



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1642 OF 2024

Nagorav s/o Hari Kamble
Age: 85 years, Occu.: Convict,
R/o. At Present confined in,
Latur District Open Prison,
District Latur.

.. Petitioner

Versus

1. State of Maharashtra
Through Superintendent of Jail,
Latur District Open Jail,
District Latur.
2. D.I.G. Prisons,
Central Division, Chhatrapati
Sambhajinagar.
3. Secretary,
Home Department, Mantralaya,
Mumbai.

.. Respondents

...

Mr. Rupesh A. Jaiswal, Advocate for the petitioner.
Mr. Birendra Saraf, Advocate General a/w Mr. A. B. Girase, Public Prosecutor
for the State.

...

**CORAM : SMT. VIBHA KANKANWADI &
MANJUSHA DESHPANDE, JJ.**

**RESERVED ON : 10 FEBRUARY 2025
PRONOUNCED ON : 24 MARCH 2025**

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present petition has been filed for following reliefs :-

“A) By writ of mandamus or any other appropriate writ, order
or direction in the like nature to direct the Respondents to take
decision on premature release forthwith as provided under the

Circular dated 10.01.2006 and Government Notification dated 01.12.2015 and/or,

B) By writ of mandamus or any other appropriate writ, order or direction in the like nature to direct the Respondents to premature release the petitioner in terms of the Government Circular dated 10.01.2006 and Government Notification dated 01.12.2015 and/or Grant any other relief which this Hon'ble Court deems fit, by allowing the petition."

2. Heard learned Advocate Mr. Rupesh A. Jaiswal for the petitioner and learned Advocate General Mr. Birendra Saraf along with learned Public Prosecutor Mr. A. B. Girase, for the respondents/State.

3. The learned Advocate appearing for the petitioner submits that the petitioner was arrested on 10.06.2008 and came to be convicted by learned Additional Sessions Judge, Kandhar, District Nanded on 21.05.2010 for the offence punishable under Section 302 of Indian Penal Code. The sentence that has been imposed is imprisonment for life. The imprisonment that is undergone by him till today is 14 years including remission 22 years. The petitioner's contention is that he is now 85 years old and as per the Government Circular dated 10.01.2006 and Government Notification dated 01.12.2015, the premature release age for male convict is more than 65 years and should have completed more than 14 years of actual imprisonment. Therefore, the present petitioner ought to have been put under the said category by the medical

committee. The petitioner is relying upon the copy of his Aadhaar card, Election card to show his age. Further, the petitioner is also relying upon the decision in ***Ambarishi s/o Shripadrao Patil Vs. The State of Maharashtra and Anr., [2018 ALL MR (Cri.) 2980]***, wherein the petitioner/convict was directed to produce before the medical committee as per the Government Resolution and therefore, it is necessary that now the petitioner should be prematurely released or that decision be taken by the State Government.

4. During the course of the writ petition, it appears that initially when the petitioner was produced before the jail committee, the petitioner's initial medical examination was got done and it was then opined by the doctor that his age is between 50 to 60 years. This had happened in 2024 and therefore, the committee itself opined that the petitioner appears to be more than 60 years and therefore, they had decided to get the opinion from the Medical Board of J. J. Hospital, Mumbai. When he was produced before the Committee of J. J. Hospital, Mumbai, the same opinion appears to have been given. However, when the matter was on board on 17.01.2025, the learned Public Prosecutor had made available the copy of communication dated 16.01.2025 by Additional Secretary, Home Department, wherein it was stated that the inquiry was made as to which guidelines are used in respect of medical examination of the convict at the time of premature release. Perusal of the said

guidelines would show that it was for general examination of a prisoner, but there is no specific mention about guidelines for determining the age of a convict. Therefore, by order dated 17.01.2025, certain questions were asked and we called upon the learned Additional Secretary, Home Department to file an affidavit. Such affidavit came to be filed on 07.02.2025. From the said affidavit, we could get that the Superintendent of Jail, where the convict is lodged, is supposed to submit the proposal of remission/premature release before the Advisory Board, as per Government Notification dated 01.12.2015 and collect all the necessary documents. The Advisory Board then verifies whether the prisoner had completed 14 years of actual imprisonment and completed the age of (60 years in case of female prisoners) and (65 years in case of male prisoners) and whether such prisoner is weak and infirm. However, the rules do not mention specifically which document is to be relied by the Advisory Board. The documents with the prison record are verified with the help of birth certificate, school leaving certificate etc. and the medical examination by the Civil Surgeon or the medical officer, who has been entrusted with the job to assess the physical condition of the prisoner as to whether he is weak and infirm. The affidavit then says that where there is valid documentation i.e. birth certificate issued by the competent authority, school leaving certificate or service record, in case of employee, regarding the age of prisoners, then the medical examination

would be the only piece of evidence on which the Advisory Board would take a decision. No guidelines have been issued by the State to the medical boards regarding which tests should be carried to determine the age of a convict. The practice that is adopted at present is whenever the Advisory Board determines the age of a prisoner as falling within a range, the midpoint of the range should be considered as the age of the prisoner. The Joint Director, Health Services, State Level, Mumbai has issued some guidelines for conducting general examination of the prisoner and the status of health of a prisoner by communication dated 16.01.2025. The government is not considering the case of a prisoner for premature release, except on the point of age i.e. for female prisoners above 60 years and for male prisoners above 65 years. Further it is revealed that the government has not made any rule pointing itself to decide such proposal for premature release on medical ground i.e. age + weak and infirm, in a particular period.

5. We were fortunate enough to get the overview on this point from learned Advocate General and also the point of view of the Government. He submitted that in one matter i.e. ***Sonba Hanumant Pande Vs. The State of Maharashtra [Writ Petition No.158 of 2024]***, to which one of us i.e. ***[Manjusha Deshpande, J.]*** was party in passing the order on 18.11.2024, a statement was made that the government is formulating rules/guidelines for ascertaining whether the convict/prisoner is

medically fit and firm, as the guidelines for the premature release of the prisoners contemplate that the prisoner should be unfit and infirm. A statement was made before the Bench that the State is now in the process of issuing clear guidelines upon how parameters should be set. The learned APP is then representing the State sought time for placing the concrete guidelines, however, it appears that those guidelines are not particularly given and as aforesaid, those guidelines are for general examination of prisoner, which were given on 02.12.2024. Those guidelines do not include how to determine the age.

6. Thus, as on today, it appears that the J.J. Hospital Medical Committee, who had examined the petitioner, has given an opinion that the age of the petitioner is between 50 to 60 years. If we consider the jail record, then it appears that when the petitioner was convicted on 21.05.2010, the age of the petitioner was 60 years. It was also as per the conviction warrant. That means, throughout the trial the prosecution had not taken any objection regarding the age of the petitioner that was stated in the charge sheet. Therefore, even the Superintendent of Jail, District Prison also states that the age of the petitioner as on today is 74 years. This record should be considered by the State and not to only rely on the medical examination. Further, we wonder as to how there can be a gap range of 10 years when there is question of determination of age. Therefore, necessary directions are required to be issued to the

respondents to take a decision on the premature release of the petitioner taking into consideration the age as per the jail record which is not even disputed at any any point of time by the Government / the jail authorities up till now. Further, directions are also required to be issued to the Government to formulate the necessary rules for determination of age of a convict. This should then be started along with the proposal for premature release of such a convict and he can be asked to submit necessary documents to support his or her age. It can be got verified through the concerned police and certainly, the preference will have to be given to the birth certificate, school leaving certificate, service record etc., enumerating preference to the documents in absence of one of it. Dependency for medical examination should be undertaken only in case of non availability of any other documents. Of course, the documents like Aadhar card and Election card cannot be considered in such situation. With these observations, we pass the following order :-

ORDER

- I) The Writ Petition is partly allowed.
- II) The respondents are directed to take decision on premature release of the petitioner considering his age on the basis of jail record (as exceptional case) as provided under the Circular dated 10.01.2006 and Government Notification dated 01.12.2015.
- III) Respondent No.1 is directed to frame rules for determination of age of a prisoner, when the cases where

premature release of a convict in terms of Government Circular dated 10.01.2006 and Government Notification dated 01.12.2015 would arise, within a period of three months from today.

IV) Respondent No.1 to take into consideration the observations made in the writ petition while framing such rules and the compliance be reported.

V) Place the matter for compliance on 19.06.2025.

[MANJUSHA DESHPANDE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm