



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

CRIMINAL WRIT PETITION NO. 813 OF 2025

PETITIONER : Shri Ajay S/o. Khuman Chichkhede,
Aged about 37 Years, Occupation : Nil
[Convict No.C-11833], at present in
Central Prison, Nagpur, District
Nagpur.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, through its
Secretary, Home Department,
Mantralaya, Mumbai – 400032.

2. Dy. Director General of Police, Prison &
Reformation, Maharashtra State,
Pune-1.

3. Divisional Commissioner, Nagpur
Division, Nagpur, Tahsil and District
Nagpur.

4. Superintendent of Jail, Central Prison,
Nagpur, Tahsil and District Nagpur.

Mr. Raju L. Kadu, Advocate for the Petitioner.
Mr. S.A. Ashirgade, APP for the Respondents/State.

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.

DATED : 10th NOVEMBER, 2025.

ORAL JUDGMENT :- (PER : ANIL L. PANSARE, J.)

Issue Rule returnable forthwith. The learned APP waives service of Rule on behalf of the respondents. With consent of learned counsel for the parties, the petition is taken up for final hearing.

2. The petitioner seeks the benefit of the Government Resolution dated 13th March, 2024, by which the State Government has decided to extend the benefit of remission of a certain period to the convicts in view of the Diamond Jubilee of Indian Independence.

3. The benefit has been refused because the petitioner was not a convict but was an undertrial prisoner on 13th March, 2024. He has been ultimately convicted *vide* judgment and order dated 24th December, 2024 in MCOC Case Nos.11/2008 and 28/2021. The conviction is for the offences punishable under Sections 307, 364 and 387 read with Section 34 of the Indian Penal Code, 1860 (for short, "IPC"). The petitioner has been acquitted of the offences punishable under Sections 364(A) and 324 read with Section 34 of the IPC. He has been acquitted of the offence punishable under Section 4 read with Section 25 of the Indian Arms Act, 1959. He has been acquitted of the offence punishable under Section 135 of the Maharashtra Police Act, 1951. He has been also acquitted of the offences punishable under the provisions of the Maharashtra Control of Organised Crime Act, 1999.

4. That being so, the counsel for the petitioner submits that the benefit of the Government Resolution cannot be denied merely because the petitioner was not a convict on a particular date i.e. 13th March, 2024. He submits that it is nobody's case that the petitioner is responsible for the delay in trial. Thus, according to him, the petitioner is entitled for the benefit.

5. Learned APP submits that the Government Resolution is meant for those who were convicts and were undergoing

imprisonment on that date. According to him, there is nothing in the Government Resolution that would enable the petitioner to get the benefit of the Government Resolution, he being an undertrial prisoner and not a convict at the relevant time.

6. The counsel for the petitioner has relied upon the judgment of the Division Bench of this Court in the case of ***Chottu Ratanlal Punekar Vs. State of Maharashtra [2008 ALL MR (Cri) 2219]***, where, in an identical situation, this Court held as under:

4. The grievance of the petitioner is that benefit of the said State remission is not extended to him though he is entitled for it. It was urged on behalf of the respondent/State that State remission can be extended only to those persons who were convicts on 15-8-1997 and it cannot be extended to those who were not convicts on that date. Since the petitioner was not a convict on 15-8-1997 and was merely an undertrial, he is not entitled to get benefit of the State remission. The logic, according to the learned APP is that had the petitioner been acquitted, there was no question of giving him benefit of the State remission.

5. The logic in the submissions of learned APP is difficult to accept. The fortuitous circumstance of one Court deciding a comparatively new matter before 15-8-1997 and the another Court deciding a very old matter thereafter cannot be permitted to be utilized to distinguish between convicts/prisoners for the purposes of extension of said benefit. Section 432 of Cr.P.C. empowers the State Government to pass appropriate orders and to remit sentences. In view of Golden Jubilee of Indian Independence, the decision dated 6-8-1997 has been taken. The decision is made operative from 15-8-1997.

Thus the above referred fortuitous circumstances is totally irrelevant and if any classification is permitted on the basis of such circumstance, it would be wholly arbitrary. For an undertrial prisoner languishing in jail, after he is found guilty and is sentenced, section 428 of Cr.P.C. permits set off of the period spent by him as undertrial prisoner against the period of sentence ultimately imposed. Thus for all practical purposes after he is found guilty and sentenced, he becomes convict and as such is covered by the policy decision dated 6-8-1997 mentioned above. The effort to contend that the period spent in jail as undertrial prisoner is wholly irrelevant for the purposes of the said circular, is without any basis and in fact it violates the spirit of said decision. An undertrial prisoner who is ultimately acquitted is not a convict at all and hence he is not entitled to benefit of remission."

7. As could be seen, the situation before the Division Bench was identical. The petitioner therein was also an undertrial prisoner. The Division Bench took note of the fact that it is not in the hands of a person like the petitioner to get decision before a particular date. The Division Bench had also taken cognizance of Section 428 of the Code of Criminal Procedure, 1973, which permits set off of the period spent by the undertrial prisoners. Accordingly, the Court held that the undertrial prisoner, who is ultimately convicted, will be covered by the policy decision.

8. Similar is the status of the present petitioner. In view thereof, and for the reasons stated in the case of **Chottu Ratanlal Punekar** (supra), we are inclined to grant relief to the petitioner. We accordingly hold that the petitioner is entitled for benefits of the Government Resolution dated 13th March, 2024, and direct the respondents to extend the same to him.

9. Rule is made absolute in above terms.

(RAJ D. WAKODE, J.)

(ANIL L PANSARE, J.)

Vijaykumar