



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

CRIMINAL WRIT PETITION NO.865 OF 2023

- 1) Sonu alias Ashwin S/o Vitthal Meshram, Aged about 35 years, Occupation: Nil, Presently in Central Prison Nagpur.

.... Petitioner(s)

// VERSUS //

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

.... Respondent(s)

Mr. Raju Kadu, Advocate for the Petitioner

Mr. M.K. Pathan, AGP for the Respondent Nos.1 and 2/State

**CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.**

**RESERVED ON : 15.07.2024.
PRONOUNCED ON : 01.08.2024**

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J)

1. We have heard Mr. Raju Kadu, learned Advocate for the petitioner and the learned APP for the State.

2. Rule. Rule is made returnable forthwith. Heard finally by the consent of the learned Advocates for the parties.

3. The present petition has been filed by the convict/petitioner for quashing and setting aside the opinion dated 04.07.2023 given by the learned Principal District and Sessions Judge, Gondia, thereby refusing to grant benefit of remission of three months to the petitioner on account of 125th Birth Anniversary of late Dr. Babasaheb Ambedkar, in view of the Government Resolution (GR) dated 03.06.2017. Consequential relief is also prayed.

4. It has been submitted by the learned Advocate for the petitioner that the petitioner came to be convicted for the offence punishable under Section 376AB of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). By the judgment and order dated 07.02.2020 passed in POCSO Cri. Case No.45/2019, he has been sentenced to suffer Rigorous Imprisonment (RI) for twenty years and to pay fine of Rs.75,000/-, in default of payment of fine, to undergo further RI. for three years. Presently, the petitioner is in Central Jail Nagpur.

The petitioner had submitted the application for remission under the GR dated 03.06.2017. It is submitted that the grant of remission ought to have been considered in view of the behaviour of the petitioner in jail and the ground for rejection/refusal to grant remission by the learned Principal District and Sessions Court, Gondia, is illegal.

5. According to the said GR, there is categorization of remission given to a convict i.e. who is convicted for three months, he gets seven days remission; the convict, who is convicted for more than three months but less than twelve months, he gets remission of fifteen days; the convict, who is convicted for more than one year but less than five years, he would get remission of two months; and lastly a convict, who is convicted for more than five years or imprisonment for life, he would get three months remission. The said GR was published on account of 125th Birth Anniversary of late Dr. Babasaheb Ambedkar. The learned Advocate for the petitioner relies on the decision in ***Ek Nath s/o Bapunath Chougule and others Vs. The State of Maharashtra and anr.*** (Criminal Writ

Petition No.1788 of 2017), decided on 09.02.2018, by this Court Bench at Aurangabad, to which one of us (Smt. Vibha Kankanwadi, J.) was a party. He also relies on the decision in ***Yogesh Pandurang Kupekar Vs. State of Maharashtra and anr.*** (Criminal Writ Petition No.462 of 2022) decided on 7.09.2022, in which the similarly situated convicts have been granted benefits by this Court. He also relies on ***Satish Dada Londhe Vs. The State of Maharashtra*** (Criminal Writ Petition No.1414 of 2018) decided on 01.02.2019, by the Principal Seat of this Court, ***Nilesh s/o Sukhlal Karosiya Vs. The State of Maharashtra and anr.*** (Criminal Writ Petition No. 108 of 2019) decided on 04.03.2019, by this Court Bench at Aurangabad and ***Satish Yadavrao Dhoke Vs. State of Maharashtra and anr.*** (Criminal Writ Petition No.758 of 2023) decided on 04.12.2023, by this Court, wherein also benefit of remission has been given to the respective petitioners.

6. Per contra, the learned APP submits that the said GR was issued for some purpose i.e. for giving remission to the convicts, who were already in jail when the country was celebrating 125th

Birth Anniversary of late Dr. Babasaheb Ambedkar. Thereafter, modification was made in that GR by another GR dated 19.11.2018, wherein the category stated as “convicts punished under the Central enactment” was replaced by “the cases under Section 435(2) of the CrPC”. Thereafter, in Criminal Writ Petition Nos.865 of 2023, 857 of 2023 and 846 of 2023, this Court has sought clarification from the Government and accordingly, a clarification was issued on 20.02.2024 and it was specifically stated that the said remission was available to the convicts, who have been convicted in the State of Maharashtra and it would be available to those convicts, who were undergoing the incarceration as on 14.04.2016. It was then made available to those convicts also who were on bail under the order of the Court, that means the convicts whose appeals are pending. However, as regards the present petitioner is concerned, he came to be convicted by the judgment and order dated 07.02.2020 i.e. after the cutoff date mentioned in the GR and therefore, this Court has taken a view in ***Akash S/o Devanand Tempe Vs. State of Maharashtra and anr.*** (Writ Petition No.857 of 2023), decided on 21.02.2024 and ***Rameshwar s/o***

Chunnilal Hardule Vs. State of Maharashtra and anr. (Criminal Writ Petition No.331 of 2024) decided on 29.04.2024, to which one of us (Mrs. Vrushali V. Joshi, J.) was a party and observed that after going through the decisions in ***Yogesh Pandurang Kupekar*** (supra) and ***Nitin s/o Shamraoji Pawnikar Vs. State of Maharashtra and anr.*** (Criminal Writ Petition No.579 of 2023), decided on 19.01.2024, it could be revealed that those decisions do not bear the reference about the cutoff date and its implementation and hence, the clarification is sought. It is a special remission that was introduced and therefore, it depends upon the policy of the State Government. The convicts who have been convicted after the cutoff date i.e. 14.04.2016, are not entitled to get the special remission.

7. We are in agreement with the decisions in ***Akash S/o Devanand Tempe*** (supra) and ***Rameshwar s/o Chunnilal Hardule*** (supra). The said GR was issued with a particular purpose as a special remission scheme and it was made available to those convicts, who were in jail as on 14.04.2016 or whose appeals are

pending but they are released on bail on suspension of sentence. It was the special occasion i.e. 125th Birth Anniversary of late Dr. Babasaheb Ambedkar. Whether to grant a special remission or in other words granting remission under special scheme is within the prerogative of the State Government. Even otherwise also the wording of the GR dated 03.06.2017 was sufficient to infer that it was applicable to those category of persons only, but now the clarification has been given on 20.02.2024, it has to be considered.

8. As the conviction awarded to the present petitioner is in the case that came to be registered in 2019 and the judgment is pronounced on 07.02.2020, the scheme is not applicable to him. After considering the communication dated 04.07.2023 given by the learned Principal District and Sessions Judge, Gondia, it can be seen that the offence took place on 01.06.2019, that means on the day when the GR was issued i.e. on 03.06.2017, the offence was not even committed and therefore, it cannot be said that the said GR is applicable to the present petitioner. The present petition is

devoid of merits and therefore, deserves to be dismissed and accordingly, it is **dismissed**.

Rule stands discharged. No costs.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]