it may, the opinion expressed by the learned Additional Sessions Judge, Jalgaon

*in ignorance of or by overlooking the Government Resolution is clearly faulty.*

*6. In the light of discussion herein above, the Petition is partly allowed. The matter is remitted back to the Additional Sessions Judge, Jalgaon, for re-consideration. The Additional Sessions Judge, Jalgaon, to re-consider the entire issue, keeping in view the Government Resolution dated 3<sup>rd</sup> June, 2017, and take decision as expeditiously as possible, however, within eight weeks from the date of receipt of this order.*

11. We see no reason to take a different view than the view adopted by the Division bench in the matter of Nilesh Karosiya (supra).

12. Accordingly, the Writ Petition is partly allowed. The matter is remitted back to the learned District Judge 6 and Additional Sessions Judge, Nashik for re-consideration. Learned District Judge 6 and Additional Sessions Judge, Nashik to reconsider the entire issue keeping in view the Government Resolution dated 03.06.2017 and take decision as expeditiously as possible and not later than 8 weeks from the date of receipt of order of this Court. Rule made absolute in

above terms.

13. We appreciate the assistance rendered by learned Appointed Counsel to represent the Petitioner and we quantify the fees at Rs. 10,000/- (Rs. Ten Thousand Only). The High Court Legal Services Committee shall pay the fees to the learned appointed Counsel within four weeks from today.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)