



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

CRIMINAL WRIT PETITION NO. 1546 OF 2023

Aslam Jamadar Ansari (C-4919) .. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Shri Rupesh A. Jaiswal, Advocate for the Petitioner.
Shri K. N. Lokhande, A.P.P. for the Respondent Nos. 1 and 2.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 20 FEBRUARY 2024.**

FINAL ORDER :

. Heard both the sides. The petitioner is challenging categorization for extending the benefit of remission under the provisions of Section 432 of the Code of Criminal Procedure (for short "Code").

2. The petitioner who has committed murder of a six year old girl has been convicted for offence of murder plus kidnapping. However, he has been acquitted of the charge of committing rape.

4. The impugned order places him in category 4(e) of the 2010 Guidelines. Whereas, according to the learned counsel for the petitioner he could have been categorized under category 2 or 3, which provide for offences relating to crime against woman and

minors and murders arising out of land dispute, family feud, family prestige and superstition, respectively. He would submit that in the light of decision in the matter of State of Haryana and others Vs. Jagdish, (2010) 4 SCC 216, the petitioner is entitled to the benefit of beneficial category, having lessor period of imprisonment. He would take us through the judgment and order, whereby he has been convicted, to point out that the motive attributed to the petitioner in committing murder was family feud.

5. Having heard both the sides and having perused impugned order, it transpires that the impugned order merely refers to report submitted U/Sec. 432(2) of the Code by the convicting Court. However, it does not even make any attempt to discuss the reasons for which the authority was accepting the report. In all probability, he must have found it difficult to precisely refer to the particulars of report received by him U/Sec. 432 of the Code, since the report itself was cryptic and vague.

6. A copy of the report made available to us. (Exhibit R – 3) is indeed cryptic and vague. The first paragraph has been devoted to explain the particulars of the punishment for which the petitioner was convicted, and in second paragraph, only in one line it has been opined that the convict has committed murder with premeditation and suggesting category 4(e) of 15 March 2010 Guidelines. We have no manner of doubt that the convicting court has failed in its duty in submitting an

appropriate report as is contemplated U/Sec. 432(2) of the Code and precisely in accordance with the directions of the Supreme Court in the matter of Sangeet Vs. State of Haryana, (2013) 2 SCC 452 and Ram Chander Vs. State of Chattisgarh, 2022 Live Law (SC) 401.

7. When it is a matter pertaining to right of convict for being considered for remission under the provisions of Chapter XXXII of the Code, the convicting Court must be careful in forwarding report U/Sec. 432(2) of the code.

8. True it is as laid down in the matter of Ram Chander Vs. State of Chattisgarh, (supra) report submitted U/Sec. 432(2) of the Code may not be binding. However, even it is expected that the order of remission should contain reasons for accepting or refusing to follow the report received U/Sec. 432(2) of the Code.

9. This having not happened in the present matter, it would be appropriate in the light of the decision in the matter of Ram Chander Vs. State of Chattisgarh (supra) that the matter is remanded back to the stage of submission of report U/Sec. 432(2) of the Code, so that convicting Court can now forward a fresh report in the light of the aforementioned observations.

10. The criminal writ petition is partly allowed. The impugned order is quashed and set aside. The matter is remitted back to the stage of report U/Sec. 432(2) of the Code by the convicting

Court i. e. Additional Sessions Judge, Thane. He shall forward a fresh report in the light of the above observations, as expeditiously as possible and in any case within a period of four (04) weeks from today. Registry shall communicate this order to the concerned Court immediately by all modes. Respondent No. 2 on receipt of such report U/Sec. 432(2) of the Code shall pass fresh order within a period of four (04) weeks of receipt of the report.

11. The criminal writ petition is disposed of.

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

bsb/Feb. 24