

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1639 OF 2016

Sanjay s/o Abhimanyu Parode,
Convict No.C/5918,
Age-Major, Occu:Nil,
R/o-In Jail, Central Prison,
Aurangabad.

...PETITIONER

VERSUS

1) The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai-32,

2) The Superintendent,
Central Prison, Aurangabad.

...RESPONDENTS

...

Mr. Kuldeep S. Patil Advocate appointed for
Petitioner.

Mr. P.G. Borade, A.P.P. for Respondent Nos.
1 & 2.

...

**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT : 13TH APRIL, 2017.

DATE OF PRONOUNCING JUDGMENT : 18TH APRIL, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties

2. By way of filing this Petition under Article 226 of the Constitution of India, the Petitioner has sought direction to the Respondents to consider his case for premature release by placing him in the Category No. 4 (b) of the Guidelines issued by the Home Department, Government of Maharashtra vide Resolution No.RLP-1006/C.R.621/PRS-3 dated 15th March, 2010 and instead of 26 years imprisonment, it may be brought down to 22 years by placing the Petitioner in Category 4(b) of the Guidelines dated 15th March, 2010.

3. Learned counsel for the Petitioner submits that Respondent No.1 issued the order on

28th January, 2016 on the proposal of premature release of the Petitioner from jail and ordered that on completing 26 years of imprisonment, the Petitioner be released from jail. It is submitted that the Respondent authority did not take into consideration the exposition of law by the Supreme Court in the case of **State of Haryana vs. Jagdish**¹, in as much as, the policy which is favourable to the Petitioner has not been adopted. It is submitted that at the most it can be held that the Petitioner has committed murder with premeditation and therefore he should have been placed in Category 4(b) of the of the Guidelines dated 15th March 2010. Therefore the learned counsel submits that the Petition may be allowed.

4. On the other hand, learned A.P.P. appearing for the State invites our attention to the affidavit in reply filed by one Bapurao Ramrao More, working as Superintendent, Aurangabad

¹ AIR 2010 S.C.1690

Central Prison, Aurangabad and submits that the proposal of the Petitioner for premature release is decided taking into consideration the information provided by the Superintendent, Aurangabad Central Prison, Aurangabad through Additional Director General of Police and Inspector General of Prison and Correctional Services, Maharashtra State, Pune. It is submitted that the Petitioner has committed double murder. The Petitioner committed murder of Ashok Deokaran Katode by stabbing him on his neck with spear and also committed murder of Rajesh Deokaran Katode by stabbing him with a dangerous weapon called "katta". He also injured Meerabai, wife of Deokaran Katode when she tried to save her son's life. Therefore, the offence committed by the Petitioner was with exceptional violence and with an intention to cause death of Ashok Katode and his brother Rajesh Katode and also injured their mother Meerabai Katode.

5. We have considered the submissions of the learned counsel appearing for the Petitioner and learned A.P.P. appearing for the State, with their able assistance perused the Judgment of the Additional Sessions Judge, Akola in Sessions Trial No.247 of 1997 (The State of Maharashtra vs. Sanjay s/o Abhimanyu Parode) and also the relevant Guidelines dated 11th May, 1992 and 15th March, 2010.

6. It is true that the Supreme Court in the case of **State of Haryana vs. Jagdish** (supra) in Para 43 observed as under:-

" State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for pre-mature release would be considered after serving the sentence, prescribed in the short sentencing policy existing on that date. The State has to exercise its power of

remissions also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given benefit thereof."

7. We have carefully perused the Judgment of the trial Court and in particular Para 19 thereof, wherein it is observed that the accused is the person who committed murders of deceased Ashok and Rajesh by assaulting them and causing severe injuries to them by spear and Katta, similarly, at the same time, accused stabbed to witness Meerabai. The accused had an intention to commit murder of Meerabai also. Therefore, upon careful perusal of the findings recorded by the trial Court, which are confirmed by the High Court, it is abundantly clear that two murders committed by

the Petitioner and also assaulted Meerabai, which unequivocally indicates that the Petitioner has committed the crime with brutality by using dangerous weapons and which amounts to murders committed with exceptional violence and brutality. Therefore, the Respondent Authorities have rightly placed the Petitioner under Category 4(e) of the Guidelines dated 15th March, 2010. We do not see any reason to interfere in the impugned order placing the Petitioner in aforementioned Category. Hence, the Petition is devoid of merits. The Writ Petition stands rejected. Rule stands discharged.

8. Needless to mention that, the Respondent Authorities themselves have stated in the affidavit in reply that the Petitioner has completed 23 years and 25 days of imprisonment with remission as on 31st January 2017 and he will be released after completion of 26 years of imprisonment with remission. In that view of the matter, no any direction in that respect is

necessary.

9. Since, Mr. Kuldeep S. Patil, the learned counsel is appointed to prosecute the cause of the petitioner, his fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

[K.K. SONAWANE, J.]

asb/APR17

[S.S. SHINDE, J.]