

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

CRIMINAL WRIT PETITION NO.432 OF 2019

Mangesh S/o Rajaram Sawant,
Age Major, Occu. Nil, R/o At present
Visapur Open Prison, Tq. Shrigonda,
District Ahmednagar.

... **Petitioner.**

Versus

1. The State of Maharashtra,
2. The Superintendent,
of the open prison Visapur,
District Ahmednagar.
3. State of Maharashtra,
Though Secretary, Home
Department (Prison)
Mumbai-40000.

... **Respondents.**

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Ms. Sharada P. Chate, Advocate for Petitioner.
Mr. S.B.Yawalkar, APP for Respondents-State.

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**CORAM : T.V.NALAWADE AND
MANGESH S. PATIL, JJ.**

DATE : 24th April, 2019

ORAL JUDGMENT (PER T.V.NALAWADE J.) :-

1. Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.
2. The proceeding is filed for giving direction to the

respondent to release the petitioner to allow the premature release of the petitioner. He is undergoing sentence of life for committing murder of his wife. This Court has gone through the copy of the judgment of Sessions Case No.354 of 2005. The facts are mentioned in the judgment and they show that the murder took place in the room in which the deceased was cohabiting with the present petitioner. The death took place due to throttling. There used to frequent quarrels between deceased and the present petitioner. In view of these circumstances, the conviction is given for the offence punishable under Section 302 of IPC and is sentenced to suffer imprisonment for life.

3. The categories of crime given in G.R. dated 15.03.2010 shown that category No.2 is as under :

- a) Where the convict has no previous criminal history and committed the murder in an individual capacity in a moment of anger and without premeditation.
- b) Where the crime as above committed with premeditation.
- c) Where the crime is committed with exceptional violence and or with brutality or death of victim due to burns.
- d) Murder with rape.

4. In view of the aforesaid facts, it is very easy to infer that the present case falls under category 2(a) and the period of imprisonment provided for it is 20 years. The submissions made show that he is behind bars now more than 24 years. This happened due to the opinion given by the learned Additional Sessions Judge, Mumbai. It appears that the Court from Mumbai had convicted the petitioner and there may arise the point of local jurisdiction also. It was submitted by the learned counsel for the petitioner that the petitioner is kept in a prison from Visapur Open Prison, Ahmednagar. This Court should be deciding the point of local jurisdiction but the facts of this case are very peculiar. In ordinary course, the petitioner ought to have been released after completion of 20 years of imprisonment but he is behind bars for more than 24 years now. Due to these circumstances, this Court holds that the present proceeding needs to be decided immediately. This Court holds that the petitioner falls under the category 2(a) of the aforesaid G.R.

5. In the result, Writ Petition is allowed.

6. As the petitioner is entitled to be placed in category 2(a) of guidelines of 1992 and for that the period was 22

years and so he is to be released immediately from the prison.

7. The order made against the petitioner as mentioned in the prayer clause 'C' is hereby quashed and set aside. Rule is made absolute in those terms.

(MANGESH S. PATIL, J.)

(T.V.NALAWADE, J.)

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vmk/-