

SSK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 989 OF 2014**

Lamuel David Shepherd
versus
The State of Maharashtra

....Petitioner

....Respondent

Mr. Kuldeep S. Patil, advocate for the petitioner.
Mr. S. K. Shinde PP along with Mr. K. V. Saste, APP for the State.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATED : 5th February, 2015.

P.C.:

Heard.

2. By this petition under Article 226 of the Constitution of India, the petitioner is challenging the order dated 14th July, 2014 passed by the State Government whereby the petitioner is categorized under category 7(b) of Annexure II of Government Resolution No. RLP-1006/C.R.621/PRS-3 dated 15th March, 2010 and directed to be released on completion of 18 years of imprisonment.

3. The petitioner is convicted by learned Addl.Sessions Judge, Pune in Sessions Case No.172 of 1998 by judgment and order dated 15th June, 2002 for offence punishable under Section 364A of the Indian

Penal code and was sentenced to suffer imprisonment for life. The judgment of the learned Additional Sessions Judge, Pune is confirmed by the High Court in criminal appeal No. 889 of 2002. The petitioner, however, was arrested on 15th April, 1997 and is undergoing life imprisonment in Yerwada Central Jail.

4. The petitioner and other two accused came to be convicted and sentenced for kidnapping of one Ashish who was the first informant. The petitioner claimed that he has undergone 16 years of imprisonment along with remissions. After having undergone actual imprisonment of 14 years, it is the case of the petitioner that he applied to the State Government for premature release. The State, however, by its order dated 4th August, 2011 held that the petitioner is entitled for remission on completion of 30 years of imprisonment by categorizing the case of the petitioner in category 8 of the Annexure I of the said resolution. This order was challenged by the petitioner by filing criminal writ petition No.2769 of 2011. The petitioner's writ petition was allowed by an order dated 7th February, 2012. The order categorizing the petitioner under category 8 of the Annexure I of the said resolution was set-aside and the matter was remanded back. Thereafter, the State has passed the impugned order under which the petitioner is categorized under category 7(b) on the assumption that the victim/complainant was 14 years of age.

5. Mr. Patil, learned counsel for the petitioner, submitted that the assumption of the State in categorizing the petitioner under 7(b) of Annexure II of the said resolution is factually incorrect. He relied upon the judgment and order passed by the learned Additional Sessions Judge on 15th June, 2002 in Sessions Case No.172 of 1998 and especially observations made in paragraph 49 to assert that the victim/complainant was major at the time of offence and, therefore, the petitioner is entitled to be categorized under category 7(a) of the Annexure II of the said Government Resolution. Mr. Saste, learned APP having taken instructions, does not seriously dispute the petitioner's assertion and stated that appropriate orders may be passed.

6. We have perused the impugned order. We have also perused the judgment and order dated 15th June, 2002 in Sessions Case No. 172 of 1998. In Paragraph 49 of the said judgment and order, learned Additional Sessions Judge has observed that the age of the complainant was above 16 years at the time of the incident. The judgment and order of the Additional Sessions Judge, Pune was challenged before this Court by filing criminal appeal No.889 of 2002. In paragraph (3), an observation is made by the Division Bench of this Court that the complainant, at the relevant time, was in III year of B.Com at Pimpri on the date of incident i.e. 14th April, 1997. Thus, it is clear that at the time of incident the complainant was major and not minor. The impugned order is passed on

the assumption that the complainant was 14 years of age and, therefore, minor.

7. Category at serial No.7(a) of Annexure II of the said resolution speaks about persons guilty of kidnapping for ransom. Whereas, category at serial 7(b) speaks about minor victim. Since the impugned order is passed on wrong assumption, the same deserves to be quashed and set-aside. The respondent is directed to categorize the petitioner under category 7(a) of Annexure II of the Revised guidelines/Government Resolution No. RLP-1006/C.R.621/PRS-3 dated 15th March, 2010 and take appropriate decision. The writ petition stands disposed of, accordingly.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)