

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

**CRIMINAL WRIT PETITION NO. 233 OF 2018**

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VIJAY S/O. BABURAO MUSALE (C-7005)  
CENTRAL PRISON, AURANGABAD

VERSUS

1. THE STATE OF MAHARASHTRA  
Through Superintendent of Jail,  
Central Prison, Aurangabad.
2. STATE OF MAHARASHTRA,  
Through Secretary,  
Home Department (prison),  
Mumbai – 400 005.

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Advocate for Petitioner : Mr Jaiswal Rupesh A  
APP for Respondents: Mrs V N Patil-Jadhav

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**CORAM : S.S. SHINDE & V.K. JADHAV, JJ.**

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Reserved on : June 07, 2018  
Pronounced on: June 14, 2018

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**JUDGMENT :-** (Per V. K. Jadhav, J.)

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

2. This writ petition is filed with following prayers :-

- i. To allow the petition, by directing the

respondent No.2 to place petitioner in category 1(B) of Guideline of 1992, and

2. To allow the Petition, by directing the respondent no.2 to place the petitioner in category 1(C) of Guideline of 1992.

3. Learned counsel for the petitioner submits that, the Supreme Court in a case of **State of Haryana and others Vs. Jagdish, reported in AIR 2010 Supreme Court 1690** has held that the guidelines which were in existence at the time of the conviction of the convict are subsequently changed, the petitioner/convict will be entitled to get the benefit of the guidelines, which are favourable to him. Learned counsel thus submits that, the petitioner's case deserves consideration in view of the Guidelines dated 11.5.1992 for Premature Release of Prisoners Sentenced to Life Imprisonment or to Death Penalty commuted to Life Imprisonment after 18.12.1973 (hereinafter referred to as the 'guidelines of 1992'). Learned counsel submits that the findings recorded by the trial court in Sessions Case No.61/2002 and also by the High Court bench at Aurangabad in Criminal Appeal

No.296/2003 are considered in its entirety, it leads only conclusion that offence committed by the petitioner was not with the exceptional violence or with perversity. Learned counsel submits that, the petitioner had tried to extinguish the fire and in that process sustained burn injuries. It is also appearing from the prosecution evidence that deceased-wife of the petitioner had also stated before the prosecution witness that the incident had occurred in the hit of anger. Learned counsel for the petitioner thus submits that, the case of the petitioner would fall within the category of 1(b) or 1(c) of the Guidelines of 1992.

4. The learned counsel for the petitioner in order to substantiate its contentions placed his reliance on the following cases :-

1. Ramdhan s/o Bhagaji Ghube Vs.The State of Maharashtra in Cri WP 1/2017 decided on 10.3.2017.
2. Prabhakar s/o Panda Reddy Vs. The State of Maharashtra and another in Cri WP 630/2010.
3. Pandharinath Yewaji Pawar Vs. The State of Maharashtra and others in Cri WP 1030/2011.

4. Govind s/o Dhondu Tupe Vs. The State of Maharashtra and another in Cri WP 147/2012.

5. The learned A.P.P. for the Respondent State submits that the petitioner accused was convicted for exceptional violence with perversity. It has been proved beyond reasonable doubt that on trifling issues the petitioner poured kerosene on the person of his wife and put her ablaze. Learned A.P.P. submits that, in view of the same, case of the petitioners is squarely covered under the category 1(e) of the Guidelines of 1992 or 2C of the guidelines Gated 15.3.2010 for Premature Release under the 14 year rule of Prisoners serving life sentence (hereinafter referred to as 'the guidelines of 2010').

6. We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and the learned APP appearing for the respondent/State. With their able assistance, we have perused the judgment of the trial court and also the High Court. Upon careful perusal of the findings recorded by the trial court and High Court, it appears that deceased Kondabai (wife) of the petitioner had

stated in her dying declaration itself that because she had demanded money from the petitioner, the petitioner had quarreled with her and then spread kerosene and set her ablaze by igniting a matchstick. She had disclosed that she sustained burns in the quarrel between herself and Petitioner/her husband. Moreover, deceased Kondabai immediately after the incident disclosed to PW 2 Keshav that incident had happened in the hit of anger due to quarrel between herself and her husband. It has also come in the evidence that petitioner had tried to extinguish the fire so as to save deceased Kondabai and in that process sustained injuries to his left hand as detailed in his medico legal certificate exh.43. The petitioner had sustained near about 7 burn injuries on his left hand as detailed in the medical certificate exh.43.

7. Upon considering the material placed on record and in particular findings recorded by the trial court and High Court and after appreciation of the evidence, we are of the considered opinion that crime has been committed without premeditation and it is not a case of

exceptional violence or with perversity. Thus, the case of the petitioner would squarely fall under the category of 1(c) of the Guidelines of 1992 and appropriate sentence would be of 24 years instead of 26 years.

7. In the result, the impugned order dated 30.10.2017 passed by the respondent No.2 is hereby quashed and set aside. Respondents/State is directed to treat the present petitioner under category 1(c) of the Guidelines of 1992 and pass appropriate orders accordingly, as expeditiously as possible and, preferably within eight weeks from today. With the above observations, the petition stands disposed of.

**( V.K. JADHAV, J. )**

**( S.S. SHINDE, J. )**

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aaa/-