

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.754 OF 2024

Mahesh Vasantryao Motaphale .. Petitioner
Versus
The State of Maharashtra .. Respondent

Mr.Priyanshu Mishra for the Petitioner.
Mr.D.J. Haldankar, APP for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 02nd JULY, 2024

P.C:-

1] Rule. Rule is made returnable forthwith.

Heard finally by consent of the parties.

2] The convict Mahesh Vasantryao Motaphale (Convicat No.11780, presently housed in Nashik Road Central Prison, has addressed a letter to the Registrar of this Court, which has resulted into registration of WP No.754/2024.

The Petitioner make a request to extend him the benefit of the special remission as declared by the Government of Maharashtra on the occasion of 125th Birth Anniversary of Dr. Babasahbe Ambedkar, while he is sentenced by the Sessions Court at Parbhani on 15.02.2023 and according to the Petitioner he is entitled to three months of special remission as he is convicted and sentenced to 10 years imprisonment.

3] The learned APP would place reliance upon the report of the Principal District and Sessions Judge, Parbhani, dated 15.02.2023 and his negative opinion to extend the benefit to the Petitioner, in the wake of the gravity of the offence as he is found guilty of committing rape on the victim girl alongwith two other accused persons, and it is opined that since the offence being of serious nature, he do not deserve the benefit of remission.

4] When we turned to the policy decision of the State Government as contained in the Government Resolution dated 03.06.2017 issued by the Home Department, it is evident that to commensurate 125th Birth Anniversary of Dr.Babasaheb Ambedkar being celebrated as “Samata Varsh” by the State Government, in exercise of power conferred under Section 432 (1) of the Cr.P.C., the prisoners categorized in the said resolution are held eligible for state remission in proportion to the sentence imposed from 14.04.2016.

The Government Resolution itself has carved out an exception in respect of the class of prisoners who are not entitled to avail the benefit of the same and this includes the category of the prisoners who are undergoing sentence under Section 106 to 110, Section 121 to 130, i.e. those who are undergoing the imprisonment for raising war against the State; the prisoners undergoing the sentence under the Central Act; under the Civil Procedures, the young boys in Observation Home and the Prisoners who are unauthorizedly remaining outside jail.

But for the aforesaid exceptions, the category of prisoners who are prohibited from availing the benefit of the Government Resolution, there is no other category of prisoners, like those who have indulged themselves and are convicted for commission of brutal and heinous crime, Gravity and seriousness of offence is not the criteria intended by the State Government to be excluded from the benefit being extended.

In any case, when the opinion of the concerned District Judge is to be called for, it is only in form of the recommendation and does not in any case, create fetters on the power of the State Government to grant the benefit of its policy dated 03.06.2017.

Merely on the pretext that the District Judge, who, only on the ground of the severity of the offence has recommended not to extend the benefit, we do not find that the Petitioner shall be deprived of the benefit.

5] As a result, Petition is allowed, by issuing a direction to the Respondents, that he shall be granted the benefit of remission in terms of Government Resolution dated 03.06.2017.

Petition is made absolute in the aforesaid terms.

(MANJUSHA DESHPANDE, J.) (BHARATI DANGRE, J.)