

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.462/2022

Yogesh Pandurang Kupekar,
aged about 48 years, Occ. Nil,
(C/10251, Presently in Central
Prison, Nagpur.)

.....PETITIONER

...V E R S U S...

1. State of Maharashtra, through
its Secretary, Home Department,
Mumbai-32.
2. Superintendent of Jail, Central Prison,
Nagpur, District Nagpur.

...RESPONDENTS

Mr. Raju Kadu, Advocate for petitioner.
Mrs. N. R. Tripathi, A.P.P. for respondents.

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED :- 07.09.2022

JUDGMENT (Per: Anil L. Pansare, J.)

The petitioner has put forth following prayers.

“a) Quash and set aside the impugned communication/opinion dated 02.02.2022 passed by the learned District and Sessions Judge-4, Thane (Annexure-A) and remit the sentence of petitioner for a period of 3 months as per the Government Resolution dated 03.06.2017 (Annexure-C)

b) direct the respondent No.2-Superintendent of Jail, Central Prison, Nagpur to release the petitioner after completion of his sentence forthwith.”

2. The petitioner has been convicted for the offence punishable under Sections 376 and 354 of the Indian Penal Code and Sections 2 (1) (kh) (3) (2) of the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013. The petitioner was sentenced to suffer 10 years imprisonment vide judgment dated 23.10.2018 passed by learned Additional Sessions Judge, Thane in Sessions Case No.423/2016. The petitioner had challenged the said judgment before this Court by filing Criminal Appeal No. 1551/2018. The appeal was partly allowed and the sentence of imprisonment was reduced to seven years. The petitioner was arrested on 28.07.2016 and is in jail since then. He has thus undergone the imprisonment for more than six years.

3. The petitioner on 16.01.2022, has made an application to the learned Sessions Judge, Thane through

respondent no.2-Superintendent of Jail, Central Prison, Nagpur for grant of the State remission, in terms of the Government Resolution dated 03.06.2017. Under the said G.R., the convicts like the petitioner were entitled to benefit of remission subject to certain conditions, one of which was the opinion of the learned trial Court who has convicted him. The learned Additional Sessions Judge, vide opinion dated 02.02.2022, opined that the petitioner is not entitled for benefits under the aforesaid Government Resolution as the crime was of heinous nature. The said opinion is challenged before us.

4. We have heard Mr. Kadu, learned counsel for the petitioner and Mrs. Tripathi, learned A.P.P. for the respondent nos. 1 and 2. We have also perused the opinion dated 02.02.2022.

5. We have gone through the Government Resolution dated 03.06.2017. The State of Maharashtra has taken a decision to grant State remission to the convicts on account of 125th Birth Anniversary of Dr. Babasaheb Ambedkar. The

said resolution contain various clauses categorizing the convicts for grant of remission depending on the sentence of imprisonment imposed by the Court. According to the resolution, the convicts who have been sentenced to imprisonment for three months would be entitled for seven days State remission. There are other categories also. The case of the petitioner falls in the last category which provides that the convicts who have been punished for imprisonment for more than five years of imprisonment or for life would be entitled for State remission of three months. The Government Resolution provides for certain categories of the offence where such benefit cannot be granted. The offence under Section 376 of the IPC is not in the category of such offences. The petitioner's case could be, thus, considered for the State remission. The only condition for releasing the convicts is to seek opinion of the concerned Court, which has convicted the prisoner. In the present case, since the learned Additional Sessions Judge has taken an objection for grant of the benefit, the petitioner has not been granted the State remission of three months.

6. Learned A.P.P. has submitted that since the learned Additional Sessions Judge has taken an objection, the benefit cannot be given to the petitioner. We are not impressed with this submission. The petitioner has undergone more than six years out of seven years of punishment. It is not the case of the respondent no.2 that during these six years, the petitioner has conducted himself in a manner that would prejudicially affect his case. The respondents have not put forth criminal antecedents against the petitioner. The petitioner was granted temporary bail for eight weeks on account of illness of his mother vide order dated 19.05.2021 passed by learned Single Judge of this Court in Criminal Appeal No.1551/2018. The petitioner has returned back to the prison after completion of eight weeks. Thus, the petitioner has not violated the terms of temporary bail. In the circumstances, we find no reason why the petitioner should not be granted the benefit under the aforesaid Government Resolution.

7. The opinion rendered by the learned Additional Sessions Judge does not consider the aforesaid facts, and therefore is not sustainable.

8. Accordingly, the writ petition is allowed. The impugned communication/opinion dated 02.02.2022 issued by the Additional Sessions Judge, Thane is quashed and set aside. The respondent no.2 is directed to grant benefit of the State remission to the petitioner in terms of Government Resolution dated 03.06.2017.

Rule is made absolute in the above terms.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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