



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.15/2024

Imran Yousuf Sheikh

Vs.

State of Maharashtra and Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Raju Kadu, Advocate for Petitioner.
Mr. M. K. Pathan, A.P.P. for Respondents/State.

CORAM : NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED : 21/11/2024.

. The prayer for remission is opposed by the learned Additional Public Prosecutor on the ground that the Circular relied on by the petitioner dated 03.06.2017 will have prospective effect.

2. It is in the expressed terms provided in the Circular that the special remission be given effect to as on 14.04.2016. According to Mr. Pathan, learned A.P.P., the petitioner before this Court has been convicted in Special POCSO Case No.74/2014 for the offence punishable under Section 376(2)(i)(n) for 10 years and under Section 506 for 6 months vide judgment delivered by the Additional District and Sessions Court, Wardha on 13.07.2018.

3. The fact remains that the offence allegedly committed by the petitioner was prior to the date of the Circular and in such an eventuality, the law laid down by the Hon'ble Apex Court in the matter of *State of Haryana and Ors. Vs. Jagdish* reported in (2010) 4 SCC 216 will govern the issue. The relevant observations made by the

Hon'ble Apex Court in the aforesaid judgment reads thus :

“54. The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a “lifer” for premature release, he should be given benefit thereof.”

4. Apart from above, a similar issue is already dealt with by the Division Bench of this Court in the matter of ***Chottu Ratanlal Punekar Vs. State of Maharashtra*** reported in ***2008 ALL MR (Cri) 2219*** wherein, the Court was dealing with the special remission on the eve of Golden Jubilee of Independence Day. This Court has specifically taken a view that the empowerment conferred in the State Government under Section 432 of the Criminal Procedure Code will be irrelevant to classify the category of the convicts based on the date of conviction.

5. That being so, the Writ Petition stands allowed in terms of prayer clause (a).

6. It is declared that the benefit conferred vide Government Resolution dated 03.06.2017 of granting

special remission of three months be extended to the petitioner.

7. The aforesaid Division Bench judgment has not categorized the under trial prisoners and the convicts to bear separate class for the purpose of extending the benefits of remission which are to be conferred pursuant to the provisions of Section 432 of the Criminal Procedure Code.

(MRS. VRUSHALI V. JOSHI, J.) (NITIN W. SAMBRE, J.)