

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3198 OF 2022**

Futarmal Kapurji Borana] ... Petitioner

V/s.

The State of Maharashtra] ... Respondent

Ms. Jai V. Kanade a/w. Mr. Rahul Shirgavkar for Petitioner.
Mr. J.P. Yagnik, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 31st January 2024.

Oral Judgment (Per : A. S. Gadkari, J.)

1) By the present Petition received through jail, the Petitioner has requested to pass Orders to direct the Respondent to grant him benefit of Government Resolution (G.R.) dated 3rd June 2017 issued by the Home Department, Government of Maharashtra, on the eve of 125th birth anniversary of Dr. Babasaheb Ambedkar.

2) Heard Ms. Kanade, learned Advocate appointed by Legal Services Committee, High Court, Mumbai, to represent the Petitioner and Mr.Yagnik, learned A.P.P. for Respondent-State. Perused entire record produced before us.

3) Record indicates that, the Petitioner has been convicted by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No. 270

of 2002 by its Judgment and Order dated 23rd November 2004 under Sections 396, 395 and 449 of the Indian Penal Code and is sentenced to suffer imprisonment for life on each count. The trial Court has directed that, all the sentences imposed upon the Petitioner to run concurrently.

3.1) The Criminal Appeal No. 441 of 2005 preferred by the Petitioner has been dismissed on merits by the co-ordinate Bench of this Court by its Judgment and Order dated 17th December 2015.

4) The Government of Maharashtra has issued the aforestated G.R. dated 3rd June 2017 for extending benefit of remission of specified period to the convicts, who have undergone a particular period of imprisonment. In the said G.R., a particular class of convicts have been excluded from getting benefit of the said scheme. There is a caveat in the said G.R., by which the Jail Authority has been directed that, the Superintendent of all the prisons shall take opinion of the concerned Court, who has convicted and sentenced the said prisoners, before extending the benefit of the said G.R.

4.1) In the case of *Anil Kallappa Parshetty & Ors. Vs. The State of Maharashtra in Criminal Writ Petition No. 3138 of 2018*, this Court has held that, the G.R. dated 3rd June 2017 is benevolent in nature to the convicts, who have undergone particular period of sentence and the same has been issued with avowed object of getting remission to the prisoners, who have undergone/completed specified period of sentence.

5) In the present case, for extending the benefit of the said G.R. dated 3rd June 2017 the Jail Authority forwarded the proposal of Petitioner to the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai, i.e. the concerned Court for its opinion. The learned Additional Sessions Judge by its opinion dated 13th November 2017 was pleased to opine that, the Petitioner is not entitled for any relief in furtherance of the said G.R., as he has brutally murdered an innocent person while committing the offence as contemplated under Section 396 of I.P.C.. Petitioner thereafter had preferred Criminal Writ Petition No. 1212 of 2019 before this Court and the co-ordinate Bench of this Court was pleased to direct the concerned Authority to complete the procedure for getting fresh opinion for extending benefit of the said G.R. to the Petitioner within stipulated period.

5.1) The proposal of the Petitioner was thereafter again sent to the learned Judge of the trial Court, as per the provision in G.R. dated 3rd June 2017. The learned Judge of the trial Court by its opinion dated 14th November 2019 has again opined that, the Petitioner is not entitled for any relief as he is involved in a heinous crime. The learned Judge has relied on the observations of this Court in the case of *Satish Dada Londhe Vs. The State of Maharashtra in Criminal Writ Petition No. 1414 of 2018, dated 1st February 2019*, while arriving at the said conclusion. In the aforesaid admitted facts on record, present Petition is filed.

6) Learned counsel for the Petitioner submitted that, the Government has issued a corrigendum G.R. on 19th November 2018 thereby diluting the rigors as mentioned in the conditions of the said G.R. dated 3rd June 2017. She submitted that, the Full Bench of this Court in the case of *Yovehel s/o. Vijaykumar Gouri Vs. State of Maharashtra & Ors., reported in 2020(6) Mh.L.J. 571*, has accepted the said position and has in detailed interpreted the said G.R.. It is therefore clear that, as of today clause No.(iii) of the conditions for exclusion of benefit to the convicts is now diluted and the convicts under the I.P.C. are entitled to get benefit of the said G.R..

7) Record indicates that, while rejecting the proposal of the Petitioner for second time by its opinion dated 14th November 2019, the learned Judge of the trial Court has clearly over looked corrigendum G.R. dated 19th November 2018 issued by the Government and has erroneously held that, the Petitioner is not entitled for getting benefit of the said G.R. dated 3rd June 2017, as per the six categories mentioned in the said G.R..

8) As noted earlier, by the Corrigendum dated 19th November 2018 the said rigors have been diluted by the Government.

8.1) After taking overall view of the matter, we are of the considered opinion that, the Petitioner deserves to be given benefit of the said G.R. dated 3rd June 2017, though as per category No.(iii) of the said G.R. he has been convicted under a Central Act.

9) Petition is allowed in the aforesaid terms.

Rule is made absolute in the aforesaid terms.

10) The Prison Authority is directed to take note of the present Judgment and accordingly extend benefit of the said G.R. dated 3rd June 2017 to the Petitioner.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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