



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

11 CRIMINAL WRIT PETITION NO. 103 OF 2025

1. Shafiq Ahmed Abdul Hamid Makrani (C-20)
@ Shafi-Mohammad Abdul Hamid Makrani
Age : 54 Years, Occu. : Convict,
At present Confined in Open Jail Dhule,
Dist. Dhule.
2. Latif Ali S/o. Gulam Ali Makrani
Age : 40 Years, Occu. : Convict,
At present Confined in Open Jail Dhule,
Dist. Dhule.
3. Samir Ali S/o. Gulam Ali
@ Sameer Gulamali Makrani
Age : 35 Years, Occu. : Convict,
At present Confined in Open Jail Dhule,
Dist. Dhule.
4. Sayyed Ali S/o. Suleman Makrani
@ Saeed Suleman Makrani
Age : 40 Years, Occu. : Convict,
At present Confined in Open Jail Paithan,
Dist. Chhatrapati Sambhajinagar.
5. Irfan S/o. Suleman Makrani
Age : 40 Years, Occu. : Convict,
At present Confined in Open Jail Paithan,
Dist. Chhatrapati Sambhajinagar.

.... Petitioners

VERSUS

1. The State of Maharashtra
Through Superintendent of Jail,
Open Jail Paithan, Dist. Chhatrapati
Sambhajinagar.

2. Secretary,
Home Department (Prison), Mumbai.
3. Superintendent of Open Jail,
Dhule.

.... Respondents

....
Advocate for the Petitioners : Mr. Rupesh A. Jaiswal
APP for Respondents-State : Mrs. R.P. Gaur
....

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

Dated : 04th April 2025

PER COURT :-

1. The petitioners are convicts and have approached on two counts before this Court. First of all, they are challenging the order passed by respondent No.2 dated 11.12.2024, whereby the petitioners were placed in category 4(d) of the Government Resolution/Guidelines dated 15.03.2010. The petitioners pray that they be placed in category 3(b) of the said guidelines. The next prayer is challenging the opinion of learned District Judge-1, Shahada, Dist. Nandurbar i.e. the convicting Court, dated 15.10.2022, thereby giving inductive opinion for extending the benefit of special remission under the Government Resolution dated 03.06.2017, which was in respect of 125th Birth Anniversary of Dr. Babasaheb Ambedkar.

2. When we expressed disinclination to grant the relief in respect of placing the petitioners in category 3(b) of the guidelines dated 15.03.2010, the learned Advocate appearing for the petitioners, upon instructions, seeks withdrawal of the petition to that extent.

3. As regards the special remission is concerned, the learned Advocate for the petitioners rely on the decision of this Court in *Criminal Writ Petition No.2049 of 2024, Suresh S/o. Bhagwan Jadhav Vs. The State of Maharashtra and Another, Decided on 13.01.2025.*

4. We have considered the opinion that has been given by the learned District Judge-1, Shahada, Dist. Nandurbar dated 15.10.2022. The said opinion is absolutely not based on any legal principle much less the guidelines. Why he was not agreed to extending the benefit under the said Government Resolution to the petitioners is not clear. Taking into consideration the offence that has been committed and the seriousness attached to it, he has stated that he is of the opinion that the remission should not be granted.

5. If we consider the Government Resolution dated 03.06.2017, it can be seen that it was a special occasion on which the decision was taken by the State Government to grant the remission of

three months maximum to all the convicts, except few which were demarcated, on account of 125th Birth Anniversary of Dr. Babasaheb Ambedkar. The scheme was made applicable for all the offences wherein the punishment was imprisonment for life and even those offences were also covered wherein though the trial Court or this Court would have confirmed death sentence but it was then converted into imprisonment for life by this Court or the Hon'ble Apex Court. The only stipulation is that the benefit of the same was to be given to such convicts after they undergo the net 14 years of imprisonment.

6. The Government Resolution Dated 03.06.2017 carved out six categories of convicts and held that those six categories were not entitled to the benefit. Now, we have observed in the above said decision that this list cannot be widened either by Additional Session Judge or even by the State Government once the resolution is passed i.e. decision is taken. There was a modification in respect of category No.3 i.e. convicts who have been convicted under the central Enactment, but it was not included those offences under the Indian Penal Code, 1860, which can be termed as heinous crime. Thereafter, a clarification was given in respect of the same by a corrigendum.

7. The present case of the petitioners do not fall under the said six categories and this fact ought to have been seen by the

learned District Judge-1, Shahada, Dist. Nandurbar. The concerned Judge has created his own category i.e. the offence committed by the accused and the seriousness of the same. Therefore, the said opinion is absolutely not legal and can be said to be erroneous.

8. Respondent No.2 has filed an affidavit of Dr. Jalinder Dattatraya Supekar, Special Inspector General of Police (Prison), Nashik Region, Nashik, which is of course mainly on the point of category of the petitioners and he has not made any statement in respect of prayer clause 'B'.

9. In view of the said fact, prayer clause 'B' deserves to be allowed. Hence, we proceed to pass the following order.

ORDER

- I) The Writ Petition stands partly allowed.
- II) The Writ Petition stands dismissed as withdrawn in respect of prayer clause 'A'.
- III) Petitioner No.5 is entitled to get the benefit of Government Resolution dated 3rd June 2017, on account of 125th Birth Anniversary of Dr. Babasaheb Ambedkar.

- IV) The respondents are directed to extend the said benefit to petitioner No.5, as per the Resolution.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asd