

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1759 OF 2013

1. Mahesh Dattatray Bagal	]	
Aged about 38 Years	]	
2. Ranjit @ Ranjya Vishwanath Deshmukh	]	
Aged about 36 Years	]	
3. Subhash Shrimant Dhaygude	]	
Aged about 30 Years	]	
4. Maruti @ Pintu Dattatray Harihar	]	
Aged about 31 Years	]	
[Presently lodged at Kolhapur Central	]	
Prison, Kalamba, Kolhapur]	]	 Petitioners

Versus

The State of Maharashtra	]	
Through Pandharpur Police Station,	]	
District Solapur.	]	 Respondent

ALONG WITH

CRIMINAL APPLICATION NO.386 OF 2017
IN
CRIMINAL WRIT PETITION NO.1759 OF 2013

Maruti @ Pintu Dattatray Harihar	]	
Aged about 31 Years	]	
[Presently lodged at Kolhapur Central	]	
Prison, Kalamba, Kolhapur]	]	 Applicant

In the matter between

1. Mahesh Dattatray Bagal	]	
Aged about 38 Years	]	
2. Ranjit @ Ranjya Vishwanath Deshmukh	]	
Aged about 36 Years	]	
3. Subhash Shrimant Dhaygude	]	
Aged about 30 Years	]	
4. Maruti @ Pintu Dattatray Harihar	]	
Aged about 31 Years	]	
[Presently lodged at Kolhapur Central	]	
Prison, Kalamba, Kolhapur]	]	 Petitioners

Versus

The State of Maharashtra	]	
Through Pandharpur Police Station,	]	
District Solapur.	]	 Respondent

Mr. D.G. Khamkar for the Petitioners-Applicant.

Mr. Arfan Sait, A.P.P., for the Respondent-State.

**CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 28TH SEPTEMBER, 2017.

ORAL JUDGMENT : [Per Smt. V.K. Tahilramani, J.]

1. Heard both sides.

2. The Petitioners are praying for premature release.

3. By Judgment and Order dated 17th May 2003, the learned Additional Sessions Judge, Pandharpur, convicted all the Petitioners, mainly under Sections 396, 364 and 201, r/w. Section 34, of IPC. For the offence punishable under Section 396 of IPC, the Petitioners were sentenced to suffer life imprisonment. Being aggrieved by the said conviction and sentence, the Petitioners preferred an Appeal before this Court. By order dated 18th September 2009, the said Appeal came to be dismissed.

4. The State has categorized the Petitioners as falling in Category 4(e) of the “2010 Guidelines” meant for “*premature release of Convicts*”, which are framed under Section 433-A of Cr.P.C. Section 433-A of Cr.P.C. states that,

“Where a sentence of imprisonment for life is imposed on conviction of a person for an offence, for which death is one of the punishments provided by law, or, where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at-least fourteen years of imprisonment.”

5. Category 4(e) of the “2010 Guidelines” reads as under :-

“4. *MURDERS FOR OTHER REASONS*

(e) *Murder committed with exceptional violence / brutality / kidnapping.*

Murder committed by dacoits and robbers in the act of committing dacoities and robberies.

Murder committed by bootleggers, gamblers, flesh traders etc.”

6. The facts relating to the case, in which the Petitioners have been convicted, are that the Petitioners kidnapped the driver and cleaner of a truck, which was transporting more than 100 bags of sugar. They murdered the driver and cleaner and took away the truck along with the sugar bags. Category 4(e) of “2010 Guidelines” covers the cases of “*murders for other reasons*”. In case of murder committed during a dacoity or robbery, Category 4(e) provides that the Convict will be released from prison after completing 26 years of imprisonment, including remission. Thus, even as per the decision of the Supreme Court in the case of *State of Haryana and Ors. Vs. Jagdish*, AIR 2010 SC 1690, the Petitioners would be entitled to be released after completing 26 years of imprisonment, including remission. Even if the “1992 Guidelines” are applied to the case of

the Petitioners, the Petitioners would fall under the category where- under they would be released from prison after completing 26 years of imprisonment with remission. Same is the case if “2010 Guidelines” are applied. Thus, if any of the Guidelines are applied, the result is the same i.e. the Petitioners would be released from prison after completing 26 years of imprisonment, including remission.

7. According to learned counsel for the Petitioners, the “2010 Guidelines” have two Annexures and the case of the Petitioners would be covered by ‘Annexure-II’; more particularly, Clause (9) of ‘Annexure-II’, which deals with “*the persons convicted under Sections 388 to 400 of IPC*” and as the case of the Petitioners falls under Section 396 of IPC, they would be covered by ‘Annexure-II’ of the “2010 Guidelines”. The fallacy in the contention of learned counsel for the Petitioners is seen from the fact that, ‘Annexure-II’ deals with “*persons guilty of offences not involving murder, who are sentenced to life imprisonment*”. The Petitioners have clearly been convicted under Section 396 of IPC i.e. “*dacoity accompanied with murder*”. In addition, it is seen that the Petitioners have been

convicted under Section 364 r/w. Section 34 of IPC and Category 4(e) of the “2010 Guidelines” also covers cases of murder with kidnapping. As the Petitioners have committed murder, their case would fall only under 'Annexure-I' and not under 'Annexure-II'. Thus, we find no merit in this submission. Clause (9) of 'Annexure-II' covers cases of extortion, robbery, dacoity etc.; only when they are not accompanied with murder. As the Petitioners have committed murder, their case would not be covered by 'Annexure-II', but would be covered by 'Annexure-I' of the “2010 Guidelines”. Thus, we find no merit in the contention raised by learned counsel for the Petitioners.

8. In view of the above, no case is made out for interference. Writ Petition is dismissed.

9. Rule is discharged.

10. In view of the above, Criminal Application No.386 of 2017 in this Writ Petition, having become infructuous, stands disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[SMT. V.K. TAHILRAMANI, J.]