



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

CRIMINAL WRIT PETITION NO. 758 OF 2023

PETITIONER : Satish Yadavrao Dhoke,
(In Central Prison Nagpur) Age : 40 years, Occp. Convicted
Offender (Prisoner No.C-7783)
R/o : Central Prison, Nagpur.

V E R S U S

RESPONDENTS : 1. State of Maharashtra
Through Ministry for Home,
Mantralaya, Mumbai - 32.

2. Superintendent of Prison,
Central Prison, Nagpur.

Shri R. K. Maheshwari, Advocate (Appointed) for petitioner.
Ms. N. R. Tripathi, Additional Public Prosecutor for respondent
Nos.1 and 2.

CORAM:- VINAY JOSHI AND
M. W. CHANDWANI, JJ.
DATED : 04/12/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of learned counsel appearing for the parties.

2. The petitioner has been convicted for the offences
punishable under Sections 341, 342, 323, 506-II, 376(2)(g) r/w
Section 34 of the Indian Penal Code; Section 4 r/w Section 25 of
the Indian Arms Act, 1959; Section 135 of the Bombay Police Act,
1951 and Sections 3(1)(ii) and 3(4) of the Maharashtra Control of
Organized Crime Act, 1999.

3. The petitioner is in jail since 23/02/2009. The petitioner has applied for grant of remission under the Government Circular dated 03/06/2017, however, due to adverse opinion of the Sessions Judge, it has not been granted. While challenging the adverse order, petitioner would submit that learned Sessions Judge has unwantingly adverted to the words "Gravity of the offence" which resulted into rejection of his application. It is submitted that the Government Resolution does not exclude the applicability of remission on account of gravity and thus, the order is patently illegal.

4. The State resisted the petition by filing reply affidavit. It is contended that since the referral Judge has given adverse opinion, the authority has declined to grant benefit of the Government Resolution dated 03/06/2017.

5. The learned counsel for the petitioner relied on two decisions of this Court in the case of Criminal Writ Petition No.1414/2018 dated 01/02/2019 (Satish Dada Londhe Vrs. The State of Maharashtra and in the case of Criminal Writ Petition No.108/2019 dated 04/03/2019 (Nilesh s/o Sukhlal Karosiya Vrs. The State of Maharashtra and another), wherein the same issue fell for consideration. In that regard, the Court observed that,

besides six categories excluded from the applicability stated in the Government Resolution, there would be no other fetter in granting remission. The opinion of referral Judge only bears a reason about the gravity of grievance and thus, it is not in accordance with the Government Policy. The said reason is not in tune with the Government Resolution, hence unsustainable in law. In view of that, the petition must succeed. Hence, by allowing the petition, we pass the following order.

ORDER

- a] The State Government is directed to consider the case of the petitioner for grant of remission in terms of orders/policy contained in the Government Circular dated 3rd June, 2017 as amended by the Government Resolution dated 19th November, 2018 after submitting the case for a fresh judicial appraisal.
- b] The parties case shall be forwarded for judicial appraisal within two weeks from the communication of this order.
- c] The judicial appraisal shall be forwarded to the authority within two weeks from the receipt of communication. The judicial appraisal shall be made in the light of observations made in this Judgment.
- d] The State shall take appropriate decision within a period of one month from the date on which the judicial appraisal is received.

6. Rule is made absolute in the aforesaid terms.
7. The fees of learned counsel for petitioner (Appointed) be quantified and paid, as per rules.

[M. W. CHANDWANI, J.]

[VINAY JOSHI, J.]

Choulwar