



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.104 OF 2025

Santosh S/o Shivaji Pawar,
Age-50 years, Occu:Nil, Convict No.8972,
R/o-At present in Chhatrapati Sambhajnagar
Central Prison, Dist-Chhatrapati Sambhajnagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Under Secretary,
Home Department, Mantralaya,
Mumbai,
- 2) The Inspector General of Prisons,
Maharashtra State, Pune,
- 3) The Superintendent of Chhatrapati
Sambhajnagar Central Prison,
Dist- Chhatrapati Sambhajnagar.

...RESPONDENTS

...
Ms. Bharati B. Gunjal Advocate for Petitioner.
Mr. S.A. Gaikwad, A.P.P. for Respondents - State.
...

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

DATE OF RESERVING ORDER : 28th FEBRUARY 2025

DATE OF PRONOUNCING ORDER : 4th APRIL 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present petitioner challenges the order passed by respondent No.1 on 19th April 2024 placing the petitioner convict under Category No. 4(d) as per the Guidelines for Premature Release Under the '14 year Rule of Prisoners serving life sentence, dated 15th March 2010, (hereafter referred to as "Government Guidelines of 15th March 2010") and seeks writ in the nature of directions to respondent No.1 to consider the case of the petitioner for placing him in Category No. 3(b) of the Government Guidelines of 15th March 2010.

2. The fact which is not in dispute is that the petitioner and three other accused persons had faced the trial i.e. Sessions Case No.7 of 2001 before the learned Additional Sessions Judge, Satara for the offence punishable under Sections 302 read with Section 34, 307 read with Section 34, 352 read with Section 34 of the Indian Penal Code. By Judgment and order dated 31st August 2007, the learned Additional Sessions Judge, Satara had convicted the present petitioner and others for the offence punishable under Section 302 and 307 read with Section 34 of the Indian Penal Code. They have been sentenced to suffer rigorous imprisonment for life and to pay fine and rigorous

imprisonment for ten years and to pay fine, for the respective offences. All the accused including the present petitioner had filed Criminal Appeal No.869 of 2007 before the Principal Seat of this Court at Mumbai and by order dated 6th May 2015, their Appeal came to be dismissed. On the date of the present Petition, the petitioner had undergone 15 years and two months of actual imprisonment.

3. It can be seen from the record that as per the procedure when the proposal for premature release of the petitioner was forwarded, opinion of the respective authorities was called. Learned Additional District and Sessions Judge, Satara had given opinion that the present petitioner should be put in Category No. 3(b) as per the Government Guidelines of 15th March 2010 i.e. for 22 years of imprisonment. Superintendent of Police, Satara and Additional District Magistrate, Satara had simply stated that they have objections for premature release. The Prison Advisory Board given opinion that the petitioner should be put in Category No.4(d) i.e. for 24 years of imprisonment. The Additional Director General of Police and Inspector General (Prisons), opined that the petitioner be put in Category No. 3(b) as per the Government Guidelines dated 11th May 1992, which is

now Category No.4(d) as per the Government Guidelines of 15th March 2010. Ultimately, the State Government has placed the petitioner under Category 4(d) as per the Government Guidelines of 15th March 2010, i.e. 24 years imprisonment.

4. Heard learned Advocate Ms. Gunjal for the petitioner and learned APP Mr. Gaikwad for respondents.

5. The learned Advocate for the petitioner has taken us through the Judgment of the learned Additional Sessions Judge as well as the Judgment in Appeal passed by this Court for considering the basic fact, as to what was the motive that was held by these authorities for commission of the crime and then based upon the same, how the petitioner should be placed in the particular Category. According to the learned Advocate appearing for the petitioner, as per the prosecution story, on the earlier day of incident there was heat exchange of words between the present petitioner and the injured Laxman. However, on the next day when said injured Laxman was passing through the road in front of the house of the accused, he was intercepted and there was assault on Laxman. Deceased Dilip was the elder brother of injured Laxman, who had come to rescue and then by

using axe, blows were given by the accused persons and deceased Dilip succumbed to the injuries. Both the Courts have held that there was family dispute and therefore, the State ought to have considered the Category No.3 for "Murder arising out of land dispute, family feuds, family prestige and superstition". Category No.3(b) of the Government Guidelines of 15th March 2010 is in respect of "Crime committed as above with premeditation, either individually or by a gang" and the period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set-off period, has been prescribed as 22 years. The State went wrong in choosing the Category No.4 "Murder for other reasons", and then Category No.4 (d) "Murders committed by more than one person or group of persons", which prescribes the period of imprisonment as 24 years.

6. Learned APP relies on the affidavit-in-reply of Dr. Jalindar Supekar, Special Inspector General of Police (Prisons), Central Region, Chhatrapati Sambhajinagar to state as to what steps were taken and how the State had arrived at a conclusion that the case is under Category No.4(d) of the Government Guidelines of 15th March 2010. Learned APP submits that the

murder that has been committed is brutal and while passing the impugned order, the observations by the learned Additional Sessions Judge have been considered that the accused party was aggressor and they exceeded the right of private defence and therefore, the impugned order is perfectly legal, need not be interfered with.

7. At the outset, we would like to say that the Category is now depend upon the observations and the proof regarding the motive. If we consider both the Judgments i.e. the Judgment passed by the learned Additional Sessions Judge as well as the Judgment in Appeal passed by this Court, then certainly there is mention of the strained relationship between the two families. This Court, in the Judgment of the Appeal, by taking note of the factual matrix, has specifically observed that:-

"The Appellants, the First Informant PW-1 Sahebrao Gogavale, the injured PW-5 Laxman Gogavale, deceased Dilip and Prosecution Witnesses to the incident are of the same village, belonging to the same village, belonging to two rival factions, having the history of strained relations between the two families."

8. In the impugned order, in Para No.1 itself, it is observed thus:-

" जन्मठेप शिक्षा बंदी क्र.सी.८९७२ संतोष शिवाजी पवार व शिक्षा बंदी क्र.सी.७३४ विठ्ठल शिवाजी पवार हे रामनगर जि. सातारा येथील रहिवाशी आहे. बंदी — संतोष व मयत—दिलीप यांच्या परिवारात तणावपूर्ण संबंध होते. घटनेच्या एक दिवस अगोदर मयत दिलीप याचा भाउ लक्ष्मण व संतोष यांच्यामध्ये फोन करण्याच्या कारणावरून वाद झाला होता. सदर वादाचा राग मनामध्ये ठेवून घटनेच्या दिवशी बंद्यानी लक्ष्मण याच्यावर कु—हाड आणि काठीने हल्ला केला त्यामध्ये तो गंभीर जखमी झाला. त्यावेळी मयत दिलीप मध्यस्थी करण्यासाठी आला असता बंद्यानी कु—हाड व काठीने त्याच्यावर देखील वार केले. उपचारादरम्यान दिलीपचा मृत्यु झाला होता."

English translation of the said portion reads as under:-

" Life Convict No.8972 Santosh Shivaji Pawar and Convict No. 734 Vitthal Shivaji Pawar, are resident of Ramnagar, District-Satara. There were strained relations between the families of convict Santosh and deceased Dilip. There was an argument between Santosh and the deceased Dilip's brother Laxman over the reason for making a phone call. Keeping the grudge in mind over the said argument, on the day of the incident, the prisoners assaulted Laxman with an axe and a stick. He was seriously injured in it. At that time, when the deceased Dilip came to intervene, the prisoners also attacked him with an axe and a stick. Dilip died during treatment."

Translated by Senior Translator and Interpreter,
High Court of Bombay, Bench at Aurangabad)

9. When these facts are clearly mentioned, then certainly the case of the petitioner comes under Category No.3(b) of the Government Guidelines of 15th March 2010 and not under Category No.4(d) of the Government Guidelines of 15th March 2010.

10. Another fact, we would be harping upon, is obtaining opinion from the convicting Court. As per the directions of the Hon'ble Supreme Court in *State of Haryana and others vs. Jagdish*, AIR 2010 SC 1690, obtaining opinion from the convicting Court is not an empty formality. The learned Additional Sessions Judge, Satara i.e. convicting Court had given the opinion that the petitioner's case falls under Category 3(b) of the Government Guidelines of 15th March 2010. In the impugned order there is absolutely no mention, as to why the State has no intention to go with the opinion of the convicting Court and why it wants to go with the opinion of the Prison Advisory Board and Additional Director General of Police and Inspector General (Prisons). If we peruse the communication dated 24th November 2022 of the Prison Advisory Board, then we can consider that prior to that the convicting Court's opinion was made available to or was before the Prison Advisory Board, yet

there is no reason given by the Prison Advisory Board, as to why they want to put the petitioner under Category No.4(d) of the Government Guidelines of 15th March 2010. The State Government is not supposed to pass the orders in such cases mechanically. A well reasoned order is expected when the State is putting a particular convict in a particular Category. We are, therefore, of the opinion that the decision dated 19th April 2024 placing the petitioner under Category No.4(d) of the Government Guidelines of 15th March 2010 is erroneous and deserves to be set aside. The petitioner will have to be placed under Category No.3(b) of the Government Guidelines of 15th March 2010. Therefore, case is made out for interference under Article 226 of the Constitution of India. We, therefore, proceed to pass following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) The order passed by respondent No.1 dated 19th April 2024 placing the petitioner in Category No.4(d) of the Government Guidelines of 15th March 2010 stands quashed and set aside.

(III) Respondent No.1 is directed to place the petitioner in Category No.3(b) of the Government Guidelines of 15th March 2010 and give the benefits as per the law, accordingly.

(IV) The revised order should be passed within a period of 15 days from today.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR25