



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

CRIMINAL WRIT PETITION NO.574 OF 2022

1. Dyaneshwar s/o Bhaurao Domewale C-6202, Aged about : 57, Occ. Nil, Central Prison, Nagpur.

... PETITIONER

VERSUS

1. State of Maharashtra, through its Secretary, Home Department, Mantralaya, Mumbai – 32.
2. Superintendent of Prison, Central Jail, Nagpur, Tehsil and District Nagpur.

... RESPONDENTS.

Shri S.R. Jaiswal, Advocate for the petitioner. (appointed.)
Mrs. Tripathi, Addl.PP for the State.

CORAM : VINAY JOSHI AND M.W. CHANDWANI, JJ.
DATED : 28.11.2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

RULE. Rule made returnable forthwith.

2. The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

3. The petitioner has been convicted in the Sessions Trial No.430 of 1993 for the offence punishable under Section 302 of the Indian Penal Code and sentence to undergo imprisonment for life along with the fine. The petitioner is in jail from the year 2003. The Petitioner has applied for State Remission (Rajyamafi) on the occasion of 125th Birth Anniversary of Dr. Babasaheb Ambedkar vide Government Resolution ('GR') dated 03.06.2017.

4. The respondent no.2 Superintendent of Prison, Nagpur has obtained opinion of the Sessions Judge on the said application. However, as the learned Sessions Judge gave adverse opinion vide communication dated 25.01.2021, the petitioner was denied from the benefit of GR dated 03.06.2017. The State has filed a reply-affidavit stating that the opinion of the Sessions Judge is binding, and thus, the remission has not been granted.

5. We have gone through the opinion of the learned Sessions Judge dated 25.01.2021. The learned Sessions Judge, has stated about the gravity of offence and expressed that due to cruel act of the petitioner, he is not entitled for remission. Bare perusal of GR dated 03.06.2017 discloses that benefit of the GR shall be accorded to all prisoners for the period specified therein subject to the exceptions

carved out in Clauses (i) to (vi) embodied therein. Either gravity of the offence or the cruel manner has not been categorized as an exception in the GR.

6. Learned Addl.PP appearing for the State fairly conceded that the case of the petitioner does not fall in either of the exceptional category. In these circumstances, merely on the basis of opinion of the Sessions Judge, which is not in accordance with the GR, the prisoner's right cannot be curtailed.

7. In view of the above, the petition is allowed.

8. We hereby quash and set aside the impugned opinion of the learned Sessions Judge dated 25.01.2021. The concerned Authorities are directed to take appropriate decision within two weeks, if the petitioner is otherwise found eligible for remission. The concerned Authority shall communicate the decision to this Court within two weeks.

9. Rule is made absolute in above terms. No order as to costs.

10. Fees of the appointed Counsel be paid as per the Rules.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

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