

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO.357 OF 2022

Vipin Banduji Kamble
Age 31 years,
C-9277, detained at Central Prison,
Nagpur

...PETITIONER

VERSUS

1. State of Maharashtra,
through its Secretary,
Department of Home,
Mantralaya, Mumbai - 32

2. Superintendent of Prison,
Central Prison,
Nagpur

...RESPONDENTS

Mrs. Sneha Dhote, Advocate (appointed) for the petitioner.
Shri M.K. Pathan, Additional Public Prosecutor for the
respondents/State.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : OCTOBER 20, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

ADMIT. Heard finally with the consent of learned Counsel for
the parties.

2. The petitioner who is the prisoner undergoing a sentence of
rigorous imprisonment of ten years with fine of Rs.10,000/- for the

offences punishable under Section 376(2)(i) of the Indian Penal Code (hereinafter referred to as “the Code” for short) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”) has preferred this petition for seeking the benefit of a remission in view of the Government Resolution dated 03/06/2017 declaring remission to all the state convicts on the occasion of 125th Birth Anniversary of Dr. Babasaheb Ambedkar. The proposal was forwarded by the Jail authorities to the District Judge-2 and Additional Sessions Judge, Wardha and requested to communicate its report so that the remission of three months can be granted to the petitioner. However, the District Judge-2 and Additional Sessions Judge, Wardha issued a communication dated 23/07/2021 to the jail authorities and opined that “legally it would not be proper to grant remission to the petitioner”. It is the contention of the petitioner that no reason is assigned by the District Judge to the jail authorities for rejecting the claim of the petitioner for remission of sentence. Mere the reason of seriousness of offence is assigned which is not a ground to deny the remission to the petitioner. In fact, the petitioner had undergone eight years of his period of punishment with a good conduct in the prison. He does not fall under the categories of prisoners to whom the remission is not extended. As per the Government Resolution certain categories of prisoners are excluded and the petitioner does not fall under such category. Therefore, the impugned communication dated 27/03/2021 by which

the benefit of remission was rejected is illegal, improper, arbitrary and deserves to be set aside.

3. In response to the notice, the State has opposed the petition on the ground that the offence alleged is serious in nature and the District Judge-2 and Additional Sessions Judge, Wardha opined that this is not the fit case to grant remission, therefore, the writ petition is devoid of merits and liable to be dismissed.

4. Heard Ms Sneha Dhote, learned Counsel for the petitioner. She submitted that in view of the Government Resolution, the petitioner is not in the excluded category. He had already completed 8 years of his punishment. But neither the Sessions Court nor the jail authorities had considered the same and wrongly rejected the benefit of remission. The communication deserves to be set aside.

5. On the other hand, Shri M.K. Pathan, learned Additional Public Prosecutor submitted that offence is of serious nature and no such benefit can be granted to the petitioner.

6. Heard both the sides. Perused the documents.

7. The Government Resolution dated 03/06/2017 produced on record as Annexure-I provides that on account of 125th Birth Anniversary

of Dr. Babasaheb Ambedkar, under the enabling provisions contained in Section 433-A of the Code of Criminal Procedure, 1973 *inter alia* a prisoner, who has been sentenced to life imprisonment, is entitled to remission to the extent of three months. However, some categories of prisoners have been excluded from the benefit of such remission which are as under :

- i] Prisoners undergoing sentence under the provisions of 106 of 110 of the Cr.P.C.
- ii] Prisoners undergoing sentence for the offence punishable under Section 121 to 130 of the I.P.C.
- iii] Prisoners undergoing sentence for the offences under the Central enactment.
- iv] Prisoners in the Civil Prison.
- v] Children from the remand home.
- vi] Prisoners who are outside the jail unauthorisedly.

8. It is thus apparent that, except the prisoners of the above said categories the rest of the prisoners are entitled to the benefit of remission under this Government Resolution dated 03/06/2017. Admittedly, the petitioner who is the prisoner undergoing rigorous imprisonment of 10 years does not fall into any of the aforesaid categories. The learned Additional Sessions Judge, Wardha in his opinion dated 23/07/2021 has overlooked these aspects and the Government Resolution and opined that the petitioner is not entitled for

any remission. It seems that he has misdirected himself in considering the gravity of the crime when the Government Resolution does not admit of any such parameter to extending the benefit. Even a life convict is entitled to remission to the extent of three months.

9. In the light of above discussion the petition is allowed. The impugned communication dated 23/07/2021 is quashed and set aside. The respondents are directed to grant benefit of remission of sentence to the petitioner in terms of Government Resolution dated 03/06/2017 as per the category to which the petitioner belongs.

10. Rule is made absolute in the aforesaid terms.

11. The fees of the appointed learned Counsel be paid as per rules.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*