

vidya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2217 OF 2016

Santosh Manohar Deshmukh ... Petitioner
vs.
The State of Maharashtra ... Respondent

Ms. Parijat Bhardwaj i/b. Dr. Yug Mohit Chaudhry, Advocate for the petitioner.

Mrs. A.S. Pai, APP for the respondent/State.

**CORAM: MRS. V.K. TAHILRAMANI &
MRS. MRIDULA BHATKAR, JJ.**

JULY 5, 2016.

ORAL ORDER: (Per Mrs. V.K. Tahiramani, J.)

Heard both sides.

2. Rule. By consent, rule is made returnable forthwith.
3. The petitioner has challenged the order dated 18th December, 2012 passed by the State Government whereby the petitioner is categorized under category 8 of 1992 guidelines and category 8 of 2010 guidelines. Both these categories state that a convict will be released from prison after completing 30 years of imprisonment with remission.

4. By the judgment and order dated 20th October, 2005, the petitioner along with other accused was convicted by the learned Special Judge (MCOC Act) Thane in Special Case No. 3 of 2002. He was convicted under sections 364A, 395, 397, 387 and 342 of Indian Penal Code. He was also convicted under sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act. The maximum sentence of imprisonment imposed on the petitioner was life imprisonment under section 364A. The learned Sessions Judge directed that all the sentences of imprisonment shall run concurrently. The judgment of the trial Court is confirmed by this Court in Criminal Appeal No. 906 of 2006 by the judgment and order dated 17th December, 2013. The petitioner, who is original accused no. 4, was arrested on 5th August, 2001 and is undergoing imprisonment in Kolhapur Central Prison, Kalamba.

5. The petitioner and other accused came to be convicted and sentenced for kidnapping Yatin Shah, who was a major, for ransom. The petitioner claims that he has undergone 16 years of imprisonment along with remission. After having undergone actual imprisonment of 14 years, the State Government on 18th December, 2012 took a decision on his case for

premature release and categorized him as falling under Category 8 of 1992 Guidelines and 2010 Guidelines. Both the categories provide that the petitioner would be released from prison after completing 30 years including remission. This order has been challenged before us.

6. The learned counsel for the petitioner pointed out that the petitioner was convicted by the trial Court by the judgment and order dated 20th October, 2005, i.e. after 1992 guidelines. Moreover, 1992 guidelines did not provide for cases of kidnapping for ransom, as Section 364A of IPC came into effect on 22nd May, 1993. Hence, 2010 guidelines would apply. Another reason why the 2010 guidelines would apply is that 2010 guidelines in Annexure II provide for cases relating to persons guilty of offence not involving murder who are sentenced to life imprisonment.

7. The petitioner has been placed in category 8 of 2010 guidelines. Category 8 states as under:

Any other such offences which are of an exceptional/heinous nature and not specifically covered in above categories	The State Government will decide individual cases on merit.
---	---

The present offence cannot be categorized as exceptional or heinous. It is a

case of kidnapping for ransom. Yatin Shah was kidnapped for ransom. After the ransom was received, he was released. The judgment of the trial Court shows that there was no torture to Yatin. In fact he was given medicine and food from time to time. His Mother Jayananda and driver Babu Pathan were not touched by the accused. It is seen that there was no brutality on the part of any of the accused. Yatin was released as soon as ransom money was received. Looking to the facts and circumstances of the case, it cannot be said that the case of the petitioner falls either under exceptional nature or heinous nature. Hence, it cannot be said that the case of the petitioner is covered by category 8 which deals with offences which was exceptional or heinous.

8. The case of the petitioner would fall in Annexure II of 2010 guidelines. In Annexure II category 7(a) deals with “Persons guilty of kidnapping for ransom”. This is a case of kidnapping for ransom. Hence, the case of the petitioner would fall under category 7(a) of Annexure II of 2010 guidelines. In view of the above, we are of the opinion that the petitioner has been wrongly categorized and instead of Category 8, he will fall in Category 7(a) of the 2010 Guidelines. The respondent is directed to

categorize the petitioner under Category 7(a) of Annexure II of 2010 guidelines and take appropriate decision.

9. It is seen that the petitioner has also been convicted under sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act. In addition to imprisonment, under each of these sections he has been sentenced to fine of Rs. 5 lakhs and in default, sentence of 3 years on each count. If the petitioner has not paid the fine amount, he shall be released after he has undergone the in default sentence which be calculated as per rules.

10. Rule is made absolute in above terms.

(MRS. MRIDULA BHATKAR,J.) (MRS. V.K. TAHILRAMANI, J.)