



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 388 OF 2024

Ajit Krishna Ghanekar .. Petitioner
Versus
The State of Maharashtra and others .. Respondents

Mrs. Bharti B. Gunjal, Advocate for the Petitioner.
Shri A. V. Lavte, A.P.P. for the Respondent Nos. 1 to 3.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 08 APRIL 2024.**

FINAL ORDER :

. Heard both the sides.

2. Though the remission is prerogative of the State, such discretion has been circumscribed by the principles and the procedure laid down in the relevant chapter of the Code of Criminal Procedure (for short "Cr. P. C.").

3. In spite of the fact that the Supreme Court having taken up the issue and had laid down elaborate guidelines in the matter of Ram Chander Vs. State of Chattisgarh, 2022 Live Law (SC) 401, the State of Maharashtra seems to be adamant in following the practice it has been following since long before while passing orders rejecting of remission without even referring to and muchless discussing the report solicited from the Advisory Board under Section 432(2) of the Cr. P. C. Stereotype orders have been

passed without adhering to observations in the judgment passed by the Supreme Court and without referring to the report submitted under Sub Section 2 of Section 432 of the Cr. P. C.

4. Same seems to be happening even at the end of the convicting Courts. Even the officers presiding over the convicting Courts seem to be oblivious of observations in the matter of **Ram Chander Vs. State of Chattisgarh** (supra) and have been, as in the present matter only forwarding one line report indicating as to under which category and the policies the case of the prisoner falls.

5. Further though the opinion forwarded by the convicting Court under Sub Section 2 of Section 432 of the Cr. P. C. is not finding place as has been observed in the case of **Ram Chander Vs. State of Chattisgarh** (supra), bare requirement regarding such report and assigning the reasons for not accepting it must be part of the order. Nothing of this sort seems to be happening. The report forwarded by the Additional Inspector General of Prisons in the petitioner's matter also demonstrates that even he is committing the same error while putting up a report, even when the Advisory Board as also the Superintendent of Jail had recommended the petitioner's case as was done by the convicting Court in its report U/Sec. 432(2) of the Cr. P. C. expressly opining that his case should be considered for category 4(d) of 15 March 2010 guidelines. The Additional Inspector General (Prisons) has submitted a report that it should be considered under category 4(e) of that caption. In view of above state of affairs, we have no

manner of doubt that the impugned order is not sustainable for more than one reason.

6. The criminal writ petition is partly allowed. Impugned order is quashed and set aside. The matter is remitted back to the stage of report of the convicting Court U/Sec. 432(2) of the Cr. P. C. The convicting Court shall forward a fresh report without there being any further requisition on the basis of present order and in the light of the observations made hereinabove and precisely the decision in the matter of Ram Chander Vs. State of Chattisgarh (supra) as expeditiously as possible and in any case within a period of four (04) weeks from today.

7. The Registrar (Judicial) of this Court shall ensure that copy of this order is forwarded to the convicting Court immediately by all modes. On receipt of report from the convicting Court U/Sec. 432(2) of the Cr. P. C., the respondent No. 1 shall pass fresh order again in the light of the observations in the matter of Ram Chander Vs. State of Chattisgarh and observations made hereinabove within a period of six (06) weeks thereafter.

8. The criminal writ petition is disposed of.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb / April 24