



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

997 CRIMINAL WRIT PETITION NO.1788 OF 2023

Rahul Balabhau Magar (C-5372)

... 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 Sambhajinagar
- ... Respondents

...
Advocate for the Petitioner : Mr. Rupesh Anil Jaiswal
APP for Respondents: Mr. V.K. Kotecha

...
CORAM

: MANGESH S. PATIL &
R. M. JOSHI, JJ.

DATE

: 05.01.2024

PER COURT:

The petitioner is seeking to derive the benefit of the decision of the State Government dated 03.06.2017 *inter alia* granting a special remission on account of the 125th birth anniversary of Dr. Babasaheb Ambedkar. It seems that pursuant to the petitioner's request the respondents solicited opinion of the convicting Court as is mandated by Section 432 (2) of the Code of Criminal Procedure. By the impugned communication the learned Additional Sessions Judge has forwarded his negative opinion.

2. We have heard both the sides.

3. The learned advocate for the petitioner would submit that contrary to the decisions of the Supreme court in the matter of **Laxman Naskar Vs. Union of India; (2000) 2 SCC 595** and **Ram Chander Vs. The State of Chhattisgarh and Anr.; 2022 LiveLaw (SC) 401**, the opinion given by the learned Additional Sessions Judge is without application of mind. No reasons have been quoted as is expected of him and in one line simply by observing that the offence was grave he has given a negative opinion. He would, therefore, request to set it aside and remit the matter back to the learned Additional Sessions Judge, Jalna to forward a fresh opinion.

4. Learned APP would oppose the petition.

5. We have gone through the report submitted by the Additional Session Judge, Jalna dated 18.02.2019 (Exhibit – B). After mentioning about the provisions under which the petitioner was convicted and the duration of the punishment, in paragraph No.3 he has simply vaguely mentioned that due to the gravity of the crime he was giving a negative opinion.

6. Suffice for the purpose to observe that this opinion to be expressed in the light of Section 432(2) of the Code of Criminal Procedure cannot be merely a technical formality. One would simply refer to the decision of the Supreme Court in the matter of **Ram Chander** (supra). The Supreme Court has *inter alia* laid down that the opinion given under Section 432(2) of the Code of Criminal Procedure though is

not mandatory, it will have to be commensurate with the direction of the Supreme Court in the matter of **Laxman Naskar (supra)**.

7. We are of the firm view that the learned Additional Sessions Judge who has expressed the opinion pursuant to Section 432(2) of the Code of Criminal Procedure had not applied mind muchless has borne in mind the decision in the matter of **Laxman Naskar (supra)**.

8. In view of the above, it would be appropriate that the matter is relegated back to the learned Additional Sessions Judge, Jalna who can be directed to give a fresh opinion in the light of the above observations.

9. The writ petition is allowed. The impugned opinion is quashed and set aside. The learned Additional Sessions Judge, Jalna shall forward a fresh opinion in the light of the above observations, as expeditiously as possible, and in any case within two weeks from today. The respondent No.2 shall thereafter, take appropriate decision in accordance with law within two weeks of receipt of the report from the Additional Sessions Judge.

10. Registry shall immediately send a copy of this order to the learned Additional Sessions Judge, Jalna, by mail and shall inform the learned Additional Sessions Judge telephonically.

(R. M. JOSHI, J.)

(MANGESH S. PATIL, J.)