

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

CRIMINAL WRIT PETITION NO. 729 OF 2018

Manjuviranna Kantayya Rai (C-4634),
Open Prison, Paithan.

...Petitioner

versus

1. State of Maharashtra,
Through Superintendent of Jail,
Open Prison, Paithan.

2. State of Maharashtra,
Through Secretary,
Home Department (Prison),
Mumbai – 400005.

...Respondents

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Mr. N. N. Gawankar h/f Mr. R. A. Jaiswal, advocate for the petitioner.
Mr. K. S. Patil, A.P.P. for respondent nos. 1 and 2.
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**CORAM : S. S. SHINDE AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 13.07.2018**

**Date of pronouncing
the Judgment : 24.07.2018**

JUDGMENT (PER V.K. JADHAV, J.) :-

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

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

- “A] To allow the Petition, by directing the Respondent no.2 to place Petitioner in category 3(b) of Guideline of 1992, and, or,
- B] To Allow the Petition, by directing the respondent no.2 to place Petitioner in category 4(d) of Guideline of 2010, and, or,
- C] To call for Record and Proceedings pertaining to Petitioner from Respondent no.1, and, or,
- D] Grant any other relief which this Hon'ble Court deems fit, by allowing the Petition.”

3. By the judgment and order dated 06.11.2003, the learned Sessions Judge, Thane convicted the petitioner for the offence punishable under Sections 302 and 120(b) of Indian Penal Code and sentenced him to suffer life imprisonment and to pay fine of Rs.5000/-, in default, to undergo further simple imprisonment of one year. He was also convicted for the offence punishable under Sections 25 and 27 of the Indian Arms Act, 1959 and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for one year.

4. The case of the petitioner for premature release was considered by the Secretary, Home Department, Mantralaya, Mumbai/respondent no.2 herein. By order dated 21.02.2018, respondent no.2 came to the

conclusion that the case of the petitioner will be governed by the category 3(d) of the guidelines framed by the State Government on 11.5.1992 and the category 4(e) of the guidelines dated 15.03.2010. Therefore, respondent no.2 remitted the portion of the sentence of imprisonment of life which is in excess of 26 years of total imprisonment including remissions, subject to completion of actual imprisonment of 14 years and the condition of good behaviour till the time of his release.

5. The learned counsel for the petitioner submits that placement of the crime of petitioner under category 3(d) of the guidelines dated 11.5.1992 and category 4(e) of the guidelines dated 15.03.2010 is not in consonance with the findings recorded by the trial court and the High Court. The murder was not brutal, neither committed with exceptional violence/perversity/kidnapping etc. as mentioned in the above two categories. At the most, it could have been placed in category 3(b) of the year 1992 or category 4(d) of the year 2010, which include murder committed in the course of quarrel with premeditation in an individual capacity or by a gang where the person/s have no previous criminal history or the murder committed by more than one person/group of persons, respectively, and which provide for remission of sentence of imprisonment of life which is in

excess of 24 years of total imprisonment including remissions, subject to completion of actual imprisonment of 14 years. The petitioner has undergone 15 years and 6 months of actual imprisonment and he has completed approximately 24 years and 06 months of total imprisonment including remissions. Hence any of the said categories 3(b) and 4(d) of respective years, which are favourable to the petitioner, should have been applied by the State. The learned counsel placed his reliance on the case ***State of Haryana and Others vs Jagdish***, reported in ***A.I.R. 2010 SC 1690*** to submit that the policy which is more beneficial to the petitioner will have to be followed by the State Government.

6. The learned counsel further submits that while categorizing the petitioner in category 3(d) of the guidelines dated 11.05.1992 and category 4(e) of the guidelines dated 15.03.2010, the Secretary, Home Department/ respondent no.2 has also not assigned any reasons. In fact the authority is bound to pass a reasoned order while placing a convict in a particular category. Therefore, relying upon the pleadings in the petition, grounds taken therein and annexures thereto, the learned counsel for the petitioner submits that the petition may be allowed.

7. On the other hand, the learned APP relies upon the affidavit-in-

reply filed on behalf of the respondents and the guidelines dated 11.05.1992 and 15.03.2010 issued by the State Government to support the order dated 21.02.2018 passed by respondent no.2. He submits that the premature release of the petitioner was considered on the strength of the policy that was existing on the date of his conviction. As the said petitioner was convicted on 06.11.2003, the guidelines dated 11.05.1992 which were existing on the that date, were made applicable to the petitioner. So also, since the proposal has been decided in the year 2018, the existing policy dated 15.03.2010 is made applicable in terms of the instructions of the Hon'ble Supreme Court in the case of ***State of Haryana and Others vs Jagdish*** (supra). Considering the nature of the offence, the findings of learned Sessions Judge, Thane thereon in S.C. No. 178/2003 with S.C. No. 214/2003, the punishment imposed on the present petitioner vide judgment dated 06.11.2003 and the information received from the Superintendent, Open District Prison, Paithan, the proposal of the petitioner for premature release has been rightly decided by respondent no.2. Learned APP submits that thus, no interference is required and the petition is liable to be dismissed.

8. We have given anxious consideration to the submissions advanced by the learned counsel appearing for the petitioner and the

learned APP appearing for the respondents. With their able assistance, we have perused the pleadings in the petition, annexures thereto, reply filed by the State and the judgment and order passed by the learned Sessions Judge, Thane as well the judgment and order passed by the High Court.

9. On perusal of the judgment and order of conviction passed by the trial court in Sessions Case No.178/2003 with Sessions Case No.214/2003 and the observations of this Court while disposing of Criminal Appeal No.422/2004 and 15/2004 alongwith criminal appeal no.207/2004, it appears that charge under section 120(b) levelled against the present petitioner has been proved and, accordingly, petitioner was convicted under section 302, 120(b) of Indian Penal Code and sentenced to undergo life imprisonment and to pay the fine of Rs.5,000/- in default to undergo further S.I. for one year. He is also held guilty for the offence punishable under section 3, 25, 27 of the Indian Arms Act and sentenced to undergo RI for five years and to pay fine of Rs.5,000/-, in default to suffer further S.I. for one year. So far as the category 3(d) of the guidelines dated 11.5.1992 and category 4(e) of the guidelines dated 15.3.2010 are concerned, most particularly, in the category 3(d) of the guidelines dated 11.5.1992, the importance is given to the murders committed with premeditation and exceptional

violence or perversity.

10. Section 120A defines Criminal Conspiracy. It states that “When two or more persons agree to do, or cause to be done, -

(a) an illegal act, or

(b) an act, which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.”

11. Thus, the essence of the offence of conspiracy is the fact of combination by agreement. The gist of the offence of conspiracy then lies in the forming of the scheme or agreement between the parties. In view of the same, since the offence under section 120(b) of Indian Penal Code was proved against the present petitioner, needless to say that the condition as mentioned in clause 3(d) of the guidelines dated 11.5.1992 to the extent of premeditation stands fulfilled. Learned counsel appearing for the petitioner has also not seriously disputed the same.

12. The learned counsel has vehemently submitted that the aforesaid clause 3(d) of the guidelines dated 11.5.1992 and the guidelines of clause 4(e) dated 15.03.2010 are concerned, said clauses are not attracted in its entirety since there is no finding about exceptional violence or perversity by the trial court as well as the order passed by

this court in the aforesaid criminal appeals. On careful perusal of the judgment and order of conviction passed by the trial court, we find that deceased Tambhale was working as the Secretary of the Agricultural Produce Market Committee and on the day of incident at about 11.00 am he was reporting his duties. As soon as he got down from his car and started proceedings towards his place of work, he was shot down from a close range. In consequence thereof, deceased Tambhale fell down on the ground in a pool of blood. It appears from the postmortem notes that deceased Tambhale had sustained firearm wound of entry over right forehead three cm about lateral 1/3rd of right eye brow and 6 cm lateral to midline of size 0.8 cm, in diameter with 0.2 cm circular aberaded coller margins inverted, and firearm wound of exist over right occipital region 9 cm from right mastoid and 5 cm lateral to midline of size 1.2 cm everted margins, active bleeding, brain tissue pointing out. It appears from the judgment and order passed by the trial court that present petitioner had no personal enmity with the deceased. On the day of incident, the petitioner had come near the car of the deceased Tambhale at about 11.00 am and fired two shots of pistol on him.

13. In the backdrop of these facts and on careful perusal of the reasons recorded by the trial court and also by the High Court in the

criminal appeal 422/2004 with appeal No.15/2004 and appeal 207/2004 and in particular the discussion about the medical evidence, there is no doubt that the case of the petitioner squarely falls under clause 3(d) of the guidelines dated 11.5.1992 and 4 (e) of the guidelines dated 15.03.2010. It was an exceptional violence and an honest officer was murdered in the broad day light near his work place with the help of country made pistol by firing two shots from a close range on fore head near eyebrow. Therefore, the State authorities have rightly placed the petitioner under the category 3 (d) of the guidelines dated 11.5.1992 and category 4 (e) of the guidelines dated 15.03.2010. We are not inclined to entertain the petition. Petition is hereby dismissed.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

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