



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

CRIMINAL APPLICATION NO. 1 OF 2024 (APPCO) IN
CRIMINAL APPEAL NO. 100 OF 2023 AND
CRIMINAL CONFIRMATION CASE NO. 1/2023

Raju s/o Chhannulal Birha

..vs..

The State of Maharashtra

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

Court's or Judge's orders

Shri Sumit G. Joshi, Advocate for the applicant.(appointed.)
Shri S.S. Doifode, Addl.P.P. for the State.

CORAM: VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 09/02/2024.

This is an application for speaking to minutes precisely contending that the applicant was in jail during the trial i.e. from 17.11.2015 and thus, considering his long standing incarceration, though he is punished for imprisonment for life however he is entitled for set off in terms of Section 428 of the Code of Criminal Procedure(the Code). In that regard, modification is sought on behalf of the accused.

2. Learned Addl.P.P. has conceded the position which has been laid down by the Constitutional Bench of the Supreme Court in case of *Bhagirath vs. Delhi Administration (1985) 2 SCC 580*, wherein the Constitutional Bench has overruled the earlier decision in case of *Kartar Singh v. State of Haryana (1982) 3 SCC 1* and held that despite imposition of sentence of life imprisonment, the accused is entitled for set off in terms of Section 428 of the Code.

3. In view of the above, we equally hold that the accused is entitled for set off. We do not see any reason to disrobe the accused from said benefit. Already we have put a rider that the applicant/accused is not entitled for remission for the period of 30 years. Having regard to the said fact and the position of law, we direct that the judgment be modified by adding the following portion in paragraph 93 at the end :

“The accused is in jail from 17.11.2015 and he is entitled for set off in terms of Section 428 of the Code for the period already undergone”.

4. Necessary amendment be carried out accordingly.

5. Fees of the appointed Counsel be paid as per Rules.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)