

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3284 OF 2015

Laltu Ashok Ghosh & Anr.	...	Petitioners
Vs.		
The State of Maharashtra	...	Respondent

Ms. Nasreen S.K. Ayubi, Advocate appointed for the petitioner.
Mr. H.J. Dedia, APP for the Respondent - State

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

DATE: AUGUST 25, 2016

P.C.:

Heard both sides.

2. By the judgment and order dated 23rd November, 2006 in Sessions Case No. 278 of 2002, the learned Additional Sessions Judge for Greater Mumbai convicted the petitioners under sections 302, 394, 449 r/w. 34 of Indian Penal Code. The prayer of the petitioners is that they may be prematurely released as envisaged under section 433A of Cr. P.C.

3. Learned APP produced the order of the Home Department dated 18th August, 2016 which shows that the petitioners are placed in category 4(e). The said order is taken on record and marked 'X' for identification. Category 4 deals with murder for other reasons. Category 4(e) interalia deals with murder committed by dacoits and robbers while committing the

dacoity or robbery.

4. We have carefully gone through the judgment in this case of the Sessions Court as well as the judgment dated 29th July, 2013 passed by this Court in Criminal Appeal No. 582 of 2007 and Criminal Appeal No. 310 of 2012 preferred by the petitioners against their conviction and sentence in Sessions Case no. 278 of 2002. These two judgments as well as other records clearly show that it is a case of murder committed in the course of robbery. In this view of the matter, the petitioners have been rightly placed under category 4(e). A convict placed in category 4(e) is released on completing 26 years of imprisonment with remission, provided the convict has completed 14 years of actual imprisonment. The petitioners as of 31st July, 2016 have completed actual imprisonment of about 14 years and 7 months and with remission they have completed about 17 years of imprisonment. As the petitioners have been placed in category 4(e), their probable date of release is in April, 2019. In view of the order dated 18th August, 2016, the petitioners be released on completing period of 26 years with remission.

5. In this Petition, the petitioners have also prayed that they be sent to open prison. We have already observed above that the petitioners have been convicted under sections 302 and 394 of Indian Penal Code. Rule

4(ii) of Chapter II of Maharashtra Prison Manual sets out when prisoners shall not normally be sent for confinement in an open prison. Rule 4(ii)(g) inter alia states that prisoners convicted under sections 392 to 402 of Indian Penal Code shall not be sent to open prison. As the petitioners have been convicted under section 394 of Indian Penal Code, in view of Rule 4(ii)(g) the petitioners cannot be sent to open prison.

6. In view of the above facts, we are not inclined to grant any of the reliefs prayed for by the petitioners, hence, Rule is discharged.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)