

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

CRIMINAL WRIT PETITION NO. 979 OF 2018

Dagadu s/o Janardhan Shinde (C-4609),
Age: Major, Occu. Nil,
R/o. At present District Open Prison,
Paithan, Dist. Aurangabad.

... **Petitioner**

Versus

1. State of Maharashtra,
Through, Home Department,
Mantralaya, Maharashtra, Mumbai.

2. The Superintendent,
District Open Prison Paithan,
Dist. Aurangabad.

... **Respondents**

Mrs. Manjushri Shendage-Narwade, Advocate for Petitioner.
Mr. S.B. Yawalkar, APP for Respondent-State.

**CORAM : R.M. BORDE &
MANGESH S. PATIL, JJ.**
DATE : 04.10.2018

ORAL JUDGMENT:

Heard.

2. Rule.

3. With the consent of the parties the petition is taken up for final disposal at admission stage.

4. The petitioner is objecting to the order passed by the State Government on 31.01.2018 categorizing the petitioner for purposes of prescription of the jail term under the guidelines issued by the Home Department on 15.03.2010 more particularly guideline no. 2(c) which prescribes that the petitioner shall have to undergo actual term of imprisonment for a period of 26 years inclusive of remissions. The petitioner contends that considering the facts and circumstances of this case the guidelines issued by the Government on 11.05.1992 and more specifically guideline no.3(a) which prescribes 22 years of period of imprisonment shall have to be applied. The petitioner has been arrested for having committed murder of his wife by pouring kerosene on her person and setting her on fire on 02.02.2003. The date of conviction is stated to be 15.07.2003 and on the date of presentation of the petition he has undergone actual imprisonment for 15 years and 4 months and including the period of remission the petitioner is stated to have completed 23 years of period of imprisonment.

5. It is alleged that the deceased was the wife of the petitioner. On the fateful day both were taking dinner at about 8 to 8.30 pm. He had come back to the home after consuming liquor and the deceased was insisting upon him not to continue to drink. Agitated by the insistence of the wife the he is stated to have initiated quarrel with her and took kerosene oil from the stove

in a can and poured it on the person of the deceased and set her on fire. The trial Judge in the judgment has recorded a finding that the death of the deceased was due to the act of pouring kerosene on the person and setting her on fire. There is no finding recorded that there was a pre-meditation on the part of the accused.

6. The guidelines issued by the State Government on 11.05.1992 and particularly guideline no.3(a) prescribes that where a murder is committed in a course of quarrel without pre-meditation in an individual capacity and where the person has no previous criminal history, the period of imprisonment to be undergone with remissions subject to a minimum of 14 years of actual imprisonment including the set off period shall be 22 years. Whereas the guideline no.3(d) prescribes that when the murder is committed with pre-meditation and with exceptional violence or perversity the accused shall undergo imprisonment for 26 years. Our attention is also invited to the guidelines issued by the State Government on 15.03.2010 and category no. 2(a) which prescribes that where the convict has no previous criminal history and has committed the murder in an individual capacity period to imprisonment will be 22 years. Category no. 2(b) prescribes that where the convict has committed the crime with pre-meditation the period of actual imprisonment shall be 22 years. Whereas under category no. 2(c) the period

of actual imprisonment shall be 26 years where the crime is committed with exceptional violence and or with brutality or death of victim is due to burns.

7. In the instant matter the death of the victim is due to burns, however such a categorization was not made in the guidelines issued on 11.05.1992. In view of the judgment of the Supreme Court in Criminal Appeal No. 566 of 2010 decided on 22.03.2010 the guidelines which are favourable to the prisoner shall apply. The guidelines which are already in existence and which are favourable to the prisoner shall be applied for purposes prescription of period of imprisonment. In the instant matter, as has been recorded above the guidelines issued on 11.05.1992 where-under the petitioner shall have to be categorized under paragraph no. 3(a), which prescribes that, where the murder is committed in the course of quarrel without pre-meditation in an individual capacity and where the person has no previous criminal history, the period of imprisonment including the set off period shall be 22 years.

8. The aforesaid provision in the guidelines which are in existence on the date of conviction of the petitioner and which is favourable to the petitioner shall apply and the view taken by the State Government categorizing the petitioner under paragraph no. 2(c) of the guidelines issued on 15.03.2010 and providing for the period of imprisonment including the set

off period to be 26 years is erroneous and against the principle laid down in judgment of the Supreme Court.

9. It was not the case of prosecution that the alleged act has been committed by the petitioner with pre-meditation. There is no previous criminal history of the petitioner. In this view of the matter, the beneficial provision made under the guidelines issued on 11.05.1992 shall apply in case of the petitioner and the period of imprisonment including the set off period in the case of petitioner shall be 22 years.

10. In view of the reasons as recorded above, the order passed by the State Government on 31.01.2018 stands modified. It is pointed out by the petitioner on oath that the actual period of imprisonment undergone by him is 15 years and 4 months and the imprisonment including the remission and set-off is 23 years. It would be open for the concerned authority to verify and to take appropriate steps. We direct the respondents to take appropriate steps forthwith. Writ petition is allowed in aforesaid terms.

11. Rule is made absolute accordingly. There shall be no order as to the costs.

[MANGESH S. PATIL, J.]

[R.M. BORDE, J.]