IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2355 OF 2023

Shrikant s/o Paragonda Basargi (C-10007),
Age : 48 years, Occ: Convict,
R/o Asangi Turk, Tal.Jath, Dist.Sangli.
(Undergoing his sentence at Nasik Road Central Jail) ...Petitioner.

V/s.

1. State of Maharashtra,
   Through Superintendent of Jail,
   Nasik Road Central Jail.

2. Secretary,
   Home Department (Prison),
   Mantralaya, Mumbai-400005. ...Respondents.

Mr. Rupesh A. Jaiswal for the Petitioner.
Mr. S.S. Hulke, APP for the Respondent-State.

CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.

Reserved on : 29th September, 2023.
Pronounced on : 9th October, 2023.

JUDGMENT : (Per : SHARMILA U. DESHMUKH, J.):

1. Heard.

2. Rule. Rule made returnable forthwith with the consent of the learned counsel for the parties is taken up for final disposal. Learned APP waives notice on behalf of the Respondent-State.

3. By this Petition, the Petitioner seeks quashing of the Order dated 14th July, 2020 passed by the Respondent No.2-Secretary, Home

Department (Prison), placing the Petitioner in category 3(d) of Guidelines dated 11th May, 1992 and category 4(e) of the Guidelines dated 15th March, 2010 issued by the State Government for premature release under the "14 Year Rule" of prisoners serving life sentence.

4. Mr. Jaiswal, learned Advocate appearing for the Petitioner submits that, the incident in-question had taken place on account of the land dispute between the accused and the deceased. He would submit that, the Petitioner has been erroneously placed in category 3(d) of the Guidelines of the year 1992 and 4(e) of the Guidelines of the year 2010. He submits that, as the incident arose out of land dispute, the Petitioner ought to be placed in category 3(b). Placing reliance on the decision of the Apex Court in the case of *State of Haryana vs. Jagdish,* reported in *(2010) 4 SCC 216,* he submits that, the provision which is beneficial to the Petitioner is required to be applied.

5. On behalf of the Respondent, State Mr. Umaji T. Pawar, the Deputy Inspector General of Prison, Central Region, Aurangabad has filed an Affidavit dated 8th August, 2023. It is stated that, the proposal of premature release of the Petitioner was submitted by Superintendent, Nashik Road Central Prison, Nashik opining that the case of the Petitioner falls under the category 2(c) of the Guidelines of

2010. It is further stated that, an adverse police report has been received from Superintendent of Police, Sangli and District Magistrate, Sangli. It is stated that, in the opinion of the Sessions Court, Sangli, the Petitioner cannot be 'prematurely released' since the offence has been committed due to land dispute and the victim's were murdered after confining them in their house. It is further stated that, the Advisory Committee has recommended category 2(c) of the Guidelines of 15th March, 2010 viz. imprisonment of 26 years. It is further stated that, the proposal was submitted before the State Government and considering the case of the Petitioner, he had been placed in category 3(d) of Guidelines dated 11th May, 1992 and category 4(e) of Guidelines dated 15th March, 2010 and as such, the Petitioner has to undergo imprisonment of 26 years.

6. Drawing the attention of this Court to the judgment of the Sessions Court in Sessions Case No.107 of 2004 and 176 of 2004, Mr.Hulke, learned APP submitted that, the incident had taken place, as on the day of the incident, the accused No.38 brought her cattle to the disputed land and therefore, quarrel took place between accused No.38 and one of the deceased, in which the deceased has assaulted the accused No.38. He would submit that, in the incident five persons were assaulted and were pushed in the house and the house was set

ablaze by the accused. He submits that, considering the incident in-question the case is one of the exceptional violence and as such, the Petitioner has rightly been categorized as 4(e) of the Guidelines of the year 2010.

7. We have perused the judgment dated 9th May, 2005 passed in Sessions Case No.107 of 2004 and Sessions Case No.176 of 2004 as also the judgment dated 7th October, 2016 passed in Criminal Appeal by this Court arising out of the Judgment of the Sessions Court. Vide the judgment dated 9th May, 2005 passed by the Sessions Court, the Petitioner has been convicted and sentenced to suffer rigorous imprisonment for life.

8. The case of the prosecution as set out in the judgment of Sessions Court is that in the year 1972, the first-informant and the deceased had purchased the agricultural land and the accused No.8 was claiming right over the land purchased by the deceased. As such, there was dispute between the Accused No.8 on one hand and the deceased on the other. The Sessions Court has considered the evidence of PW-17-Jagannath Chavan, the son of the deceased that there was a dispute on account of '*bandh'* situated in between two lands. That his father tried to get the land measured, however, accused No.8 and his family members restrained his father from taking survey of the lands.

As result of which, his father had lodged the FIR against the accused No.8 and his sons. The Sessions Court has arrived at a finding that because of land dispute, there was strained relations between the complainant and the Mahadeo Chavan and his family on one hand and the accused on the other.

9. In Appeal, this Court has upheld the findings of Sessions Court and considered the evidence of PW-3 that the dispute was in respect of strip of land between the property purchased by him and the deceased. This Court has observed in Paragraph No.66 that, the incident in-question was preceded by an assault on accused No.38 by one of the deceased and that the previsions enmity coupled with the incident of assault on accused No.38 was the motive behind the incident in-question.

10. As such, it can be inferred that, the incident has occurred due to land dispute. The finding of the Sessions Court which has been upheld by this Court clearly shows the incident in-question has occurred on account of dispute arising out of landed property.

11. The Superintendent of Police, Sangli has given an adverse police report, on the ground that, the complainant and the witnesses are under an apprehension that if the Petitioner is released prematurely, there would be danger to their life. It needs to be noted

that, the Superintendent of Police, Sangli has observed that, the Petitioner had been released on parole/furlough leave while undergoing the sentence and that there is no untoward incident which has been recorded. The Sessions Court by its opinion dated 16th March, 2017 has not recommended the premature release for the reason that out of the land dispute the Petitioner has committed the murder of the deceased. The Advisory Committee has recommended the case of the Petitioner as category 2(c) of the Guidelines of 15th March, 2010 and by the impugned Order, the State Government has categorized the Petitioner under 3(d) of the Guidelines of 11th May, 1992 and category 4(e) of the Guideline dated 15th March, 2010. The sum and substance of the case of the State as indicated above is that, the Petitioner is required to undergo the sentence of 26 years.

12. In exercise of the powers under Section 432 of the Code of Criminal Procedure, 1973, guidelines have been issued by the Central Government for 'premature release' of the prisoners undergoing life sentences. The Petitioner has been convicted by the Sessions Court vide Judgment dated 9th May, 2005 and as such, the guidelines of the year 1992 and 2010 are applicable to the present case.

13. Considering the decision of the Apex Court in the case of *State of Haryana vs. Jagdish* (supra), the guidelines of 2010 are

beneficial to the Petitioner and as such, the same are considered. For brevity the relevant categorization under 2010 guidelines are reproduced herein below:

"Category No.	Sub Category	Categorization of Crime	Period of imprisonment to be undergone including remission subject to minimum of 14 years of actual imprisonment including set off period.
3.		**MURDERS ARISING OUT OF LAND DISPUTE, FAMILY FEUDS, FAMILY PRESTIGE AND SUPERSTITION.**	
	(a)	If the offence is committed in individual capacity and without premeditation.	20
	(b)	Crime committed as above with premeditation, either individually or by a gang.	22
4.		**MURDERS FOR OTHER REASONS.**	
	(a)	Where a murder is committed without premeditation in an individual capacity and the person has no previous criminal history.	20
	(b)	Murder committed with premeditation, or a person having criminal history.	22
	(c)	Murder resulting from trade union activities and business rivalry.	22
	(d)	Murder committed by more than one person/group of persons.	24

"Category No.	Sub Category	Categorization of Crime	Period of imprisonment to be undergone including remission subject to minimum of 14 years of actual imprisonment including set off period.
	(e)	Murder committed with exceptional violence/brutality/kidnapping. Murder committed by dacoits and robbers in the act of committing dacoities and robberies. Murder committed by bootleggers, gamblers, flesh traders etc."	26

14. The category 4(e) is under the heading "murder for the other reasons". It is true that the murders in the present case have been committed with exceptional violence. However, murders arising out of land dispute are categorized under Guideline 3. As held by the Co-ordinate Bench of this Court in case of *Uday s/o Dhaku Sutar V/s. The State of Maharashtra & Anr.* passed in Criminal Writ Petition No.4544 of 2021, the principle of giving benefit to the convict of beneficial policy certainly applies to two different policies/guidelines but the same will also apply to the categories in the same/policy/guidelines, if case falls under both the categories. As such even if it is assumed that category 3 and 4 of 2010 guidelines applies,

category 3(b) being beneficial to the convict will apply.

15. In our opinion, considering the Judgment of the Sessions Court as well as the Judgment of this Court as the incident in-question has occurred due to a longstanding land dispute, the present case is covered by the category 3(b) of the Guidelines of the year 2010.

16. In view of the above discussion, the impugned Order dated 14th July, 2020 is hereby quashed and set aside. We direct that the case of the Petitioner be placed under category 3(b) of the Guidelines dated 15th March, 2010.

17. Petition is allowed and Rule is made absolute in the above terms.

18. All concerned to act on the authenticated copy of this Order.

(SHARMILA U. DESHMUKH, J.) **(A.S. GADKARI, J.)**