

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3844 OF 2022

Mr. Pravin Dayanand Shetty

Age 44 years, Occ.Driver,

R/o. Borsapada, Indiranagar,

Kandivali (W), Mumbai.

And Original resident of Anandnagar Kariyakal,

Taluka Karkla, District.Udipi, Karnataka at present

Logged in Ratnagiri Open Prison.

.. Petitioner

Vs.

The State of Maharashtra

through Superintendent,

Ratnagiri Special Open Prison.

.. Respondent

- Mr.Rajesh L. Dharap, appointed Advocate for the Petitioner.
- Ms. S.D. Shinde, APP for Respondent-State.

**CORAM : SUNIL B. SHUKRE &
M.M. SATHAYE, JJ.**

DATE : 29th MARCH, 2023.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1. Heard.
2. Rule.
3. Rule is made returnable forthwith. With the consent of the parties,

the petition is taken up for final disposal at the stage of admission itself.

4. It is seen that the only reason why benefit of remission in sentence as per the GR dated 03.06.2017 has not been granted to the petitioner is the communication dated 06.02.2018 of Addl. Sessions Judge, City Civil & Sessions Court, Mumbai. By this communication, the learned Additional Sessions Judge has stated that he has not been able to give his opinion in respect of the accused Pravin Dayanand Shetty i.e. the petitioner found convicted for the offence punishable under Section 320 & 120B of the Indian Penal Code, 1860 in Sessions Case No.294 of 2009 as the record and proceedings of the case were not available before this Court.

5. In our considered opinion, it was not necessary for the learned Sessions Judge to go through the entire record and proceedings of the Court and it would have been enough for him to consider the judgment and order rendered by the Sessions Court in Sessions Case No.294 of 2009 and the same were indeed available on the website and could have been gone through by the learned Additional Sessions Judge by visiting the website. The learned Additional Sessions Judge did not do so, and therefore, an erroneous communication has been sent by him. In fact, recording of opinion by the concerned Trial Court is a necessary condition for considering grant of benefit or otherwise of the GR dated

03.06.2017 to the prisoners like the petitioner.

6. We find that this is a case which requires remand to the Trial Court for giving its opinion as required under GR dated 03.06.2017. The petition is, therefore, partly allowed and the matter is remanded to the concerned Court i.e. the Additional Sessions Court No.56, City Civil & Sessions Court, Greater Mumbai for fresh consideration of the issue involved in the petition and giving his opinion accordingly by considering the judgment and order referred in Sessions Case No.294 of 2009, in accordance with law. The opinion shall be formulated in accordance with law and sent to the Prison Authority within a period of two weeks from the date of receipt of writ of this Court.

7. Learned Registrar (Judicial), High Court, Bombay, is requested to communicate this order to the Trial Court at the earliest.

8. Rule is made absolute in the aforesaid terms;

9. The Petition is disposed of. No costs.

[M.M. SATHAYE, J]

[SUNIL B. SHUKRE, J.]