

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 4573 of 2019**

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RADHESHYAM BHAGWANDAS SHAH

Versus

STATE OF GUJARAT & 3 other(s)

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Appearance:

HCLS COMMITTEE(4998) for the Applicant(s) No. 1

MR PRATIK B BAROT(3711) for the Applicant(s) No. 1

MR LR PUJARI APP for the Respondent(s) No. 1

RULE SERVED(64) for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MR.JUSTICE G.R.UDHWANI**Date : 17/07/2019****ORAL ORDER**

1. The grievance of the prisoner in this petition is as regard non-consideration of his case under Section 433 – 433A of the Criminal Procedure Code, 1973 (for short 'Cr.P.C. '); despite his having undergone the sentence of about 14 years 05 months and 06 days as on date of the jail remarks against the main sentence of life imprisonment for sections 302, 143, 147, 148 read with Section 149 and 376 of the Indian Penal Code, 1908 (for short 'IPC'). It is his case that his application is not even being forwarded to the competent authority for consideration under the provisions of Section 433/433-A of Cr.P.C.(supra) on the ground that he is not entitled to the remission.

2. On consideration of the rival submissions, it transpires that the prisoner having been concededly tried in the State of Maharashtra, the Appropriate Government for the purpose of

Sections 432 and 433 of 'Cr.P.C.' would be State of Maharashtra (Section 432 (7)). This aspect fell for consideration with the Apex Court in the case of Union of India vs. V. Sriharan alias Murugan and others [(2016) 7 SCC 1] where in para:212 it was held thus:

“**212.** As regards definition of appropriate Government, Section 432(7) CrPC adopts a slightly different approach. It defines Central Government to be the appropriate Government in cases where the sentence is for an offence against any law relating to a matter to which the Executive Power of the Union extends. In that sense it goes by the same principle as in Article 73 of the Constitution and Section 55-A IPC. The residuary area is then left for the State Government and it further states that in cases other than those where the Central Government is an appropriate Government, the Government of the State within which the offender is sentenced shall be the appropriate Government. In other words, it carries the same essence and is not in any way different from the principle in Article 73 read with Article 162 on one hand and Section 55-A IPC on the other. The specification as to the State where the offender is sentenced serves an entirely different purpose and helps in finding amongst more than one State Government which is the appropriate Government as found in *State of M.P. v. Ratan Singh*, *State of M.P. v. Ajit Singh*, *Hanumant Dass v. Vinay Kumar* and *State of A.P. v. M.T.Khan*. According to this provision, even if an offence is committed in State A but if the trial takes place and the sentence is passed in State B, it is the latter State which shall be the appropriate Government.”

3. This Court therefore would not address the merits of the case and would relegate the petitioner to pursue the remedy with the State of Maharashtra.

4. Learned Additional Public Prosecutor states that in continuation of the application already made by the prisoner with

this Court in the present case, statement of the prisoner would be recorded within three weeks henceforth and if he desires to pursue the case with the State of Maharashtra, his application shall be forwarded to the State of Maharashtra along with this order as expeditiously as possible preferably within a period of two weeks from the date of statement of prisoner.

5. Copy of this order shall be made available to learned Additional Public Prosecutor.

6. The petition is accordingly disposed of.

MISHRA AMIT V.

(G.R.UDHWANI, J)

