

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.851 OF 2017

Raju @ Ahmed Ismail Sayyed
[C-4739]

PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary, Home Department
Mantralay, Mumbai-400 032.
2. The State of Maharashtra
Through Additional Director General
of Police [Prisons].
3. The State of Maharashtra
Through Superintendent of Open
Prison, Paithan,
Tq. Paithan, Dist. Aurangabad.

RESPONDENTS

...

Ms.Neha B.Kamble [Appointed] Advocate for the
Petitioner

Ms.S.S.Raut, APP for the Respondent/State

...

**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 01.08.2017

Pronounced on : 04.09.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

2. It is the case of the petitioner that the petitioner is undergoing life imprisonment for the offence punishable under Section 302 of the Indian Penal Code, and he has completed actual imprisonment of 14 years on 22.05.2015, and completed 20 years 5 months and 24 days of imprisonment with remission on 31st January, 2017. The petitioner has been confined in Open Prison, Paithan, since last three years. On 18th March, 2017, the respondents have placed the petitioner in category 3 [d] of the Guidelines for premature release of prisoners sentenced to life imprisonment or to death penalty commuted to life imprisonment after 18th December, 1973 [for short 'Guidelines of 1992'] and category 6 [c] of the Guidelines for Premature Release Under the '14 year Rule of Prisoners serving life sentence [for short 'Guidelines of 2010'], and directed premature release after completion of 26 years

imprisonment. The main grievance of the petitioner is that he is wrongly placed in the category 3 [d] of the Guidelines of 1992, as the murder committed is not with extreme violence or perversity, and that the Guidelines of 2010 are not applicable to the petitioner. Similarly placed prisoners are released on premature basis merely after serving of 14 years, and thus the case of the petitioner is being treated arbitrarily and in violation of Article 14 of the Constitution of India.

3. The learned counsel appearing for the petitioner submits that the petitioner suffers discrimination, when similarly situated prisoners are released on '14 years pre-mature release Rule' merely after 14 years imprisonment. The respondents failed to apply the norms laid down by the Hon'ble Supreme Court while considering the case for premature release. The respondents have

failed to consider that the petitioner is under reform and serving in Open Prison, thus the strict Guidelines of 1992, which failed to consider the reformed prisoner and merely places them in categories, is illegal and arbitrary. The authorities should have considered that non-release of a convict is worse sanction than the death sentence, resultant encroachment upon the life and personal liberty by the executive. In view of the above submissions, the order dated 18.03.2017 is subject to judicial review and is arbitrary, whimsical and against the provisions of Article 21 of the Constitution of India, thus liable to be quashed and set aside and the petitioner deserves to be released forthwith.

4. The prison systems are based on the theory of Reformation, which promotes humanistic principle that even if an offender commits a crime, he does not cease to be a

human being. The reformatory theory is also known as rehabilitative sentencing. The purpose of punishment is to 'reform the offender as a person, so that he may become a normal law-abiding member of the community once again. The spirit of correctional philosophy in criminology is rightly described by Justice Krishna Iyer, 'Every saint has a past and every sinner a future, never write off the man wearing the criminal attire but remove the dangerous degeneracy in him, restore his retarded human potential by holistic healing of his fevered, fatigued or frustrated inside and by repairing the repressive, though hidden, injustice of the social order which is vicariously guilty of the criminal behaviour of many innocent convicts. Law must rise with life and jurisprudence responds to humanism.

5. It is further submitted that the

open prisons are established under the Refomative Theory with the object to save the long-term prisoners from the ill effects of confining continuously in closed prisons and to inculcate in the prisoners a sense of self-discipline and social-responsibility. The prisoners who responds to the programme, based on trust and responsibility are selected for being sent to Open Prison. The petitioner is presently confined in the Open Prison as he is found to be in good behaviour and is willing to do hard work and abide by the Rules and Regulations of the Open Prison. The petitioner has served his sentence in Nashik Road Central Prison till 21.03.2014 and has then been transferred to the Paithan Open Prison, Taluka Paithan, District Aurangabad on 22nd March, 2014. The petitioner has completed actual imprisonment of 14 years on 22.05.2015 and 20 years 5 months and 24 days of imprisonment with remission on

31.01.2017, thus is entitled for premature release on completion of 14 years imprisonment.

6. It is further submitted that the premature release has been recognized as one of the facets of the human rights of prisoners. The National Human Rights Commission had taken up this issue in a couple of instances. The Commission formulated guidelines for release because various representations were made to the Commission on the non-uniformity of standards applied by State Governments when using the power of remission. The Hon'ble Supreme Court in the case of *Laxman Naskar Vs. Union of India*¹ has laid down parameters to be considered by the Authority before taking a final decision on the proposal of remission as follows:

i. Whether the offence was an

¹ [2000] 2 SCC 595

individual act of crime without affecting the society at large.

- ii. Whether there was any chance of future recurrence of committing a crime;
- iii. Whether the convict had lost his potentiality in committing the crime;
- iv. Whether there was any fruitful purpose of confining the convict any more;
- v. The socio-economic condition of the convict's family and other similar circumstances.

The petitioner has always returned on time whenever he was released on parole or furlough, and has been a law abiding citizen. The authorities should have considered that the socio-economic conditions of his family in regard to the death of his father and his ailing mother, thus the order sans merit, and deserves to be quashed and set aside.

7. It is further submitted that the petitioner is being treated differently in comparison to similarly placed prisoners for premature release, in a arbitrary manner, thus discriminating two equally placed prisoners and violating the sacred principle of '*Equality before law and equal Protection by Law*' under Article 14 of the Constitution of India. The case of the following prisoners, who are similarly situated to the petitioner are treated for pre-mature release merely after completion of 14 years of actual imprisonment:

- i] Bhagwan Singh Ramsingh – Prisoner No.4246 – The said prisoner was placed in the category 4 [e] for murder of 4 people and attempt to murder of 2 under Section 302, 120-B and 34, and thus serve a sentence of 26 years, however the Government vide order dated 13th January, 2015, granted him premature release only after serving 14 years imprisonment.

ii] Annasaheb @ Maruti Suryabhan Mhase
Prisoner No.4579 : He was punished
with life imprisonment and placed in
category 3 [d] for 26 years and 4
[e] for 26 years under the
Guidelines of 16.11.1978, 1992 and
2010. The said prisoner had even
arrived late 3 times while on leave
from prison, however yet the
respondent authorities have released
him after completion of 14 years of
imprisonment.

iii] Bajurao Kurde, Prisoner No.4280, who
even falls in the category of 26
years imprisonment, has been
released by the Government after
completion of 14 years.

This Court vide order dated 21st January, 2009
in Criminal Writ Petition No.2391 of 2008
[Vishwajit Shankar Khaavanekar Vs. The State
of Maharashtra & others] directed that the
persons who had completed 14 years of
imprisonment and who in terms of Guidelines

are entitled to be released on completion of 14 years. The case of the petitioner needs to adjudge considering that he is confined in Open Prison since last 3 years and has shown impeccable determination for work and good behaviour and character, and to neglect the same and detain the petitioner in the prison even after fulfillment of the object of rehabilitation, is illegal detention of the petitioner. In support of her afore-stated contentions, the learned counsel placed reliance upon the ratio laid down by the Supreme Court in the cases of *Laxman Naskar Vs. Union of India and others [supra]*, and *State of Haryana and others Vs. Jagdish*². Therefore, learned counsel submits that the order dated 18th March, 2017, deserves to be quashed and set aside.

8. On the other hand, learned APP appearing for the respondent – State relying

2 [2010] 4 SCC 216

upon the affidavit-in-reply submits that the proposal of 14 years premature release of the petitioner-prisoner was decided taking into consideration the information provided by the Superintendent, Open District Prison, Paithan through Additional Director General of Police and the Inspector General of Prison and Correctional Services, Maharashtra State, Pune as well as the punishment imposed by the Additional Sessions Judge, Osmanabad, vide judgment dated 01.03.2001. Considering the nature of crime committed by the petitioner, punishment imposed by Additional Sessions Judge, Osmanabad to suffer imprisonment of life under Section 302 r/w. 34 of the IPC and imprisonment of life under Section 120 (B) r/w. 302 of the IPC as well as recommendations by Additional Director General of Police and Inspector General of Prison and Correctional Services, Maharashtra State, Pune, petitioner's case was

recommended for release on completion of 26 years of imprisonment with remission under the provisions of category-3 [d] of the Government letter No.RLP 1092/13/252/PRS-3, dated 11.05.1992 and category 6 (c) of the Government Resolution No.RLP-1006/C.R. 621/PRS-3 dated 15.03.2010 subject to completion of actual imprisonment of 14 years. The petitioner has undergone actual imprisonment of 14 years on 22.05.2015 whereas he has completed 20 years and 5 months and 24 days of imprisonment with remission on 31.01.2017. The petitioner-prisoner will be released after completion of 26 years of imprisonment with remission. Therefore, she submits that the petition may be dismissed.

9. We have given careful consideration to the submissions of the petitioner, and learned APP appearing for the respondent-State. With their able assistance, we have

perused the pleadings in the Petition, annexures thereto, and the reply filed by the respondents, and also other documents placed on record. Upon careful perusal of the order passed by the Department of Home, Government of Maharashtra, it is abundantly clear that keeping in view the exposition of law by the Supreme Court in the case of *State of Haryana Vs. Jagdish [cited supra]*, the impugned order is passed. Therefore, there is proper application of mind by the authority to the facts of the case except categorization of the petitioner in the guidelines issued on 15th March, 2010. However, since the Guidelines of 1992 are beneficial to the petitioner, he is placed in category 3 [d] of the Guidelines of 1992. Upon perusal of the orders passed by the respondents, it is crystal clear that, keeping in view all the factors including that the petitioner is undergoing imprisonment in the Open Prison

from last three years, the petitioner is placed in category 3 [d] of the Guidelines of 1992.

10. The submission of the learned counsel appearing for the petitioner that the petitioner's case would fall in category 3 [b] of the Guidelines of 1992 has to be appreciated keeping in view the following facts and circumstances mentioned by the High Court while dismissing the appeal filed by the petitioner. The relevant facts mentioned in the judgment dated 24th August, 2004, passed by this Court in Criminal Appeal No. 190 of 2001, reads thus:

....There was no hope of receiving the money and, therefore, the deceased asked the rickshaw driver to return to Omerga. On the way, the accused No.2 spread chilly powder in the eyes of Shivshankar and accused No.1 took out a rope. Shivshankar Swami started

shouting and, therefore, the rickshaw driver looked back on the rear side where all the three were sitting. He noticed that both the accused were strangulating the deceased with a nylon rope and when they noticed that the driver had seen them, part of the rope was thrown around his neck as well and he was told that if he looked back or stopped the rickshaw or made any noise, he would be dealt with in the same manner. After some time, the moments of the deceased stopped and the rickshaw continued. The accused asked the rickshaw driver to stop the rickshaw near the land of Champabai Mahadeo Shelke (PW 12) in the territory of village Bhusni. The accused took out the dead body of Shivshankar and carried it about 50 to 60 ft. inside in the standing crop and dropped there. They asked the rickshaw driver to proceed to Murum and from

there, they procured some kerosene, came back to the site and went to the place where the dead body was dumped. They poured kerosene on the dead body and set it on fire. The rickshaw driver was under threats and, therefore, he had no alternative but to wait as a mute spectator. They got into the rickshaw and asked the driver to proceed towards Omerga and in a chowk, they stopped near Nagu's hotel. They offered dinner to the rickshaw driver as well but he did not have dinner and after their dinner was over, they came back with the rickshaw driver to Omerga town by about 9.30 p.m. While getting down from the rickshaw, they again threatened the driver not to mention about the incident to anyone else not only he but all his family members would be eliminated in the same way as Shivshankar Swami was killed.

11. Upon careful perusal of the aforementioned facts from the judgment of the High Court, and the evidence brought on record by the prosecution, the prosecution has been successful in proving that the accused No.2 spread chilly powder in the eyes of Shivshankar and accused No.1 took out a rope, and they strangled the deceased with a nylon rope and when they noticed that, the Rickshaw puller / driver had seen them; they threatened him not to interfere or disclose the said incident to anybody else. Thereafter, they went to village Murum and procured some kerosene, and they came back to the spot where dead body was thrown by them, and poured kerosene on the dead body of Shivshankar and set it on fire. There cannot be slightest doubt that murder of Shivshankar was committed in a brutal and ghasty manner by the petitioner and another co-accused.

12. In that view of the matter, it

cannot be said that the categorization of the petitioner in category 3 [d] of the Guidelines of 1992 is not proper. Category 3 [b] cannot be made applicable, since murder of Shivshankar was not committed during the course of quarrel, but it was preplanned, and pursuant to the premeditation. The fact that the petitioner was possessing chilly powder and another co-accused was possessing nylon rope clearly indicated that the murder of Shivshankar was intended. It is not necessary for us to elaborate further reasons, suffice it to say that no case is made out to issue directions as sought by the petitioner to the respondents. Hence Writ Petition stands rejected. Rule stands discharged.

13. We appreciate the sincere efforts taken by Advocate Ms.Neha B. Kamble, [Appointed] to represent the cause of the petitioner by rendering able assistance during the course of hearing. We quantify her

fees at Rs.5,000/- [Rupees Five Thousand only].

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

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