

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.1113 OF 2023**

Futermal Kapoorji Borana

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. M. Mujeebuddin Chaudhari for Petitioner.

Ms. Mahalakshmi Ganpathy, APP for Respondent No.1-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.****DATE : 7th December 2023.****P.C. :**

1) By the present petition, the petitioner has prayed for grant of special education remission of 90 days as per Government Circular dated 3rd October, 2019 for successfully completing three Certificate Technical Courses, i.e. (1) Photo Lamination, (2) Electrician & (3) Plumbing and Sanitary Works and to extend the benefit of the Government Resolution dated 3rd June, 2017 issued by the Home Department, Government of Maharashtra to the Petitioner.

2) Heard Mr.Chaudhari, learned Advocate for Petitioner and Ms.Ganpathy, learned APP for Respondent No.1-State. Perused record.

3) At the out of learned APP submitted that, the Petitioner has been

granted benefit of special education remission of 90 days as per Government Circular dated 3rd October, 2019 and therefore the said prayer in the petition to that extent, is already worked out.

4) As far as relief of grant of benefit under Government Resolution dated 3rd June, 2017 is concerned, the said special circular was issued by the Government of Maharashtra on the eve of 125th Birth Anniversary of Dr. Babasaheb Ambedkar and various categories have been prescribed therein for granting remission to the convicts, who are undergoing sentences in different jails in Maharashtra. Petitioner herein claimed benefit of remission of 90 days as he has already undergone sentence of five years. As a matter of fact, he has undergone more than twenty years of sentence.

5) It is the grievance of Petitioner that, his case in consonance with Circular dated 3rd June, 2017, has not been considered by the Government, as the learned Additional Sessions Judge, Greater Bombay by his opinion dated 14th November, 2019 has not recommended for it.

6) Perusal of opinion given by the trial Court dated 14th November, 2019, indicates that, the learned Additional Sessions Judge had come to a conclusion that, Petitioner is not entitled as per the six categories of prisoners mentioned in Government Resolution dated 3rd June, 2017.

7) It is an admitted fact on record that, Petitioner has been convicted under Sections 395, 396 and 449 of the Indian Penal Code, i.e. dacoity with murder and is directed to undergo life imprisonment.

Admittedly, Sections, 395, 296 and 449 of the Indian Penal Code do not form part of the said six categories mentioned in Circular dated 3rd June, 2017. Though Sr. No.3 of the said circular mentions that, the convicts sentenced under Central Act, are not entitled for the said remission, it appears to us that, insertion of category No.3 in the said guidelines is inadvertent, as according to us the Indian Penal Code is a central legislation.

8) According to us, the trial Court has erroneously held that, the Petitioner is not entitled for getting benefit of said remission in pursuance of Government Resolution dated 3rd June, 2017 i.e. as per the six categories mentioned therein. According to us, it is an error on the part of the learned Judge of trial Court in recording such finding/opinion.

9) In view of the above, we find that, the Petitioner is entitled to get benefit of Government Circular dated 3rd June, 2017. The Competent Authority is directed to consider the case of the Petitioner for getting benefit of Government Resolution dated 3rd June, 2017.

10) Petition is allowed in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

RAJESH
VASANT
CHITTEWAN

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