



Judgment

908 wp 579.23

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

CRIMINAL WRIT PETITION NO. 579/2023

Nitin s/o Shamraoji Pawnikar,
Convict No. C/10172,
Aged about 40 years. Occ. Nil,
R/o. Nagpur, Dist. Nagpur,
At present in District Prison,
Nagpur.

... **PETITIONER.**

VERSUS

1. State of Maharashtra,
through its Secretary,
Home Department, Mumbai-32.
2. Superintendent of Jail,
District Prison, Nagpur,
District Nagpur.

... **RESPONDENTS**

Mr. A. K. Sorde, Advocate for petitioner.
Mrs. N. R. Tripathi, Addl. Public Prosecutor ('APP') for respondent
Nos. 1 & 2.

CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 19.01.2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Rule. Rule made returnable forthwith. Heard finally by
consent of learned counsel appearing for the parties.

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2. The petitioner has been convicted for the offence punishable under Sections 376(2)(i)(j) of the Indian Penal Code and Section 6 of the Protection of Children From Sexual Offences Act ('POCSO Act'), whereby he was sentenced to suffer 10 years of imprisonment. The petitioner is in Jail from last 8 years. The petitioner has applied for remission on account of Government Resolution ('GR') dated 03.06.2017. The respondents sought opinion from the Sessions Judge which being adverse, petitioner has been denied for grant of remission.

3. The learned APP has opined that the offence punishable under Section 376((2)(i)(j) of the Indian Penal Code read with Section 6 of the POCSO Act is quiet serious and thus, petitioner does not deserve for the benefit of GR dated 03.06.2017.

4. We have examined the GR dated 03.06.2017 which provides that on account of 125th Birth Anniversary of Dr. Babasaheb Ambedkar, remission is to be accorded to the prisoner for the period specified therein as per term of punishment. The prisoner who have been sentenced for more than five years of imprisonment would be

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entitled for remission of three months subject to self imposed rider. The GR dated 03.06.2017 carves out six categories which have been excluded from the applicability of GR. Apparently, the offence of rape or POCSO Act does not fall in the exceptional category. The learned Trial Court has misread the said GR while opining that due to seriousness of offence, the petitioner is not eligible. Apparently, the reason accorded by the Sessions Judge is not in consonance with the said GR and thus, the denial is unjust and arbitrary.

5. In view of above, impugned communication dated 06.02.2023 is hereby quashed and set aside. The respondents are directed to grant benefit of remission to the petitioner in terms of GR dated 03.06.2017 by imposing suitable conditions.

6. Petition stands disposed of.

7. Rule is made absolute in above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)