

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.894 OF 2021

Sachin Manohar Khambe
Aged about 40 years,
R/o Khambe Chawl, Room No.2
Adarsha Nagar, Kalina, Santacruz (E),
Mumbai
Presently residing as Convict No.6275
Kolhapur Central Prison
Kalamba, Kolhapur

CHITRA
SANJAY
SONAWANE

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... Petitioner.

Vs.

The State of Maharashtra
through its Home Ministry, Mantralaya,
Madame Cama Road, Mumbai-400001

... Respondents.

.....

Dr.Yug Mohit Choudhary for the petitioner.
Mr.JP Yagnik, APP for the State.

.....

**CORAM : Nitin W.Sambre
& R.N.Laddha, JJ.**

DATE : 31 July, 2023.

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Order (Per Nitin W. Sambre, J.)

The petitioner was charge-sheeted and made to face trial, and
was convicted in MCOC Special Case No.13 of 2000 and MCOC

Special Case No.1 of 2010. In both these cases, the petitioner was acquitted of the offences punishable under Section 3(1) and 3(2) of the Maharashtra Control of Organised Crime Act, 1999, however, in MCOC Special Case no.13 of 2000, he was convicted and sentenced to life imprisonment u/s 302 r/w 34, 120-B IPC on 31.12.2002, whereas in MCOC Special Case No.1 of 2010, he was convicted for the offence u/s 307 r/w 109 IPC and 120-B on 16.9.2014.

2. Dr.Yug Mohit Choudhary, the learned Counsel for the petitioner at Bar informs that the prayer for categorisation in category (a) of Annexure-II of the guidelines framed by the State Government and for remission of the accused Vencil Roy Miranda, who was also convicted with the petitioner in MCOC Special Case no.1 of 2010, was allowed by the Nagpur Bench of this Court **[Coram: Rohit B. Deo & Urmila Joshi-Phalke, JJ.]** on 15th November, 2022. To substantiate his contention, he has invited

our attention to the judgment dated 15th November, 2022 delivered in Criminal Writ Petition No.654 of 2021. According to him, the respondent/State Government is not left with the option but to categorise the petitioner, in Category (1) particularly in view of Annexure-II of the guidelines framed by the State Government for remission of sentence, as per Government Resolution dated 15.3.2010, as said entry in Annexure-II does not confer any power in the State Government to refuse to grant remission or order categorisation. It is further contended that merely because the case was filed in the MCOC Court, that by itself does not permit to refuse to grant remission or categorization of the petitioner, as there is no such embargo on the rights of the petitioner to claim resolution pursuant to relevant judgment dated 15.11.2022. As such, he would urge that the impugned order of the State Government not only suffers from non-application of mind but also fails to prove the mitigating circumstances for release of the co-accused in MCOC Special Case No. 1 of 2020 by granting

remission. According to Mr.Choudhary, requirement for calling the report from the concerned Court while dealing with the claim u/s 432 Cr.P.C. is mandatory and in case in hand, same is not reflected in the impugned order dated 2nd September 2021. According to him, there should not have been order passed by the State Government thereby categorisation and grant of remission of the petitioner, as he is convicted under two different offences, for two different charges.

3. Mr.Yagnik, learned APP submits that he be granted time to take instructions in the matter. The fact remains that present petition is pending since last three years wherein the petitioner has already undergone 30 years and 2 months of imprisonment, which includes remission of 6 years and 10 months in MCOC Special Case No.13 of 2000. In the said matter, the petitioner was arrested on 29.3.2000, convicted on 31.12.2002 and was under trial custody for 2 years 9 months and 3 days. As on 29.7.2023, the petitioner had already undergone 20 years and 7 months post

conviction. As far as, MCOC Special Case No.1 of 2010 is concerned, the petitioner allegedly has already undergone imprisonment for 16 years 6 months and 20 days, which includes period of remission of 2 years 11 months and 11 days. Release of the co-accused Vencil Roy Miranda can be inferred from the judgment dated 15.11.2022 delivered in Criminal Writ Petition No.654 of 2021.

4. As a sequel of aforesaid observations, we are inclined to partly allow the present petition with directions to the respondent/State to forthwith call for the report of the concerned Judge manning the Court who has convicted the accused/petitioner pursuant to the provisions of Section 432 of the CrPC. The aforesaid process be completed within period of four weeks from today.

5. Once such report is received, within four weeks thereafter the State Government shall pass fresh order in the matter

in the backdrop of the observations noted herein-above.

6. The petition is partly allowed in above terms.

7. The State Government shall be sensitive to the report submitted by the Designated Court which has ordered the conviction of the petitioner.

[R.N.Laddha, J.]

[Nitin W. Sambre, J.]