

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

CRIMINAL WRIT PETITION NO. 1230 OF 2016

RAFIQ S/O BABU SHAIKH

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for petitioner : Mr. R.A. Jaiswal
Advocate for the Respondents : Mr. D.R. Kale

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CORAM: S.S.SHINDE & K.K.SONAWANE, JJ.

Dated: December 08, 2016

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Heard the learned counsel appearing for the petitioner. He submits that the order by which the petitioner is placed under category 1(d) of Guidelines dated 11th May, 1992 and category 4(e) of the Guidelines dated 15th March, 2010 issued by the Home Department, Government of Maharashtra, Mumbai is not in consonance with the findings given by the trial Court and the High Court. He further submits that, the murder was not brutal murder. He further submits that, while placing the petitioner in category 4(e)

of the guidelines dated 15th March, 2010 issued by the State Government, the concerned authority has not assigned any reasons. In fact, the authority bound to give reasons while placing the convict in a particular category. At the most, the petitioner's case could be covered under category 4(d) since the murder is committed by more than one person or the group of persons. Therefore, relying upon the pleadings in the Petition, grounds taken therein and annexures thereto, the learned counsel appearing for the petitioner submits that the Petition may be allowed.

2. On the other hand, the learned A.P.P. relying upon the affidavit in reply filed on behalf of respondent nos.1 to 3, annexures thereto, and more particularly, the Guidelines dated 11th May, 1992 and 15th March, 2010 issued by the State Government, submits that the findings recorded by the trial Court and endorsed by the High Court with a specific observation in para 19 onwards would certainly led to only conclusion that the petitioner's case falls in category 4(e) of the guidelines laid down in Government Resolution dated 15th March, 2010.

Therefore, he submits that the Petition may be rejected.

3. We have given anxious consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned A.P.P. appearing for the respondents. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, reply filed by the State and also annexures thereto and the judgment and order passed by the High Court.

4. It is not necessary for us to give elaborate reasons. Suffice it to say that on careful perusal of the reasons recorded by the High Court in Criminal Appeal No. 652 of 2004 (Shri Rafik Babu Shaikh V/s The State of Maharashtra), and in particular, the discussion about the medical evidence and also the reasons from para no.19 onwards, there is no room for doubt that the murder was brutal in nature and also it was with violence. Therefore, the State Authorities have rightly placed the petitioner under category 4(e) of the Guidelines dated 15th March, 2010. It is not in dispute that the guidelines dated 11th May, 1992 and

15th March, 2010 both are applicable to the facts of the present case.

5. For the reasons aforesaid, we are not inclined to entertain the Petition. Hence, the Petition stands rejected.

(K.K.SONAWANE, J)

(S.S. SHINDE, J)

sga/