

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

CRIMINAL WRIT PETITION NO. 698 OF 2021

Gourav Narendra Singh-C-5024
Aged about 30, Occ. - Nil
Central Prison, Amravati

}

.. Petitioner

Versus

- 1. State of Maharashtra,**
Through its Secretary,
Home Department, Mantralaya, Mumbai
- 2. Superintendent of Prison**
Central Jail, Amravati,
Tahsil and District Amravati

}

.. Respondents

Mr. S. R. Jaiswal, Advocate for petitioner.
Ms. Nandita Tripathi, A.P.P. for respondents.

CORAM : MANISH PITALE AND
VALMIKI SA MENEZES, JJ.

DATED : 12/08/2022

ORAL JUDGMENT (PER : MANISH PITALE J.)

Rule. Rule made returnable forthwith. Heard finally
by consent of the learned counsel for the rival parties.

(2) By this petition, the petitioner-convict undergoing
sentence has approached this Court seeking quashing and setting aside

of order of the respondent No.2 i.e. Superintendent of Prison, Amravati, which according to the petitioner was not communicated to him. A further prayer is made for declaring that the opinion given by the Additional Sessions Judge, Greater Bombay, is contrary to Government Resolution (G.R.) dated 03/06/2017 and it is further prayed that a direction may be issued to the respondents to grant remission to the petitioner in terms of the aforesaid Government Resolution.

(3) The petitioner was convicted for offences under Section 376 and 506 of the Indian Penal Code (IPC) and sentenced to suffer rigorous imprisonment for 10 years and 01 year respectively, along with sentence to pay fine in terms of judgment and order dated 29/03/2017 passed by the Special Court at Greater Bombay in Sessions Case No.500 of 2013.

(4) The petitioner applied for grant of remission in terms of G.R. dated 03/06/2017. In terms of the aforesaid G.R., as also the requirement of Section 432(2) of the Code of Criminal Procedure (Cr.P.C.), an opinion was sought from the Court of Additional Sessions Judge, Greater Bombay in respect of the said

application for remission submitted by the petitioner.

(5) On 08/06/2021, the Court of Additional Sessions Judge, Greater Bombay forwarded his opinion stating that the case of the petitioner was not found fit for grant of remission. According to the petitioner, the respondent No.2 passed the order rejecting the application for remission, but the same was not communicated to him and that is why he has approached this Court for the above mentioned reliefs.

(6) Mr.Jaiswal, learned counsel appearing for the petitioner, submitted that the opinion given by the Court of Additional Sessions Judge, Greater Bombay is no doubt binding on the respondents in terms of the law laid down by a Full Bench of this Court in the case of *Yovehel s/o Vijaykumar Gouri vs. State of Maharashtra and others, 2020(6) Mh.L.J. 571*, but the said opinion does not at all take into consideration the contents of G.R. dated 03/06/2017. It is submitted that the petitioner does not fall within the six categories specifically mentioned in the said G.R. wherein the convicts are not entitled for remission. It is submitted that the opinion is given in a mechanical manner, without detailed reasons as to why

the case of the petitioner was not found fit for grant of remission. On this basis, it was submitted that the present petition may be allowed.

(7) Ms.Tripathi, learned APP, appearing on behalf of respondents, submitted that the respondent No.2 did not pass any separate or specific order rejecting the application for grant of remission filed by the petitioner, for the reason that adverse opinion was received from the Court of Additional Sessions Judge, Greater Bombay dated 08/06/2021. It was submitted that in such cases where adverse report is received from the competent Court, and which is binding on the respondents, a specific separate order is not issued. In fact, when the opinion is positive, appropriate entries are made in the register granting remission to the convict.

(8) It was further submitted that a proper reading of the Full Bench judgment of this Court in the case of *Yovehel s/o Vijaykumar Gouri vs. State of Maharashtra* (supra), would show that the opinion of the competent Court in such cases under Section 432(2) of the Cr.P.C., as well as the contents of the aforesaid G.R. dated 03/06/2017, are binding on the respondents and that therefore, no fault can be attributed to the respondents in refusing to grant

remission to the petitioner.

(9) We have considered the rival submissions in the backdrop of the material placed on record before this Court. A perusal of the G.R. dated 03/06/2017, shows that while six categories are specifically identified, whereunder convicts would not be eligible for remission as per the said G.R., the requirement of obtaining opinion from the Sessions Court under Section 432(2) of the Cr.P.C. is reiterated. Under the said provision, an opinion is to be sought by the appropriate Government while considering the question of remission of sentence, from the Presiding Judge of the competent Court.

(10) A perusal of the Full Bench Judgment of this Court in the case of *Yovehel s/o Vijaykumar Gouri vs. State of Maharashtra* (supra) would show that specific questions were framed and they were answered by the Full Bench. The concluding portion of the said judgment is relevant, which reads as follows: -

“41. Considering the above discussion, we answer the question No.(iii) as follows :-

Question No.(iii) : Whether the opinion given by the Presiding

Officer mentioned in Section 432(2) of the Code of Criminal Procedure and also the record of trial, need to be considered by the authority created for grant or refusal of remission as relevant circumstances or whether the opinion is binding on the authority.

Answer : *The opinion given by the Presiding Judge of the Court in terms of provisions of Section 432(2) of the Cr.P.C. is binding on the authority.*

42. *In view of the discussion made herein above and the ratio laid down by the Supreme Court in various authorities as cited above, as referred in the foregoing paragraphs, we answer the question Nos.(i) to (iv) as follows :-*

Question No. (i) : *Whether it is necessary to obtain the opinion of the Presiding Officer mentioned in Section 432(2) of the Code of Criminal Procedure in respect of convicts mentioned in Government Resolution dated 3rd June, 2017 to whom the benefit of remission is to be given.*

Answer : *In view of the ratio laid down by the Constitution Bench of Supreme Court, in the case of Union of India vs. V. Sriharan @ Murugan & Others (supra) this question is no more res-integra. The Constitution Bench of the Supreme Court in the said case has recorded the answer to the question formulated in para 52.6 by the Referral Bench and recorded that suo motu exercise of power of remission under Section 432(1) is not permissible and exercise of power under Section 432(1) must be in accordance with the procedure under Section 432(2) of Cr.P.C.*

Question No. (ii) : *Whether the application given by the convicts, who fall under the excepted categories, can be rejected straightway by the authority.*

Answer : *In view of the discussion above, we record our answer to question No.(ii) in the affirmative.*

Question No.(iii) : *Whether the opinion given by the Presiding Officer mentioned in Section 432(2) of the Code of Criminal Procedure and also the record of trial, need to be considered by the authority created for grant or refusal of remission as relevant circumstances or whether the opinion is binding on the authority.*

Answer : *The opinion given by the Presiding Judge of the Court in terms of provisions of Section 432(2) of the Cr.P.C. is binding on the authority.*

Question No.(iv) : *Whether under such policy without any scrutiny as provided in the Code of Criminal Procedure, the benefit, remission must be given.*

Answer : *In view of the discussion above, we record our answer to question No.(iv) in negative.”*

(11) As per law laid down in the above quoted portion of the Full Bench judgment of this Court, there can be no doubt about the fact that the opinion rendered by the Presiding Judge of the competent Court is binding on the respondents and therefore, to that extent, the

learned APP is justified in submitting that no fault can be found with the respondents in not having granted remission to the petitioner in the present case.

(12) But, we are of the opinion that the contents of the G.R. dated 03/06/2017 have not been adverted to by the Court of Additional Sessions Judge, Grater Bombay, in the opinion dated 08/06/2021. A perusal of the said opinion also shows that adverse opinion has been given, only in one sentence, by stating that since the petitioner was convicted for heinous offence, it was not a fit case for grant of remission.

(13) A Division Bench of this Court in the case of *Vitthal Rayaji Gadekar vs. State of Maharashtra and others 2019 (1) Mh.L.J. (Cri.) 550*, observed that such opinions are repeatedly issued by Judicial Officers under Section 432(2) of the Cr.P.C. without even looking to the policy of the State, manifested in the aforementioned Government Resolution. The mechanical approach adopted by Judicial Officers was deprecated and it was reiterated that the Judicial Officers must independently analyze the material on record, before rendering opinion under Section 432(2) of the Cr.P.C. It was observed that if

opinions are not given in the manner expected, it leads to unnecessary litigation.

(14) We are of the opinion that the present petition would not have arisen, but for the casual manner in which opinion dated 08/06/2021, was issued by the Court of Additional Sessions Judge, Greater Bombay. In the said opinion, there is no reference to the contents of the G.R. dated 03/06/2017. It is not examined whether the case of the petitioner falls within the six categories specifically mentioned in the said G.R. and there is no analysis of the judgment and order dated 29/03/2017, whereby the petitioner stood convicted and sentenced for the aforesaid offences. We are of the opinion that issuance of opinions under Section 432(2) of the Cr.P.C. is an act of great responsibility, to be performed by Judicial Officers with appropriate seriousness and such opinions ought to be detailed and they ought to indicate the material which impressed such Judicial Officer to give his/her opinion, particularly an adverse opinion on the question of grant of remission to the convict.

(15) In the facts of the present case, we are constrained to observe that the opinion dated 08/06/2021, issued by the Court of

Additional Sessions Judge, Greater Bombay, has not been issued after proper analysis of the aforesaid G.R. dated 03/06/2017 and the material available on record, particularly judgment and order dated 29/03/2017, passed by the Special Court in Sessions Case No.500 of 2013. Therefore, the petitioner is indeed entitled to limited relief in the present petition.

(16) Accordingly, the Writ Petition is partly allowed.

(17) The opinion/order dated 08/06/2021, issued by the Court of Additional Sessions Judge, Greater Bombay, in the case of the petitioner, holding that his case is not found fit for granting remission, is quashed and set aside.

(18) It is directed that the papers shall be placed again before the aforesaid Court along with application for remission submitted by the petitioner. The said Court shall take into consideration the contents of the G.R. dated 03/06/2017 and other relevant material on record, particularly the contents of the judgment and order dated 29/03/2017, passed in Sessions Case No. 500 of 2013, before rendering opinion on the said application as regards the entitlement of the petitioner for grant of remission.

(19) We expect the aforesaid Court to issue a detailed opinion so that the authorities are aware as to the reasons why the application for remission submitted by the petitioner has been opined to be disposed of in a particular manner.

(20) The exercise shall be carried out by the Court of Additional Sessions Judge, Greater Bombay within a period of **six weeks** from today.

(21) Rule is made absolute in above terms.

[VALMIKI SA MENEZES J.]

[MANISH PITALE J.]

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