

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

963 CRIMINAL WRIT PETITION NO. 827 OF 2023

IRFAN BABU SHAIKH (C-242)

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for the Petitioner : Mr. Chate Sharada P.

APP for Respondents : Mr. G.A. Kulkarni

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 13 FEBRUARY 2024

PER COURT :

The petitioner has been claiming remission in accordance with state policy particularly the guidelines dated 15 March 2010, by invoking the powers of this Court under Article 226 of the Constitution of India.

2. We have heard both the sides for a while. The petitioner has been placed in category 6 (a) of the guidelines whereas, according to him, he should have been placed in category 4 (d) as was opined by the convicting Court in a report submitted under Section 432 (2) of Code of Criminal Procedure.

3. The report of the convicting Court dated 28 March 2018 reads thus :

“With reference to subject above I submit that accused Irfan Babu Shaikh is convicted by this Court of Sessions, Greater Mumbai by order dated 30/07/2009 in S.C. No. 670/07 arising out of C.R. No. 30/07 registered with N. M. Joshi Marg Police Station, Mumbai under Section 302 r/w 34 of IPC and sentenced to suffer life imprisonment and to pay fine of Rs. 1,000/- in default to suffer further S.I. for one month.

It is alleged that on 28/1/2007 while convict was under trial prisoner in another case, along with other four under trial prisoner committed murder of Ali Agar Mehendi. The guidelines issued by Government of Maharashtra dated 11/5/92 are not applicable here.

As per guidelines issued by Home Department, Government of Maharashtra of the year 2008-2010 convict falls under the category of 4D wherein the period of imprisonment to be undergone including remission, subject to minimum of 14 years and actual imprisonment including set off period is 24 years.

As such, there are no observations that accused should not be given benefit of pre-mature release. Hence, after the period of imprisonment mentioned in the revised guidelines of Government of Maharashtra for the year 2010, this Court has no objection if convict is granted permission of pre-mature release on taking bond of good behavior and on other terms and

conditions as suitable to the appropriate authority of Government of Maharashtra taking into account his behavior in the jail.”

4. Suffice for the purpose to observe that, this report submitted by convicting Court is not in tune with the guidelines laid down in the matter of *Sangeet and another Versus State of Haryana*, **(2013) 2 SCC 452**, and as is expected and laid down in the matter of *Ram Chander Versus The State of Chattisgarh*, **AIR 2022 SC 2017**.

5. In view of decision in the matter of *Ram Chander* (supra). The only option would be to call upon the convicting Court to submit a fresh report under Section 432 of Cr.p.c. in tune with the directions in the matter of *Sangeet* (supra) and thereupon to call upon the respondents to decide the petitioner's entitlement on its own merits.

6. Writ Petition is partly allowed. Impugned order is quashed and set aside. The matter is remitted back to the convicting Court that is the City Civil and Sessions Court, Greater Mumbai, which shall submit a fresh report under Section 432 (2) of the Cr.pc. in the light of the aforementioned observations as expeditiously as possible and in any case within four weeks.

7. After receipt of the report the respondent no. 1 shall consider and take a decision afresh on the petitioner's application for remission in accordance with law, on its own merits as expeditiously as possible and in any case within a period of four weeks from the date of receipt of the report under Section 432 (2) of Cr.p.c.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]