

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1051 OF 2018

Narayan s/o. Waman Shinde,
Age 38 years, Occ. Nil Convict No. 4814
R/o. At present in open prison,
Paithan, Dist. Aurangabad.

.. PETITIONER

VERSUS

- 1] The State of Maharashtra
through Secretary, Home Department,
Mantralaya, Mumbai.
- 2] The Inspector General of Prisons,
Maharashtra State, Pune.
- 3] The Superintendent of Open Prison,
Paithan, Dist. Aurangabad.

.. RESPONDENTS.

Smt. B.B. Gunjal, Advocate for the petitioner
Mr. Yawalkar, Additional G.P. for respondent Nos 1 to 3

. . .

CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.

JUDGMENT RESERVED ON 4TH DECEMBER, 2018
JUDGMENT PRONOUNCED ON 14TH DECEMBER, 2018

ORAL JUDGMENT [PER K.K. SONAWANE, J]:-

- 1] Heard. Rule made returnable forthwith. The matter is taken up for adjudication finally on merits with the consent of both sides.

2] The petitioner, a convict for the offence of murder and sentenced to suffer life imprisonment, preferred the present writ petition, agitating the legality and propriety of the decision taken by the Home Department dated 17.3.2018 for his premature release after undergoing actual imprisonment of 24 years, as contemplated in category of crime No.3(b) and 4(d) of the guidelines and policy issued by the authority of the State of Maharashtra on 11.5.1992 and 15.3.2010. According to petitioner, in view of nature of crime committed on his part and the factual aspect, the petitioner's case for remission should have been considered under category 3(b) of the guidelines prescribed by Govt. Resolution dated 11th April, 2008 and he should be released after undergoing 22 years actual imprisonment.

2] The learned counsel for the petitioner vehemently submitted that the petitioner is the convict for the offence punishable under Sections 302/201 r/w. 34 of IPC. He was sentenced to suffer imprisonment for life. The petitioner has already undergone 21 years and 9 months imprisonment including the remission. According to learned counsel, the petitioner is in prison since more than actual imprisonment of 14 years to serve out the punishment of life imprisonment. After considering his good behaviour and conduct, the respondent-jail authority moved a proposal under Section 432 of Cr.P.C. for remission of the punishment of the petitioner, imposed upon him. The learned counsel further submits that the concerned authority of the respondent called the reports from the Police as well as Civic authority in regard to his conduct and behaviour as well as ailment of his mother. The

concerned Sessions Judge also has examined the case of the petitioner for remission and expressed the opinion that the benefit of category of crime No.3(b) as prescribed under the Government Resolution dated 11.4.2008 should have been given to the petitioner for his premature release after actual imprisonment of 22 years. The learned counsel for the petitioner cast allegations that the respondent authority did not take into consideration the opinion dt. 25.10.2017 expressed by the learned Sessions Judge and erroneously put the crime of the petitioner under category 3(b) of the guidelines delineated in the year 1992 and category 4(d) of the Government Resolution dated 15.3.2010. According to learned counsel, the petitioner has to undergo 24 years actual imprisonment for his premature release and same is unjust and improper one. The learned counsel raised the objection and submits that the impugned decision of the respondent is erroneous, illegal and not in accordance with the rule. The learned counsel prayed to consider the petitioner's case for remission under category 3(b) of the Government Resolution dated 11.4.2008 and issue necessary directions to the concerned authority for premature release of the petitioner forthwith.

3] We have given anxious consideration to the arguments advanced on behalf of petitioner and the respondent State of Maharashtra . There would not be any controversy that in view of exposition of law laid down by the Honourable Apex Court in the matter of ***“State of Haryana and others Vs. Jagdish” AIR 2010 SC 1690***, it is evident that while dealing with the matters for premature release of the prisoners, it is imperative to take

"x
x x x x x x The High court, therefore, in our opinion,
was absolutely justified in arriving at the conclusion
that the case of the respondent was to be considered
on the strength of the policy that was existing on the
date of his conviction. 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
remission 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 pre-mature release, he should
be given benefit thereof."

4] In the matter in hand, prior to take into consideration the guidelines promulgated time and again by the Government of Maharashtra for premature release of the petitioner, it would imperative to take into consideration the nature and factual score of the crime committed by the petitioner, to ascertain the gravity of the allegations nurtured on behalf of prosecution against the petitioner. Admittedly, the petitioner produced the extract of judgment of the Sessions Case No. 133 of 2004, dated 7.11.2006. The learned Sessions Judge, Nanded, after appreciating the entire evidence on record, arrived at the conclusion that the petitioner and his accomplices are guilty of the offence punishable under Sections 302, 201 r/w. 34 of IPC and they were sentenced to suffer R.I. for life with other punishment under the IPC. After perusal of the overt act of the petitioner while committing actual crime, it transpired that the sister of the petitioner had an illicit relation with one Gangadhar s/o. Tatyaraao, resident of the same village. The petitioner, his brother and mother were insisting the said Gangadhar to marry with Sunita. But, the father of Gangadhar i.e. deceased Tatyaraao raised objection and opposed for the proposal of marriage of Gangadhar with Sunita - sister of the petitioner. Taking umbrage of refusal for marriage proposal, the petitioner and his brother barged into the courtyard of the deceased Gangadhar and assaulted him with stone. The deceased Tatyaraao received fatal head injury and while escorting to the hospital, he breathed his last. Admittedly, the factual score of the crime demonstrate that the alleged offence came to be committed by the petitioners with pre-meditation by more than one person.

5] As referred supra, pursuant to the legal guidelines delineated by the Honourable Apex Court in the aforesaid judicial precedent, it is imperative to take into consideration the policy which was in existence on the date of his conviction. While considering the proposal for remission, the concerned authority has to take into consideration the sentencing policy existing on that date. In the matter in hand, the petitioner was held guilty for the offence punishable under Section 302, 201 r/w. 34 of IPC. He was convicted by the learned Sessions Judge, vide judgment and order dated 7.11.2006. The guidelines for premature release of the prisoners promulgated in the year 1992 was in existence in the year 2006 and as per the category of crime No.3(b) referred in it, if the crime came to be committed with pre-meditation, or by a gang, the period of imprisonment to be undergone for remission subject to minimum of 14 years of actual imprisonment including set off, would be 24 years. The proposal for remission was considered by the respondent authority under the impugned order dated 12.3.2018. In such circumstances, the respondent authority has rightly placed reliance on the guidelines for premature release of the prisoners dated 11.5.1992 and policy dated 15.3.2010. There is no propriety to consider the Government Resolution No. RLP No.1006/CR621/PRS-3 dated 11th April, 2008. The procedure adopted by the respondent for consideration of proposal of petitioner appears just, proper and within the prescribed rules meant for the same. We do not come across with any illegality or error in the impugned order passed by the respondent dated 12.3.2018. In such

circumstances, we are not inclined to cause any interference at the instance of the petitioner. It is fallacious and preposterous to put the petitioner under under category 3(b) in the Government Resolution dated 11.4.2008.

6] In view of above discussion, the petition being devoid of any merit, deserves to be dismissed. Accordingly, the same stands dismissed. Rule is discharged. No costs.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-