



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

CRIMINAL WRIT PETITION NO. 1232 OF 2023

Ashok Shankar Khalse

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Ms. Bharti B. Gunjal, Advocate for the Petitioner.

Shri G. A. Kulkarni, A.P.P. for the Respondent Nos. 1 to 3.

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

DATE : 18 JANUARY 2024.

FINAL ORDER :

. Heard both the sides.

2. The petitioner is aggrieved by the decision of the respondent authority putting him in category 4(b) of the 15 March 2010 guidelines which provide for 22 years of imprisonment, whereas he has been claiming to fall under the category of 3(a) of the same guidelines, which provides for 20 years of imprisonment.

3. Having heard both the sides for a while it transpires that, though not completely in agreement with the petitioner's prayer, the convicting Court while submitting report U/Sec. 432 of the Criminal Procedure Code (for short "Cr. P. C.") dated 23.02.2018

opined that considering the facts and circumstances he could have been appropriately placed in category 4(a) of the same guidelines which also provide for 20 years of imprisonment.

4. As laid down in the matter of Ram Chander Vs. State of Chhattisgarh reported in *AIR 2022 SC (Cri). 699*, the opinion expressed by the convicting Court U/Sec. 432(2) of the Cr. P. C. for premature release of the convict is not binding on the authorities. However, it would be imperative that if some different view is to be taken by the authority, the bare requirement and expectation of the rule of law would be to assign some reasons for not following the opinion expressed by the convicting Court.

5. Perusal of the impugned order would reveal that though there is reference to the opinion received from the convicting Court as also an opinion expressed by the Additional D. I. G. (Prisons), the body of the order nowhere objectively considers both these opinions muchless why the authority was inclined to take a different view than it was expressed U/Sec. 432(2) of the Cr. P. C. While exercising powers for grant of remission, it was expected that the authority would assign sufficient and cogent reasons for classifying the petitioner under a specific category by taking into consideration the opinion expressed U/Sec. 432(2) of the Cr. P. C without which, we have no hesitation in reaching a conclusion that the impugned order is nothing but arbitrary.

6. The learned advocate for the petitioner vehemently submits that this Court has the jurisdiction and power to reverse the order and classify the petitioner. The submissions would be contrary to the law laid down in the matter of Ram Chander Vs. State of Chhattisgarh (*supra*) which reads as under :

“14. In Rajan (*supra*), the court observed that while the grant of remission is the exclusive prerogative of the executive and the court cannot supplant its view, the Court can direct the authorities to re-consider the representation of the convict. The Court made the following observations:

“18. The petitioner would, however, rely on the unreported decision of this Court in Ram Sewak [Ram Sewak v. State of U.P., 2018 SCC OnLine SC 2012] , to contend that this Court may direct the authorities to release the petitioner forthwith and that there is no point in directing further consideration by the State as the petitioner had already undergone over 30 years of sentence and with remission, over 36 years. The order passed by this Court in Ram Sewak [Ram Sewak v. State of U.P., 2018 SCC OnLine SC 2012] , is obviously in the facts of that case. As a matter of fact, it is well settled by now that grant or non-grant of remission is the prerogative to be exercised by the competent authority and it is not for the court to supplant that procedure. Indeed, grant of premature release is not a matter of privilege but is the power coupled with duty conferred on the appropriate Government in terms of Sections 432 and 433 CrPC, to be exercised by the competent authority after taking into account all the relevant factors, such as it would not undermine the nature of crime committed and the impact of the remission that may be the concern of the society as well as the concern of

the State Government.....

20. Thus understood, we cannot countenance the relief claimed by the petitioner to direct the respondents to release the petitioner forthwith or to direct the respondents to remit the remaining sentence and release the petitioner. The petitioner, at best, is entitled to the relief of having directions issued to the respondents to consider his representation dated 5-2-2018, expeditiously, on its own merits and in accordance with law. We may not be understood to have expressed any opinion either way on the merits of the claim of the petitioner. The fact that the petitioner's request for premature release was already considered once and rejected by the Advisory Board of the State Government, in our opinion, ought not to come in the way of the petitioner for consideration of his fresh representation made on 5-2-2018. We say so because the opinion of the Advisory Board merely refers to the negative recommendation of the Probation Officer, Madurai and the District Collector, Madurai. The additional reason stated by the State Government seems to be as follows:

The above discussion makes it clear that the Court has the power to review the decision of the government regarding the acceptance or rejection of an application for remission under Section 432 of the CrPC to determine whether the decision is arbitrary in nature. The Court is empowered to direct the government to reconsider its decision.”

7. In the light of the above and considering the fact that the petitioner has been behind the bars for more than twenty years, it would be appropriate that the matter is remitted back to the

respondent No. 1 for taking decision afresh within stipulated period. We pass following order.

O R D E R

- i) The writ petition is partly allowed.
- ii) The impugned order is quashed and set aside.
- iii) The matter is remitted back to the respondent No. 1, who shall now pass fresh order in the light of the observations made hereinabove and in tune with the directions contained in the matter of Ram Chander Vs. State of Chhattisgarh (*supra*).
- iv) The decision shall be taken as expeditiously as possible and in any case within a period of four (04) weeks from today.

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

bsb/Jan. 24