



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1813 OF 2024

Tatyasaheb S/o Limbraj Patil (C-5274),
Age-56 years, Occu:Convict,I
R/o-At present Open Prison, Paithan,
Dist-Chhatrapati Sambhajnagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary Home Department,
Mantralaya, Mumbai-32,
- 2) The State of Maharashtra,
Through Superintendent Open Prison,
Paithan, Dist-Chhatrapati Sambhajnagar.

...RESPONDENTS

...
Mr. Rupesh A. Jaiswal Advocate for Petitioner.
Mr. S.A. Gaikwad, A.P.P. for Respondents.
...

CORAM: SMT. VIBHA KANKANWADI AND
R.W. JOSHI, JJ.

DATE : 25th NOVEMBER, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present petition has been filed to challenge the opinion of the learned Additional Sessions Judge, Solapur / District Judge-4, Solapur dated 1st February 2020 opining that benefit of

the State remission on the occasion of 125th Birth Anniversary of Dr. Babasaheb Ambedkar should not be given to the petitioner which was granted under the Government Resolution dated 3rd June 2017 issued by respondent No.1.

2. Heard learned Advocate Mr. Jaiswal for the petitioner and learned APP Mr. Gaikwad for the respondents. In order to cut short, it can be stated that both the sides have made submissions in support of their respective contentions.

3. The petitioner came to be convicted in Sessions Case No.180 of 2003 by the learned Sessions Judge, Solapur on 6th March 2004 under Section 302 of the Indian Penal Code. The imprisonment that was awarded to him was the life imprisonment and as on the date of the petition he has undergone 14 years and 9 months imprisonment approximately and including remission, 23 years and 11 months incarceration. Respondent No.1 passed Government Resolution dated 3rd June 2017, whereby granting State remission of three months on account of 125th Birth Anniversary of Dr. Babasaheb Ambedkar to various categories of convicts. Thereupon in the case of the benefit to be granted, the jail authorities / State Government was duty bound to call the report from the convicting Court. In

case of the petitioner such report was called and taking into consideration the facts of the case or circumstances which led to the conviction of the petitioner, learned Additional Sessions Judge, Solapur opined that the remission should not be granted. He has considered the offence that has been committed by the petitioner as heinous crime.

4. Important point to be noted is that the scheme was made applicable to all the offences wherein the punishment was imprisonment for life and even those offences were also considered wherein though the trial Court or this Court would have confirmed death sentence but it was then converted into imprisonment for life. The only stipulation was that the benefit of the same to be given to such convicts after they undergo the net 14 years of imprisonment. In the Government Resolution itself six categories were mentioned wherein those convicts falling within the said six categories were stated to be not entitled to the benefit. This list cannot be widened either by the Additional Sessions Judge or even by the State Government once the resolution is passed i.e. decision has been taken. It should be then included by way of another Government Resolution if any modification is sought. Certainly there was a modification in respect of category No.3 i.e. convicts who have been convicted

under the Central Enactment but it was not including those offences under the Indian Penal Code which can be termed as heinous offences. That clarification was needed in view of the fact that many Enactments were by the Central Enactment including Indian Penal Code and then every convict would have been deprived of the benefit which was tried to be given by the State Government.

5. If we peruse the impugned communication / opinion dated 1st February 2020 by the learned Additional Sessions Judge, Solapur, it does not specifically state that he is considering the petitioner under Clause-3 i.e. the convict convicted under the Central Enactment. Therefore, the interpretation that has been put by the learned Additional Sessions Judge was not proper and legal.

6. Learned Advocate for the petitioner is relying upon the decision by this Court in ***Nandkumar S/o Shivmurti Munde Murde vs. State of Maharashtra*** (Criminal Writ Petition No.1040 of 2018, decided on 12th September 2018, ***Rajendra Maroti Uppalwar vs. State of Maharashtra and others*** (Criminal Writ Petition No.510 of 2018, decided on 29th June 2018), wherein also this Court has considered that the petitioners therein will

not fall in any of the categories mentioned in clause Nos. 1 to 6 of the Government Resolution, therefore the impugned orders / opinions by the Additional Sessions Judge deserves to be quashed and set aside. We are also of the same opinion. Hence, we proceed to pass the following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) The petitioner is entitled to get the benefit of Government Resolution dated 3rd June 2017 on account of 125th Birth Anniversary of Dr. Babasaheb Ambedkar.

(III) The respondents are directed to extend the said benefit to the petitioner, as per the Resolution.

[R.W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE