



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.421 OF 2025

Mahesh Dhanaji Shinde,
Age 45 yrs., Occ. Convict,
R/o at present Open Prison, Paithan.
Permanent r/o Moreshwar Patil Road,
Excer Talepapadi, Borivali (West),
Mumbai.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through Secretary,
Home Department (Prison),
Mumbai – 400 005.
- 2 Superintendent of Jail,
Open Prison, Paithan.

... Respondents

...

Mr. R.A. Jaiswal, Advocate for petitioner
Mr. N.R. Dayama APP for respondent Nos.1 and 2

...

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

RESERVED ON : 23rd APRIL, 2025

PRONOUNCED ON : 11th JUNE, 2025

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

1 The petitioner once again approaches this Court to challenge the order passed by respondent No.1 dated 06.03.2025, thereby refusing to grant remission to him. It will not be out of place to mention here that the petitioner had earlier approached this Court by filing Criminal Writ Petition No.1346 of 2024. By order dated 23.10.2024 this Court had partly allowed the petition. The order that was then passed by respondent No.1 on 28.02.2022 was quashed and set aside. Respondents were directed to get fresh opinion from the convicting Court in view of the guidelines in **Life Convict Laxman Naskar vs. State of West Bengal and another** [2000 All M.R. (Cri) 1526] and **Ram Chander vs. The State of Chhattisgarh and another** [2022 LiveLaw (SC) 401]. Directions were given as to what should be considered as the petitioner had made some achievements during his incarceration and after collecting the information and opinion respondent No.1 was directed to decide the proposal for remission under Section 432 of the Code of Criminal Procedure once again.

2 The petitioner came to be arrested on 26.12.2003 and was prosecuted in Sessions Case No.3/2005 and Sessions Case No.5/2005 before learned Sessions Judge, Sindhudurg for the offence punishable under

Sections 302, 394 of the Indian Penal Code. It was the prosecution story that petitioner, with co-accused persons, had caused murders of eight persons in three different incidences. Three separate charge sheets were filed in respect of those murders, separate charge were framed, but evidence was led in respect of all the cases, in Sessions Case No.3/2005. Petitioner and three co-accused persons were sentenced to death by learned Sessions Judge, Sindhudurg and said conviction was confirmed by this Court. Petitioner has preferred criminal appeal and co-accused persons have also preferred appeals before the Hon'ble Supreme Court of India bearing Criminal Appeal Nos.1210-1213 of 2012. The Hon'ble Supreme Court commuted the death sentence to life imprisonment, by Judgment and order dated 27.02.2014. Thus, the imprisonment undergone on the date of petition by petitioner was 20 years and 02 months actual imprisonment and including remission, it is 27 years. By the order dated 28.02.2022 respondent No.1 has refused to grant any benefit of premature release under Section 432 of the Code of Criminal Procedure to petitioner. After Criminal Writ Petition No.1346 of 2024 was decided, it appears that the material was placed before learned Additional Sessions Judge, Sindhudurg at Oros, who had then called the socio-economic report through Probation Officer. After considering the various documents, it appears that a detailed opinion has been given. Though it is under the style as 'order', it is, in fact, the opinion given on

29.11.2024 and it was opined that possibility of repetition of crime by petitioner cannot be ruled out, taking into consideration the facts and circumstances and, therefore, the opinion was in the premature release of petitioner. Based upon said opinion respondent No.1 has passed impugned order on 06.03.2025 stating that petitioner would fall in Category-09 of the guidelines in Government Resolution dated 11.04.2008 and Category-08 as per the guidelines in Government Resolution dated 15.03.2010 that in respect of any other offences which are of exception/heinous nature and not specifically covered in the other categories, it would be the Government which will decide the individual case on its merits. The Government has taken decision not to release the petitioner on remission or in other words not to grant the benefit under Section 432 of the Code of Criminal Procedure.

3 Learned Advocate appearing for petitioner submits that Hon'ble Supreme Court while commuting the sentence has also observed that -

“30. Balancing the two sets of circumstances i.e. one favouring commutation and the other favouring upholding the death penalty, we are of the view that in the present case the option of life sentence is not “unquestionably foreclosed”. Therefore, the sentence of death awarded to the accused should be commuted to life imprisonment. We order, accordingly, and direct that each of the accused-appellants, namely Santosh Manohar Chavan, Amit Ashok Shinde, Yogesh Madhukar Chavan and Mahesh Dhanaji Shinde shall undergo

imprisonment for life for commission of the offence under Section 302/120B IPC. The sentences awarded to the accused-appellants by the High Court for commission of all other offences under the IPC and the Arms Act are affirmed to run concurrently. We also make it clear that the custody of the appellants for the rest of their lives will be subject to remissions if any, which will be strictly subject to the provisions of the Sections 432 and 433-A of the Cr.P.C.”

When Hon’ble Supreme Court while deciding petitioner’s appeal had stated that the punishment that has awarded is subject to remission, if any, strictly subject to provisions of Sections 432 and 433A of the Code of Criminal Procedure; respondent No.1 was duty bound to consider all the aspects. This Court has taken note in the earlier petition as to how the principles laid down in **Laxman Naskar** (supra) and **Ram Chander** (supra) were not followed. The basic purpose for which there is a provision of Section 432 and 433-A of the Code of Criminal Procedure has not been considered properly. No doubt, it is the prerogative of the State to release any convict upon grant of remission; yet, through the catena of Judgments the said right is channelized. The learned Additional Sessions Judge appears to have got swayed away with the gravity of the offence or prosecution story as it was alleged that the petitioner along with co-accused had committed murder of 7-8 persons. The socio-economic report of Probation Officer has been considered, wherein it was stated that family of petitioner is suffering

from financial crisis. It is wrongly interpreted by learned Additional Sessions Judge that as the murders were for the purpose of finance or money and now the family is suffering from financial crisis, possibility of repetition of crime cannot be ruled out. There was absolutely no basis of document with the learned Additional Sessions Judge to come to conclusion and said observations have been taken as it is by respondent No.2 while passing the impugned order. Petitioner has taken a positive stand and in order to uplift himself, he completed his Bachelor of Arts, LED Decorative Light Making Course. He completed his Master of Arts in Marathi from Yashwantrao Chavan Marathwada Open University. Then he cracked the MBA Entrance Test. He had also participated in Gandhi Vichar Sanskar Pariksha and the certificates would show that he has obtained good marks. He wants to lead a good life after he comes out of the Jail and he should be given an opportunity to become a good human being. The State Government ought to have considered his case under Category - 3(B) of Guidelines of 1992 dated 11.05.1992, which prescribes the period of 24 years required to be gone into.

4 Per contra, learned APP strongly objects the petition and relies on the affidavit filed by Dr. Jalindar Supekar, presently working as Special Inspector General of Police (Prisons), Central Region, Chhatrapati Sambhajnagar. Learned APP submits that in fact, when Sessions Court had

decided the Sessions Case No.5/2005 on 26.05.2009, he was awarded death sentence for committing murder of four persons i.e. death sentence was separately awarded for each death and the separate sentence in Sessions Case No.3/2005 on the same day in respect of another crime in respect of each of the death of four persons. That means, in all for eight deaths of different persons death sentence was awarded to petitioner for each death. This Court had confirmed the death sentences. Hon'ble Supreme Court had then commuted the sentence to the imprisonment for life. At present petitioner has been transferred from Central Prison, Nagpur to Open Prison, Paithan since 12.05.2023 to undergo the remaining sentence. After undergoing around 14 years of incarceration, the case of petitioner was considered by the State Government for remission, however, taking into consideration the reports those were required to be obtained, the order was passed on 28.02.2022 to reject the benefit to petitioner, which was then challenged in the said writ petition before this Court i.e. Criminal Writ Petition No.1346 of 2024, which was decided on 23.10.2024 allowing it partly. The entire data was then placed before the convicting Court and the convicting Court gave opinion on 29.11.2024. Categorically observed that possibility of committing similar offence now by petitioner cannot be ruled out. In fact, by order dated 25.10.2024 the Superintendent of Jail, Paithan was asked to get the socio-economic report from Probation Officer. Probation

Officer had given his report, then special remission information which was granted to petitioner from Central Prison, Nagpur was also placed vide letter dated 29.10.2024 before learned Additional Sessions Judge. The compliance of directions given in writ petition has been done and, therefore, taking into consideration all the aspects, it was considered that offence that was committed by petitioner is exceptional and heinous in nature. The offence was committed with a motive of money shower and for that purpose nine innocent persons were abducted under the pretext of said money shower i.e. they will get multiple money with the magical power of accused No.1 and those innocent persons used to come along with money, they were mercilessly killed. Therefore, the State Government has decided not to grant any benefit to petitioner as he has committed beastly, extremely brutal and barbaric act. Learned APP relies on the decision in **Rajan vs. The Home Secretary, Home Department of Tamil Nadu and others** [AIR 2019 SC 2101], wherein it is specifically observed that -

“As a matter of fact, it is well settled by now that grant or non-grant of remission is the prerogative to be exercised by the competent authority and it is not for the Court to supplant that procedure. Indeed, grant or premature release is not a matter of privilege but is the power coupled with duty conferred on the appropriate Government in terms of Sections 432 and 433 of the Code of Criminal Procedure to be exercised by the competent authority after taking into

account all the relevant factors, such as it would not undermine the nature of crime committee and the impact of the remission that may be the concern of the society as well as the concern of the State Government.”

No interference is required.

5 At the outset, we would like to consider the fact which we had already in fact considered in the earlier order in Criminal Writ Petition No.1346 of 2024 decided on 23.10.2024 that the opinion of the convicting Court was taken on 06.04.2015 and the impugned order was then passed on 28.02.2022 i.e. after about seven years after collecting the opinion. Now, almost the same mistake has been committed by the State Government, when this Court had quashed and set aside the earlier order. That means, everything ought to have been done a fresh and not only to the specific directions. In fact, the specific directions were go the convicting Court, especially in view of guidelines in **Laxman Naskar** (supra) and in **Ram Chander** (supra). This Court had directed that while making communication with the convicting Court, respondents should forward the details regarding various achievements of petitioner during incarceration in jail, report in respect of his good conduct together with special remissions those have been awarded to petitioner and also the chart regarding leave granted to petitioner and his reporting back to the jail whether in time or not, any offence

committed when he was granted parole or furlough leave. Thereafter, it was stated that the State should decide the application of petitioner afresh. Now, it appears that said directions in paragraph No.3 of operative order have been complied with, but fresh reports from the other authorities appears to have not been taken. Of course, the reports in addition would have been of the local Collector, Superintendent of Jail and Advisory Board. In the affidavit it is not stated that once again the matter was placed before the Advisory Board and opinion was sought. That means, now, for the order that has been passed on 06.03.2025 the report that appears to have been used of the Advisory Board was of the year 2015 or so. In the impugned order there is no reference to the opinion of Advisory Board. Now, it will be appropriate to ask the respondents to once again fill up the lacuna and, therefore, we would like to consider the merits and legal position in this respect.

6 We would like to consider the decision in **Bilkis Yakub Rasool vs. Union of India and others** [AIR 2024 SC 289]. In this case the earlier decisions of Hon'ble Supreme Court have been considered, wherein it is stated that guidelines under Section 432(2) of the Code of Criminal Procedure with regard to the opinion to be sought from the Presiding Judge of the Court which had convicted the applicant must be considered with mandatorily. While doing so it is necessary to follow the requirements of the

said Section which are highlighted by us viz. “(i) the opinion must state as to whether the application for remission should be granted or refused and for either of the said opinions, the reasons must be stated; (ii) the reasons must have a bearing on the facts and circumstances of the case; (iii) the opinion must be tandem with the record of the trial or of such record thereof as exists; (iv) the Presiding Judge of the Court before or by which the conviction was had or confirmed, must also forward along with the statement of such opinion granting or refusing remission, a certified copy of the record of the trial or of such record thereof as exists.” While considering an application for remission there cannot be any abuse of discretion and then the decision in **Laxman Naskar** (supra) has been relied. It is then stated that the Jail Advisory Committee which has to consider the application for remission may not have the District Judge as a Member inasmuch as the District Judge, being a Judicial Officer may coincidentally be the very Judge who may have to render an opinion independently in terms of sub-section (2) of Section 432 of the Code of Criminal Procedure. Thereafter, the Hon’ble Supreme Court in **In Re: Policy Strategy for Grant of Bail** [2025 INSC 239] insisted upon having a policy for the remission and it was specifically stated that *State must consider all eligible convicts for premature release under its policy without requiring an application, with reasonable conditions, and provide reasoned orders, ensuring fairness and transparency.* Thus, even

filing of an application for remission has been dispensed with and duty has been cast on the State Government to consider a case of all the convicts. Definitely, it is the prerogative of the State Government or appropriate Government to consider such benefit to be given to the convicts, but at the same time a balance act requires that the State Government should exercise its powers in reasonable manner. It cannot deny the benefit forever, that means, in infinity, but it can be considered periodically that is after once again evaluating the behaviour and other criteria in respect of a convict. We would also like to consider the decision of Hon'ble Supreme Court in **Om Prakash Shrivastava @ Babloo vs. Union of India and others** in Petition for Special Leave to Appeal (Cri.) No.6748 of 2024, decided on 08.01.2025, wherein after the petitioner had served over 28 years of incarceration though the Supreme Court did not find fault with the State Governments denial of release under Section 2 of Union Provinces Prisoners Release on Probation Act, 1938 which had more stringent provisions than Section 432 of the Code of Criminal Procedure or Section 473 of the Bharatiya Nagarik Suraksha Sanhita, 2023. It was observed that – *“Unless the State Government records a finding that it is satisfied from antecedents of a convict or his conduct in prison that he or she is likely to abstain from crime and lead a peaceful life if he is released from prison, the relief of release on remission cannot be granted.”* The State Government was directed to consider the case of

petitioner for grant of remission under sub Section (1) of Section 473 of the B.N.S.S. We are of the opinion that instead of debarring the petitioner from getting benefit altogether we grant liberty to petitioner to make such application or State may consider the case of petitioner for grant of benefit under Section 432 of the Code of Criminal Procedure, if he would then still be fulfilling the criterion after a period of five years. At that time the State Government will have to follow the entire procedure afresh, which it has not done. Now, in one stretch i.e. the reports have been sought in piecemeal and after a gap of 5 – 7 years. Of course, upon consideration of all the material, the State would be at liberty to take its own decision on merits.

7 With these observations, the writ petition stands dismissed.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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