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

CRIMINAL WRIT PETITION No. 155 OF 2023.

Arun Gulab Gawli,
Aged 71 years, resident of
Geetai Cooperative Housing Society,
3rd Floor, Bapurao Jagtap Marg,
Byculla, Mumbai – 400 011.
Presently lodged in Nagpur Central
Prison, Nagpur as a Prisioner convicted
under the provisions of the Mahashtra
Control of Organized Crime Act, 1999. ... PETITIONER.

VERSUS

1.The State of Maharashtra,
through Deputy Inspector
General Prison (East),
Nagpur.

2.The Advisory Board,
Nagpur Central Prison constituted
under Rule 3 of the Maharashtra
Prisons (Review of Sentence) Rules,
or other applicable provisions of law
having its office at Nagpur Central
Prison, Nagpur.

3.The Secretary to the Government
of Maharashtra, Home Department,
Mantralaya, Madam Cama Marg,

Hutatma Rajguru Chowk,
2nd Floor, Main Building,
Mumbai – 400032.

4.The Dy. Secretary to the Government
Home Department, Mantralaya,
Madam Cama Marg,
Hutatma Rajguru Chowk,
2nd Floor, Main Building,
Mumbai – 400032.

5.The Addl.Director General of
Police and Inspector General of
Prisons, Maharashtra, having
office at Central Building, Agarkar
Nagar, Pune 411 001.

6.The Superintendent of Central Prison,
Having office at Nagpur Central
Prison, Wardha Road, Ajani Chowk,
Dhantoli, Nagpur 440012.

7.The Commissioner of Police,
Nagpur, CBI Colony, Sadar,
Nagpur 440001. ... **RESPONDENTS.**

Mr. M.N. Ali, Advocate for the Petitioner.
Mr. M.J. Khan, Addl.P.P. for Respondents.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

CLOSED FOR JUDGMENT ON : MARCH 05, 2024.
JUDGMENT PRONOUNCED ON : APRIL 05, 2024.

JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule is made returnable forthwith and by consent of the learned Counsel for the parties, the Writ Petition is taken up for final disposal.

2. By this petition the petitioner, who has been convicted under the provisions of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as "the MCOC Act" for short), is seeking his premature release on account of the remission policy dated 10th January, 2006, which was prevailing on the date of his conviction dated 31.08.2012. The petitioner claims to have been complied with all the conditions of the policy of the year 2006, and thus, the rejection by the respondent Authorities is unjust, arbitrary and is liable to be set aside.

3. The petitioner has been convicted for the offences under the provision of the MCOC Act, vide judgment and order dated 31.08.2012. By the time the petitioner has served actual

imprisonment for 14 years. The petitioner has completed 65 years of age and he has been certified as weak by the Medical Board making him eligible for availing the benefit of the policy of the year 2006.

4. The State is empowered to frame policy for premature release. In terms of Section 59 of the Prisons Act, 1894 time to time different policies for early release have been framed. Initially the State Government vide notification dated 31.12.1999 framed a Special Remission Policy, particularly for a class of prisoners who have completed 65 years of age; weak and had undergone 14 yeas of actual imprisonment. Later on the said policy was revised vide notification dated 10.01.2006, which was prevailing on the date of conviction of the petitioner. The said policy similarly provides for early release for those life convicts who have undergone 14 years of actual imprisonment; completed 65 years of age and were physically weak. However, the policy has some inbuilt exceptions stating that the policy would not apply to the convicts of specific enactments stated therein.

5. Vide notification dated 01.12.2015, Rule 6 of the

Maharashtra Prisons [Review of Sentences] Rules, 1972 has been modified with addition of sub-clause [3] and [4] below sub-clause [2] of Rule 6. It has excluded applicability of the policy to the convicts under certain Acts including convicts under MCOC Act. The petitioner being a convict under MCOC Act, his urge for premature release was rejected in terms of the policy of the year 2015, which is subject matter of challenge.

6. At the inception, it necessitates us to make brief reference of few admitted facts. The petitioner was convicted under different provisions of the MCOC Act, vide judgment and order dated 31.08.2012. The details of his conviction are set out in tabulator form hereinbelow.

Sr. No.	Under Sections	Punishment	Penalty	Remarks
1.	3[4] MCOC Act, 1999.	R.I. for 10 years.	Rs.5 Lakhs and in default to pay, suffer 3 years imprisonment.	The substantive sentences shall run concurrently.

2.	3[1][ii] MCOC Act, 1999.	R.I. for 10 years.	Rs.5 Lakhs and in default to pay, suffer 3 years imprisonment.	-”-
3.	3[2] MCOC Act, 1999.	R.I. for life imprisonment.	Rs.7 Lakhs and in default to pay, suffer 3 years imprisonment.	-”-
4.	3[1] [I] MCOC Act, 1999.	R.I. for life imprisonment.	Rs.1 Lakh and in default to pay, suffer 3 years imprisonment.	-”-

7. The petitioner has completed 65 years of age, as well as undergone actual imprisonment for 14 years. Moreover, it is not in dispute that the Medical Board has certified that the petitioner is above 65 years of age and physically weak. The case of petitioner was referred to the Advisory Board for according benefit of premature release policy. The Advisory Board in its meeting dated 11.11.2022, took a decision that the petitioner is not entitled for early release in terms of the modified Rules of the year 2015 being a convict under MCOC Act. The Advisory Board concluded that the

convicts under MCOC Act have been kept away from the benefits of the policy in terms of Rule 6[b][iv] of the 2015 policy. The State in its reply-affidavit has equally stated that the petitioner's case was considered in terms of the notification dated 01.12.2015, however, the same excludes the convict under MCOC Act, and therefore, the petitioner is not entitled for premature release.

8. The learned Addl.P.P. relying on the decision of Supreme Court in case of **Laxman Naskar .vrs. Union of India and others – [2000] 2 SCC 595**, would contend that the convict has no right to claim remission, but, has limited right to have his case put up before the authority for consideration. The learned Addl.P.P. has also relied on the decision of Supreme Court in case of **State of Haryana and others .vrs. Jagdish – [2010] 4 SCC 216**, to contend that right of the convict is limited to the extent that his case is tobe considered in accordance with the relevant Rules, but, he cannot claim premature release as a matter of right. Certainly, a prisoner cannot claim premature release as of right, however, he can claim applicability of the policy and Rules consistently without discrimination.

9. The learned Counsel appearing on behalf of the petitioner would submit that on the date of conviction i.e. 31.08.2012, the policy of the year 2006 was prevailing and thus, the case of the petitioner would squarely govern by the said policy. In other words, it is petitioner's contention that the policy which is more liberal and beneficial to the convict, shall apply. For the said purpose, he has relied on the decision of Supreme Court in case of Jagdish [supra], which has clarified that the policy which was existing on the date of conviction would apply and if the subsequent policy is more beneficial, then the later would apply.

10. The petitioner has also relied on the decision of this Court in case of **Sahebrao Kaluram Bhintade .vrs. The State of Maharashtra and another – Writ Petition No.1040/2022 decided on 21.03.2023 (Bom),** wherein the same issue fell for consideration of this Court. Relying on the above decision of Jagdish, this Court has extended the benefit of the policy of the year 2006 to the then convict. Incidentally the said petitioner Sahebrao was convict under the

MCOC Act, along with the present petitioner in the same case. He has similarly claimed benefit of the policy of the year 2006. The State similarly resisted by relying on the policy of the year 2015 in the manner stated above. This Court in case of Sahebrao [supra], has specifically ruled that the policy of 2006 was existing on the date of his conviction which was beneficial to the petitioner, and therefore, the petitioner's case has to be considered as per the said beneficial policy of the year 2006, and not as per the subsequent policy of the year 2015.

11. Though the learned Addl.P.P. made a faint attempt to state that the policy which was existing on the date of consideration of petitioner's case would apply, however, the said submission was without any justification. Rather the said submission is against the decision of Supreme Court in case of Jagdish [supra], and therefore, it requires no consideration. Facing such a difficulty, the learned Addl.P.P. left the above submission in midway and tried to justify the rejection by canvassing one more ground.

12. The learned Addl.P.P. would submit that even if it is assumed that the policy of the year 2006 would apply to the case of petitioner, still the convict under MCOC Act are not eligible, therefore, the petition is liable to be dismissed. He would submit that the policy of the year 2006 excludes its applicability to the convicts under MPDA, TADA, NDPS etc. According to him the word 'etc' would cover the convicts of MCOC Act also. He would submit that the provisions of law and the contents of the policy are to be construed by keeping in mind the colour and context of the policy. The policy makers have excluded its applicability from the stringent statutes, thus, MCOC Act being a similar statute, by applying rule of *ejusdem generis*, it would also fall in excluded category in terms of Clause 3 of the policy dated 10.01.2006.

13. We must note that neither this was the reason assigned by the Advisory Board while rejecting the case of the petitioner, nor the State in its reply-affidavit has canvassed the said ground. Whatever resistance was only on account of applicability of the new policy of the year 2015. As the said submission was against the law declared

by the Supreme Court, the learned Addl.P.P. took a twist by arguing this additional ground which was not raised earlier. Law in this regard is fairly well settled by the Supreme Court in case of **Mohinder Singh Gill .vrs. The Chief Election Commissioner and others – AIR 1978 SC 851,** wherein it is observed that "when the statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise." However, to complete the said point in all respect, we undertake to deal with the said submission.

14. This takes us to consider the core issue which is about interpretation of the remission policy dated 10.01.2006. We may reiterate that there is no dispute that the petitioner is a life convict, undergone 14 years of actual imprisonment, completed 65 years of age and Medical Board declared him to be weak. The only question remains is - whether the petitioner being a convict under MCOC Act, is liable to be excluded in terms of Clause [3] of the policy. For the sake of convenience we have extracted the relevant portion of the

policy dated 10.01.2006, as under :

"65 वर्षावरील वयस्कर व अशक्त पुरूष बंद्याना तसेच
60 वर्षावरील अशक्त महिला बंद्याना मुक्त करण्याबाबत

महाराष्ट शासन
गृह विभाग

शासन निर्णय कमांक – एमआयएस 4505/5/529/पीआरएस–3
मंत्रालय, मुंबई 400 032, दिनांक – 10 जानेवारी, 2006

संदर्भ – 1) एमआयएस 4599/5/276/पीआरएस–3, मंत्रालय, मुंबई 400 032, दिनांक – 31/12/1999.
2) आरएलपी 1005/प्रक.–82/पीआरएस–3, मंत्रालय, मुंबई 400 032, दिनांक – 21/03/2005.

शासन निर्णय – उपरोक्त संदर्भाधिन अ.क.1 येथील शासन निर्णयानुसार राज्यातील विविध कारागृहात बंदी असलेल्या 65 वर्षावरील वयस्कर व अशक्त बंद्याच्या मुदतपूर्व मुक्ततेबाबत आदेश निर्गमित करण्यात आलेले आहेत.

सदर आदेशातील सवलत पुढील अटींच्या अधीन राहून देण्यात यावी–

1) जन्मठेपेची शिक्षा झालेल्या 65 वर्षावरील वयस्कर व अशक्त बंद्याना निव्वळ 14 वर्ष शिक्षा भोगणे आवश्यक राहील.

2) इतर शिक्षा झालेल्या 65 वर्षावरील वयस्कर व अशक्त बंद्याना (एमपीडीए, टाडा, एनडीपीएस आणि केंद्र शासनाच्या सीानबध्दतेच्या कायद्यानुसार शिक्षा झालेल्या बंद्याना वगळुन) मा. न्यायालयाने दिलेल्या शिक्षेपैकी अर्धी शिक्षा किंवा किमान तीन वर्षे यापैकी जो कालावधी अधिक असेल तेवढया कालावधीची शिक्षा भोगणे आवश्यक राहील.

3) सदर शासन निर्णयातील सवलत खालील प्रवर्गातील बंद्याना लागु राहणार नाही –
अ) जन्मठेपेच शिक्षा भोगत असलेल्या ज्या बंद्यानी निव्वळ चौदा

वर्ष शिक्षा भोगलेली नाही असे बंदी.

ब) <u>एमपीडीए, टाडा, एनडीपीएस इत्यादी</u> तसेच केंद्र शासनाच्या अखत्यारीतील सीानबध्दतेच्या कायद्यानुसार शिक्षा झालेलेबंदी.

क) 3 वर्षापर्यंत शिक्षा झालेले बंदी."

.....

(Emphasis supplied)

Clause (1) of the policy relates to the life convicts which is relevant for our purpose. Clause [2] relates to the other convicts whilst clause [3] serves as a proviso to the above two clauses. Sub-clause [b] to Clause [3] excludes the applicability of the policy to the convicts under MPDA, TADA, NDPS etc. The main thrust of the learned Addl.P.P. is that the term 'etc' covers the convicts of MCOC Act, as it is also a stringent statute like MPDA, TADA, NDPS. The learned Addl.P.P. by relying on the decision of Supreme Court in case of **Hindustan Liver Ltd. .vrs. Ashok Vishnu Kate – 1995 AIR SCW 4065**, would submit that while construing the provisions, liberal construction must be avoided and the construction is to be made with the colour, the contents and the context of the statute. A purposive construction of an enactment has to be made. The learned Addl.P.P. has relied on the decision of Supreme Court in case of

Lokmat Newspapers Pvt. Ltd. .vrs. Shankarprasad – [1999] 6 SCC 275, to contend that the term 'etc' has to be interpreted by invoking the rule of *ejusdem generis*. On the same line, he has also relied on the decisions of Supreme Court in case of (1) **S. Gopal Reddy .vrs. State of A.P. - AIR 1996 SC 2184** and (2) **Amar Chandra Chakraborty .vrs. The Collector of Excise and others – [1972] 2 SCC 442**.

15. On the other hand the learned defence counsel would submit that by applying the rule of *ejusdem generis*, the convicts of MCOC Act cannot be denied the benefit. According to him, the provisions of law, rules and scheme framed under the Rules, must be construed by applying the rule of beneficial construction. Thus, the short controversy remains that whether by applying the rule of *ejusdem generis*, the convicts of MCOC Act can also be excluded under Clause [3][b] of the policy.

16. In order to understand the rule of *ejusdem* generis, initially we may refer to the decision of Supreme Court in case of **Parakh Foods Limited .vrs. State of Andhra Pradesh and another –**

[2008] 4 SCC 584, in particular paragraph no.9, portion of which reads as under :

> "9. ….*For the purpose of interpretation of this rule the principle of ejusdem generis can be applied; ejusdem generis is a Latin expression which means 'of the same kind", for example where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. In other words, it means words of similar class. According to Black's Law Dictionary [8th Edn., 2004], the principle of ejusdem generis is where general words follow an enumeration of persons of things, by words of a particular and specific meaning, such general words are no to be construed in their widest extent, but, are to be held as applying only to persons or things of the same kind or class as those specifically mentioned. It is a canon of statutory construction that where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of same general class as those enumerated." (Emphasis supplied)*

17. We may also refer to the decision of Supreme Court in case of **Jage Ram and others .vrs. State of Haryana and others – 1971 [1] SCC 671**, wherein in paragraph no.13 it has been observed

as under :

> "13. *The ejusdem generis rule is not a rule of law but is merely a rule of construction to aid the courts to find out the true intention of the Legislature. If a given provision is plain and unambiguous and the legislative intent it clear, there is no occasion to call into aid that rule. Ejusdem generis rule is explained in Halsbury Laws of England [3rd Edn.] Vol.36, p.397, paragraph 599 thus :*
>
> > *"As a rule, where in a statute there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified, although this, as a rule of construction, must be applied with caution, and subject to the primary rule that statutes are to be construed in accordance with the intention of Parliament. For the ejusdem rule to apply, the specific words must constitute a category, class or genus; if they do constitute such a category, class or genus fall within the general words…."*

18. In case of **Grassim Industries Ltd .vrs. Collector of Customs, Bombay – [2002] 4 SCC 297**, the Supreme Court in paragraph no.12 has made the following observations :

> "12. ….*The following enunciation in craies on Statute Law [7th Edn.], at pp.181-82succinctly states that principle :*

> *"The modern tendency of the law, it was said [by Asquith, J in Allen v. Emmerson – 1944 KB 362], is 'to attenuate the application of rule of ejusdem generis'. To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to <u>something which can be called a class or kind of objects</u>. Where this is lacking, the rule cannot apply, [Hood-Barrs v. IRC – (1946) 2 All ER 768], but the mention of single species does not constitute a genus. [Per Lord Thankerton in United Tows Electric Co. Ltd. v. Attorney General for Newfoundland – (1939) 1 All ER 423 (PC)] 'Unless you can find a catewgory', said Farwell, L.J., [in Tillmanns and Co. v. S.S. Knutsford – (1908) 2 KB 385], 'there is no room for the application of the ejusdem generis doctrine', and where the words are clearly wide in their meaning they ought not to be qualifed on the ground of their association with other words." (Emphasis supplied)*

19. The rule of *ejusdem generis* strives to reconcile incompatibility between specific and general words. This doctrine would apply to a particular class of category. It would apply when

particular words pertaining to a class or category or genus are followed by general words. The general words are construed as limited to the things of same kind and thus specified. In order to invoke the rule of *ejusdem generis,* there shall be a common thread in between the words which are tried to be inserted by use of rule of *ejusdem generis.* This Rule is applicable when particular words pertaining to a clause, category or genus are followed by general words. In such a situation, the general words are construed as limited to things of same kind as those specified.

20. Clause 3[b] of the notification excludes its applicability to the convicts of MPDA, TADA, NDPS. Undeniably, the field of each statute is quite distinct. MPDA deals to protect the innocent depositors, TADA tackles the act of terrorism, whilst NDPS deals to curb the menace of narcotics. We do not find any common thread or similarity in these enactments. Pertinent to note that MCOC Act is a local statute which aims to curb the organized crime, which is also distinct than above three statutes. The learned Addl.P.P. besides referring rule of *ejusdem generis*, has not argued about the similarity

or common thread in these statutes. We do not find any similarity in all these statues, nor they can be termed as belonging to one class to invoke the rule of *ejusdem generis.*

21. Pertinent to note the MCOC Act came into the statute books in the year 1999, meaning thereby, when the remission policy dated 10.01.2006 was framed, the framers were well aware about the existence of MCOC Act, still it was not included in the excluded category. Therefore, it can be logically inferred that MCOC Act was intentional exclusion from clause 3[b] of the policy. There was no difficulty for the framers to add one more statute namely MCOC Act in sub-clause [b], but, they did not. Thus, by putting a general term 'etc', a subject which has a different flavor and field of working cannot be inserted by invoking the rule of *ejusdem generis.* Moreover, the revised policy dated 01.12.2015 has specifically excluded the convicts of MCOC Act from the applicability of the policy. Thus, it is apparent that for the first time in the year 2015, the framers thought it fit to exclude MCOC Act, and therefore, it cannot be said that in the year 2006, the framers also intended to

exclude MCOC Act by putting a general phrase as 'etc'. In the circumstances, we are not inclined to accept the above argument which was built at the time of final submissions without any foundation.

22. One another argument has been advanced by the learned Addl.P.P. contained in the revised guidelines dated 18.03.2010 for premature release contemplates that there shall be no premature release of a convict of Organized Crime unless he undergoes 40 years of actual imprisonment. On that basis it is argued that the petitioner being a convict for the offence of Organized Crime, he is also not entitled for premature release as per those revised guidelines. The said submission is totally misconceived. We may reiterate that neither this was the ground taken for rejection, nor raised in the affidavit-in-reply. It is apparent that the learned Addl.P.P. has argued the matter by picking up whatever grounds he pleases without any foundation. The revised guidelines dated 15.03.2010, are general guidelines made applicable to all kind of prisoners, however, the premature release policy of the year 1999

and 2006 have specifically created a separate class of prisoners who have completed 65 years of age and are sick or infirm. Thus the policy of the year 2006 being specifically framed for the benefit of the prisoners of advanced age and weak physical condition, the above guidelines would not apply at all.

23. In view of above discussion, we hold that the petitioner is entitled to the benefits flowing from the remission policy dated 10.01.2006, which was prevailing on the date of his conviction. We also hold that by applying the rule of *ejusdem generis*, convicts of MCOC Act cannot be excluded from availing the benefits of the said policy. Writ Petition is accordingly allowed.

24. The respondent Authority is directed to pass consequential order in that regard within a period of four weeks from the date of uploading of the order.

25. Rule is made absolute in aforesaid terms.

JUDGE **JUDGE**

Rgd.