

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

WRIT PETITION NO. 3822 OF 2021

Ramlu Agmayya Margam	PETITIONER
V/S	
The State Of Maharashtra	RESPONDENT

Mr. Sagar Rane for Petitioner appointed through Legal Aid.
Mrs. S. D. Shinde, APP for Respondent-State

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ**

DATED : 27th JUNE, 2023

P.C.:

1. Heard.
2. The challenge in the Petition is to the decision of the State Government taken under sub-section (1) of section 432 of Cr.P.C thereby permitting remission in favour of the Petitioner, life convict, to be released after 26 years of imprisonment undergone.
3. The challenge is based on the provision of sub-section (2) of section 432 wherein the opinion given by the Presiding Judge has been ignored by the State Government.
4. Learned Counsel for the Petitioner by relying on the Full Bench judgment of this Court in the matter of **Yovehel s/o. Vijaykumar Gauri vs. State of Maharashtra & Ors.** reported

in **2021 ALL MR (Cri) 801** submits that the opinion of the Presiding Judge is held to be mandatory and as such, the State Government while passing the impugned order is bound by the opinion of the Presiding Judge as referred to under sub-section (1) of section 432 of the Cr.P.C.

5. While countering the aforesaid submissions, learned APP would invite our attention to the observations made by the Apex Court in the matter of **Union of India vs. Sriharan @ Murugan & Ors** reported **2016 7 SCC 1**. According to her, the Apex Court has already observed in the aforesaid judgment so also in the judgment of **Swami Shradhanand** that the opinion tendered by the Presiding Officer will have guiding force and will not mandate the Government to follow the recommendation mentioned in such opinion.

6. In the aforesaid background, if we test the impugned order passed by the State Government what can be noticed is, the State Government though referred to the opinion tendered by the Presiding Judge and also of the jail authorities, the order lacks reasoning. It cannot be inferred from the impugned order that the opinion as sought for and received under sub-section (2) of section 432 of Cr.P.C from the Presiding Judge was considered.

7. In this background, we deem it appropriate to go to opinion rendered by the Presiding Judge in exercise of powers u/s. 432(2) of the Cr.P.C. The Presiding Judge in the case in hand has rendered his opinion on 09/02/2018 thereby observing that the deceased, the wife of the convict died of 44% burn injuries. The judge has also referred to the fact that convict was addicted to liquor and non-fulfillment of demand by the deceased about money, the deceased has poured Kerosene and set her on fire.

8. If the aforesaid opinion of the Presiding Judge of the Court is appreciated, we are of the view that such opinion lacks prima facie reasons for forming an opinion thereby recommending the case of the convict to be considered under the Guidelines of 2010 under clause 2(a), which provides for the remission and release of convict after undergoing imprisonment for a period of 20 years.

9. Apart from above, as stated herein before even the order impugned passed by the State Government also lacks reasoning.

10. In view of above, we deem it appropriate to quash and set aside the impugned order passed by the State Government on 10/06/2021.

11. We remit and restore the matter to the file of the State Government who is directed to forthwith call afresh opinion of the

Presiding Judge of the Court as contemplated under sub-section (1) of Section 432 within a period of two weeks.

12. We further direct the Presiding Judge of the Court to forward forthwith the opinion containing his reasons and also shall scrupulous follow the procedure as contemplated under sub-section (2) of section 432 of the Cr.P.C.

13. The Presiding Judge shall forward the opinion within a period of two weeks from the date of receipt of the request from the State Government.

14. We expect the State Government to take the decision on the request made by the Petitioner for grant of remission under section 432 as expeditiously as possible and in any case within a period of eight weeks from the date of receiving the opinion under Sub-section (2) of Section 432 of Cr.P.C. and communicate the order to that effect to the Petitioner.

15. The Petition stands partly allowed in the above terms.

(R. N. LADDHA, J)

(NITIN W. SAMBRE, J.)