

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1369 OF 2026

Bittu Raju Tiwari

... Petitioner

Versus

State of Maharashtra & Ors.

... Respondents

Ms. Ankita Naik for Petitioner.

Ms. Gauri Rao, APP for the Respondent-State.

Mr. Narayan B. Mane, under Secretary, Home Department,
Mantralaya, Mumbai is present.

Mr. Pandurang S. Shinde, Jailor, Yerwada Central Prison, Pune is
present.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.**

DATE : 5th OCTOBER 2026

JUDGMENT : PER (SARANG V. KOTWAL, J.)

1) Rule. Rule made returnable forthwith. Heard with the
consent of the parties.

2) Heard, Ms. Ankita Naik, learned counsel for the Petitioner
and Ms. Gauri Rao, learned APP for the Respondent-State.

3) The present Petition is filed for setting aside the Order
dated 6th February 2026 passed by the State of Maharashtra through the

Home Department. By the impugned Order dated 6th February 2026, the Petitioner was placed in Category 4(e) mentioned in Annexure-I of the G.R. dated 15th March 2010.

4) Learned Counsel for the Petitioner submitted that there is a separate category in the said Annexure for offences relating to crime by women and, under that caption, at the highest, the Petitioner could be kept in Category 1(b), which provides for 20 years' imprisonment including remission, subject to a minimum of 14 years of actual imprisonment including set off period.

5) Learned Counsel for the Petitioner, in support of her contention, relied on the observations of a Division Bench of this Court in the case of *Usha Munna Upadhyay Vs. The State of Maharashtra in Criminal Writ Petition No. 3701 of 2012* by Order dated 15th March 2013.

6) Learned APP, on the other hand, submitted that the Petitioner's offence is covered under Category 4(e) and the sentence which she is required to undergo is 26 years. The said category is mentioned thus:-

“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.”

7) Learned APP relied on the observations of the Additional Sessions Judge, Kalyan, made in the Judgment whereby the Petitioner was convicted. It was observed as under:-

“24. After considering all the facts, circumstances and available evidence on record, I hold that the testimony of PW. 5 minor witness Sumit has completely proved the allegations levelled against the accused Nos. 1 and 2. Testimonies of PW. 4 Pushpa and PW. 1 Sanjaykumar have corroborated to the testimony of PW. 5 minor Sumit. It is well supported by medical evidence as well as factual aspects of the matter. I hold that consistent evidence of prosecution has inspired my confidence to say that the accused Nos. 1 & 2 have killed the deceased Raju by pouring kerosene and setting ablaze to him. Accuse have committed crime under Section 302 r/w. Section 34 of the Indian Penal Code. Therefore, they are required to be convicted. I stop for a while.”

“26. aspects of the matter, I find that the offence itself is serious and anti-social. Both the accused have killed deceased Raju who is husband of accused No. 2 Bittu, by setting ablaze by pouring kerosene.”

8) Learned APP therefore submitted that the offence committed by the Petitioner was committed with exceptional violence and brutality. It was committed with the help of co-accused.

9) Learned APP relied on the Government Circular dated 8th December 2011. A copy of the same is taken on record and marked 'X' for identification. It is mentioned in the said Circular that accused and co-accused who are convicted in the same trial be kept in one category. In the present case, the co-accused is placed in the category of 4(e) and therefore, in this case also, the Petitioner is rightly placed under Category 4(e).

10) We have considered these submissions. We are unable to accept the submissions of the learned APP. Learned Counsel for the Petitioner has rightly relied on the observation of the Division Bench of this Court in the case of ***Usha Munna Upadhyay Vs. State of Maharashtra*** . Paragraphs 18 to 21 are relevant, which are as follows:-

“18. We find that the category 1 is a special category relating to 'Crime by Women' which is divided in two sub categories (a) and (b). The other categories are based on the classification of offences, and not on the classification of the offenders on the basis of gender. Thus, the provision with respect to the offences committed by woman, is a special category and the other categories are general.

19. The categorization as 'Crime by Women' in category 1, indicates that so far as women offenders are concerned, the applicability of other categories is ruled out. It is a settled principle of interpretation of statutes and instruments, that if a special provision is made on a certain matter, that matter is excluded from general provision. This principle is expressed in

the maxims Generalia specialibus non derogant, and Generalia specialibus derogant. Since, in this case, a special provision has been made with respect to the offences or crimes by women, the applicability of the other provisions of a general nature to women offenders, is excluded.

20. It is not possible to take any other view of the matter, inasmuch as, if women offenders are attempted to be fitted in other categories, the category 1 would be rendered totally and wholly redundant. For instance, the women offenders falling under category 1(a) can fall also in categories 2(a) and 3(a) and the Women Offenders falling under category 1(b) can fall in categories 2(b) and 3(b) etc. also. If women offenders were to be placed in other categories, the separate category of women need not have been created at all.

21. In our opinion, category 1 of the 2010 guidelines which is exclusively for women offenders must cover all the cases of women offenders, and the women offenders can be fitted only in that category. Because of the creation of a special category of women offenders, the other categories which are of a general nature, classified on the basis of nature of offences, would not apply to women offenders. Consequently, we hold that the order dated 4 September 2012 passed by the Government of Maharashtra placing the petitioner in Category 5(b) of the 1992 guidelines and Category 6(a) of the 2010 guidelines, is not proper and that the petitioner may be placed in Category 1(b) of the 2010 guidelines for considering her premature release.”

11) We respectfully agree with the observation made by the Division Bench in the said case. The observations are squarely applicable to the present case and therefore the petition must succeed.

12) Learned APP states that the Petitioner has completed 21

years, 10 months, 9 days till 30th September 2026 and that she has already undergone the maximum period prescribed under Category 1(b) of Annexure-I of the 2010 Circular.

13) Hence the following Order :

- i) Rule is made absolute in terms of prayer clause 'a' and 'b' which are as follows :-

"a) This Hon'ble Court by appropriate writ, order or direction, quash and set aside the order dated 06/02/2026 passed by respondent no. 3 (Home Department, Mantralaya).

b) This Hon'ble Court be pleased to release the petitioner under the category of 1(b) as per the Government Resolution dated 15/03/2010."

- ii) The Petitioner be released forthwith, if not required in any other case.
- iii) Petition is disposed of.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)

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