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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO.465 OF 2017**

Kundlik Bhanudas Gavhad,
Age: 61 years, Occ: Prisoner
Convict No.3410,
R/o. at present in Central Prison,
At 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
Central Prison, Aurangabad
4. Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai

..RESPONDENTS

**WITH
CRIMINAL WRIT PETITION NO.1622 OF 2017**

Shaikh Amin Shaikh Bapu,
Age: 55 years, Occ: Agri.,
R/o. At Kawadgao, Post Golatgaon,
Tq. and Dist. Aurangabad

..PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary Home
Department, Mantralaya,
Mumbai
2. The Inspector General of Prisons,
Maharashtra State, Pune

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3. The Superintendent of
Central Prison, Aurangabad ..RESPONDENTS

Mrs Bharati B. Gunjal, Advocate for petitioners;
Mr V.J. Dixit, Senior Advocate appointed as a
Special Public Prosecutor for respondents in
Criminal Writ Petition No.465 of 2017;
Mr S.W. Munde, A.P.P. for respondents in Criminal
Writ Petition No.1622 of 2017

CORAM : PRASANNA B. VARALE

AND

SMT. VIBHA KANKANWADI, JJ.

RESERVED ON : 3rd MAY, 2019

PRONOUNCED ON : 6th JUNE, 2019

JUDGMENT : (PER : PRASANNA B. VARALE, J.)

By way of Criminal Writ Petition No.465 of 2017, petitioner Kundlik Bhanudas Gavhad, a convict presently lodged in Central Prison, Aurangabad prayed for directions to release him submitting before this Court that he has undergone imprisonment as per the Government guidelines and further prayed for directions to decide 14th years proposal expeditiously. During pendency of the petition, certain events occurred namely, order is passed by respondent State on 13th June, 2017 placing the petitioner in clause (6) of the

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Government Guidelines dated 16th November, 1978. The petition is amended and the petitioner, by way of amendment, refers the order dated 13th June, 2017.

2. In Criminal Writ Petition No. 1622 of 2017, the petitioner - convict Shaikh Amin Shaikh Bapu raises challenge to the order passed by State Government through Secretary, Home Department, dated 23rd October, 2017, whereby State Government cancelled premature release and it was directed in the said order that petitioner Shaikh Amin Shaikh Bapu be brought back to the prison and further it was ordered that petitioner Shaikh Amin Shaikh Bapu, after completing imprisonment of 14 years, be granted benefit of remission and his case be considered for premature release.

3. Petitioner Shaikh Amin Shaikh Bapu is approaching this Court on the backdrop of peculiar circumstances. He was convicted for the offence punishable under Sections 147, 148, 149 read with

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Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life. The appeal filed by him came to be dismissed. After completing 14 years imprisonment, proposal for his premature release was submitted to the competent authority and same was pending for considerable long time before the authority, as such, petitioner Shaikh Amin Shaikh Bapu approached this Court by filing Criminal Writ Petition No. 267 of 2016 seeking directions to decide the proposal.

4. It was brought to the notice of this Court by learned A.P.P. for respondent-State that as the proposal in respect of premature release is already decided and the State Government has taken a decision on 1st March, 2016 to release petitioner Shaikh Amin Shaikh Bapu on completion of 21 years total period of imprisonment, the Division Bench of this Court was pleased to observe that grievance raised by the petitioner stands redressed and as such, the petition was disposed of accordingly. It was submission of learned Counsel for the petitioner Shaikh Amin Shaikh Bapu that though the

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State Government decided the proposal on 1st March, 2016, State Government erred in considering the date of conviction, as such, petitioner Shaikh Amin Shaikh Bapu had again approached this Court by filing Writ Petition No. 998 of 2016.

5. The State Government, by recalling its order dated 1st March, 2016 issued fresh order on 14th October, 2016 placing him in category 3(b) of the Government Guidelines dated 16th November, 1978. Petitioner Shaikh Amin Shaikh Bapu, after order dated 14th October, 2016 had undergone his remaining period and after completion of 18 years imprisonment had been released from Central Prison on 2nd December, 2016. Petitioner Shaikh Amin Shaikh Bapu was then faced with the order dated 23rd October, 2017 and to his utter surprise, the State Government assigned reason that petitioner Shaikh Amin Shaikh Bapu, after availing benefit of parole in the year 1995, was absconding and was brought back to the prison by effecting arrest. As such, petitioner Shaikh Amin Shaikh Bapu would fall

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in the category as per Government Guidelines dated 15th March, 2010.

6. Heard Mrs. Gunjal, learned Counsel appearing for the petitioners, Mr. Dixit, learned Senior Counsel appointed as Special Public Prosecutor with Mr. Munde, learned A.P.P. for the respondents.

7. The facts giving rise to the present petitions can be summarized as follows :

The petitioners being accused along with other co-accused persons were charged for committing offence punishable under Sections 147, 148, 149 read with Section 302 of the Indian Penal Code. On appreciation of the evidence, learned Additional Sessions Judge, Aurangabad was pleased to convict the petitioners for offence punishable under Sections 148, 302 read with Section 149 of the Indian Penal Code by judgment and order dated 15th February, 1992, delivered in Sessions Case

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No.171 of 1991 and sentenced them to suffer imprisonment for life.

8. The proposal of the petitioner Kundlik was forwarded to learned Additional Sessions Judge for appraisal in regard to award remission of sentence. Mrs. Gunjal, learned Counsel for the petitioners submitted that petitioner Kundlik has undergone imprisonment of 25 years 9 months and 25 days in Central Prison including remission and his actual imprisonment is more than 14 years. On receiving proposal, learned Additional Sessions Judge, Aurangabad was of the opinion that the guidelines issued by the State of Maharashtra vide notification dated 16th November, 1978 are not applicable to the petitioner and as per guidelines dated 11th May, 1992, he falls under category 1(d), as such, he has to undergo 26 years imprisonment. Learned District Judge and Additional Sessions Judge, Aurangabad also refers to the guidelines of the State of Maharashtra vide letter/notification dated 11th April, 2008 to state that the petitioner

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falls under the category No.2(c) and period of imprisonment undergone by him till date of considering the proposal is of 24 years 6 months and 25 days. Learned District Judge and Additional Sessions Judge, Aurangabad while considering the proposal also refers to the nature of crime committed i.e. accused persons caused 30 injuries on the person of deceased, out of which two injuries were grievous in nature and then recorded an opinion that considering this fact, the intention of the accused was to commit murder of the deceased in brutal condition.

9. Learned District Judge and Additional Sessions Judge, Aurangabad, thus, on considering all these aspects informed the authorities that the case of petitioner Kundlik Bhanudas Gavhad for remission of sentence under Section 432 of the Code of Criminal Procedure be considered after completion of 26 years of imprisonment.

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10. The guidelines issued by the State Government are also placed on record, namely, letter dated 16th November, 1978. Perusal of the said letter shows that Home Department of the State Government thought it fit to reconsider the guidelines of the letter dated 8th January, 1974 and it is stated in the letter that it was, therefore, felt necessary to review the guiding principles so as to have a more comprehensive coverage of cases involved in the punishment of imprisonment for life, which could be followed while considering the cases for premature release under the '14 Years Rule'. Accordingly, the question of evolving comprehensive guidelines for premature release under 14 Years Rule of prisoners sentenced to life imprisonment was considered by Government and Government is pleased to lay down the following revised Guidelines for premature release of prisoner serving life sentence:-

Categorization of Crime	Period of total imprisonment, including Remissions, to be under

(10)

1).....	
2).....	
3) <u>Murders for other reasons</u>	16 years (Sixteen years)
a) Where a murder is committed in the course of a quarrel etc. without premeditation in any individual capacity and where the prisoner has no previous criminal history.	
b) as at (a) above, but with premeditation or as a gang.	18 years (Eighteen years)
4).....	
5).....	
6) <u>Escapees</u>	
Prisoners who have escaped from lawful custody while undergoing imprisonment or who absconded while on parole or furlough	24 years (Twenty four years)
7).....	

The Resolution dated 15th March, 2010 is also placed on record. It is stated in the said Resolution that :

"Government had revised guidelines for premature release of prisoners undergoing

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life sentences, from time to time. These guidelines are applicable to the prisoners committing crimes mentioned in the Indian Penal Code. However, said guidelines does not cover grave offences, such as life imprisonment under stringent laws like TADA, MCOCA, POTA, etc. Therefore, in exercise of power vested in it under Section 432 of the Criminal Procedure Code, 1973, the State Government has decided to modify the existing guidelines of even number, dated 11th April, 2008 and dated 13th June, 2008 and pleased to sanction revised guidelines.

.....

4. The State Government reserves its rights to remit any sentence to release the prisoners only after undergoing imprisonment in excess for which there is no specific guidelines as mentioned in the annexures enclosed with this Government Resolution.

Category No.	Sub Category	Categorization of crime	Period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off period.

(12)

1.			
2.			
3.			
4.		MURDERS FOR OTHER REASONS	
	(a)	Where a murder is committed without premeditation in an individual capacity and the person has no previous criminal history	20
	(b)	Murder committed with premeditation, or a person having criminal history	22
	(c)	Murder resulting from trade union activities and business rivalry	22
	(d)	Murder committed by more than one person/group of persons	24
	(e)	Murder committed with exceptional violence/brutality/kidnap-ping. Murder committed by dacoits and robbers in the act of committing dacoities and robberies. Murder committed by bootleggers, gamblers, flesh traders etc.	

11. Mrs Gunjal, learned Counsel for the petitioners vehemently submitted before this Court that, learned Additional Sessions Judge, Aurangabad while forwarding communication dated 16th December, 2015 thereby forming an opinion that the case of the petitioner can only be considered after completion of 26 years of imprisonment in view of the guidelines of the year 2008 and the guidelines

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in the letter dated 11th May, 1992 are on an erroneous appreciation. It is the submission of Mrs. Gunjal, learned Counsel that learned Additional Sessions Judge committed an error in not considering the judgment of the Hon'ble the Apex Court in the matter of ***State of Haryana and others V/s Jagdish***, reported in ***A.I.R. 2010 SC 1690***, in its proper perspective. It is further submission of the learned Counsel for the petitioner that the action of the State Government suffers from arbitrariness. Support was drawn by learned Counsel for the petitioner for this submission from the order passed by State Government wherein other co-accused Shaikh Amin Shaikh Bapu was granted benefit of premature release.

12. It may be necessary for us to refer to certain orders passed by this Court in the present petition i.e. Criminal Writ Petition No. 465 of 2017. On 13th April, 2017 it was submitted before this Court by learned Counsel for the petitioner that already the co-accused from the same crime

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number is released by the respondents. This Court was pleased to observe in the order dated 13th April, 2017 in paragraph No.2 thus :

"2. It is stated in the said letter that, the proposal is pending with the State Government. When the petitioner had approached this Court with a assertion that, the co-accused in the same crime is already released, after completion of sentence, we do not understand as to how the proposal of the petitioner is kept pending. We direct respondent No.1 to consider the proposal of the petitioner for releasing him, on its own merits and after verifying record as expeditiously as possible, however, in any case, on or before 2nd May, 2017 and shall communicate the said decision to the petitioner."

13. Interestingly enough, other co-accused Shaikh Amin Shaikh Bapu who had been released prematurely, though was absconding for 3118 days was released on parole in the year 1995 and the State Government decided to review its order dated

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14th October, 2016 and on the backdrop of these facts, Division Bench of this Court is pleased to direct respondent No.1 to hold an inquiry and if required, to take necessary action against the concerned persons. Then, a detailed order was passed by this Court on 6th November, 2017 directing the Chief Secretary of the State Government to cause an enquiry. The enquiry report was submitted to this Court.

14. As the above referred facts are the matter of record, it may not be necessary for us to refer to inquiry report submitted to this Court in detail, suffice to say that the State Government in Criminal Writ Petition No. 1622 of 2017 tendered apology.

15. Mrs. Gunjal, learned Counsel raising challenge to the order passed by State Government dated 23rd October, 2017 submitted that the State Government reviewed its earlier decision exercising powers under section 431(2) of the Code of Criminal

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Procedure. It is also her submission that, petitioner Kundlik Bhanudas Gavhad in Criminal Writ Petition No.465 of 2017 and petitioner Shaikh Amin Shaikh Bapu in Criminal Writ Petition No.1622 of 2017 are identically circumstanced for the reason that the names of both of them were removed from remission book on the ground that they were absconders/escapees, whereas State Government applied one yardstick in case of Shaikh Amin Shaikh Bapu, granting premature release and applied another yardstick to petitioner Kundlik Bhanudas Gavhad. It is also submitted by learned Counsel for the petitioners that even considering the fact that the petitioners-convicts were absconders or escapees, they would suffer jail punishment for the act of absconding/escapism but on this ground, the claim of the petitioners seeking premature release under the Government letter ought not to have been rejected. It is also submitted that the wife of petitioner Kundlik is suffering from serious ailment and if petitioner Kundlik is granted benefit of Government guidelines of the year 1978

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and if he is released, he will be in a position to provide assistance to his ailing wife.

16. It is further submitted by Mrs. Gunjal, learned Counsel that in view of various judgments of the Apex Court and this Court, the State Government ought to have applied the guidelines which are more beneficial to the petitioner. Learned Counsel for the petitioners placed heavy reliance on the judgment of the Apex Court in the case of **State of Haryana and others** (cited supra). She also made submission before this Court that the State Government ought to have granted an opportunity of hearing to the petitioners while rejecting the proposal for their premature release or reviewing of earlier order of premature release.

17. Mr. Dixit, learned Senior Counsel appointed as Special Public Prosecutor appearing for the State vehemently submitted that the State Government in its wisdom by exercising powers under

the provisions of Code of Criminal Procedure framed guidelines and these guidelines are revised time to time, considering the need of power. It was submission of learned Special Public Prosecutor that while appraising the case of the petitioner Kundlik, learned Additional Sessions Judge recorded reasons including nature of the crime i.e. brutal murder. Learned Special Public Prosecutor also submitted that categorization of convicts so as to grant benefit is on rational basis. He also refers to the various affidavit in replies to submit that in compliance of the order of this Court, inquiry was effected and the State Government initiated action against erring officers. It was also submitted before this Court that in the matter of Shaikh Amin Shaikh Bapu, earlier decision was reviewed by the State Government exercising its inherent powers to rectify the mistake. An attempt was made by learned Special Public Prosecutor to draw support to his submission from the judgment of the Apex Court in the matter of **Vinod Kumar vs State of Haryana and others** reported in **A.I.R.**

2014 (SC) 33.

Learned Special Public Prosecutor, by drawing support from the provisions of Code of Criminal Procedure, namely, Section 433 thereof, submitted that it cannot be said that the State Government is not possessing powers on touchstone of reasonability. The State Government exercises its discretionary powers to rectify the mistake. It is also submission of Mr. Dixit, learned Special Public Prosecutor that petitioner Kundlik cannot claim parity with convict Shaikh Amin Shaikh Bapu, as earlier order passed in his favour of premature release is reviewed by the State Government.

18. Learned A.P.P. made available record for perusal of this Court. In view of the facts which are already referred to above by us and more particularly grounds raised by petitioner Kundlik in Writ Petition No. 465 of 2017 that a discriminatory treatment is given to him and though he was similarly circumstanced with petitioner

Shaikh Amin Shaikh Bapu, in whose favour the State Government had passed earlier order of premature release and in view of orders passed by the Division Bench of this Court time to time including directions to cause inquiry, we only say that the approach of the State Government in respect of petitioner Shaikh Amin Shaikh Bapu is least to say, is of non application of mind. Firstly, petitioner Shaikh Amin Shaikh Bapu was granted benefit of remission and after he was released from prison after completing 18 years of imprisonment, he was faced with fresh order, whereby he was directed to be brought back to the prison.

19. Petitioner Shaikh Amin Shaikh Bapu, who was granted benefit of parole in the year 1995 was enjoying liberty for a period of 10 years 11 months and 6 days and was brought back to the prison by effecting arrest. When proposal for premature release was submitted to the authority, in spite of his earlier record that he was surrendered to the prison authorities belatedly on three occasions,

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out of which, on one occasion, he was out of prison for 3118 days and the competent authority at that point of time, on the ground of his overstay outside jail, he suffered punishment of removal of his name from remission book permanently. The case of petitioner Shaikh Amin Shaikh Bapu cannot be considered as a escapee.

20. We fail to understand on the backdrop of the fact that petitioner Shaikh Amin Shaikh Bapu was outside the prison for 10 years 11 months and 6 days, merely because he had suffered jail punishment of his removal from remission book permanently, how the State authorities initially thought it fit not to treat him as an escapee and then when petitioner Kundlik raises ground of discrimination, the State Government on the very earlier fact that Shaikh Amin Shaikh Bapu was brought back to the prison by effecting arrest after 3118 days is treated an escapee. It may not be out of place to state that Oxford English Dictionary provides meaning of the word 'escape' as

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break free from confinement or control, leak from a container, elude or get free from (someone).....

21. Learned Counsel for the petitioners though vehemently submitted that the State Government ought to have given benefits to these petitioners of the guidelines which are beneficial to them as the State authorities have committed an error in applying subsequent Government guidelines of 2000 and thus, prayed for allowing the petitions. This Court cannot lose sight of material aspects. It is not in dispute that seeking remission or seeking benefit of premature release is only a facility being provided to the convicts and same cannot be treated as a right accrued in favour of them.

We may usefully refer to the provisions of the Maharashtra Prisons (Remission System) Rules, 1962. Rule 26 provides for Powers of State Government and the Inspector General to revoke, in

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whole or in part any ordinary or special remission granted to the prisoner or remove him from the remission system for the specified period. Rule 26 reads thus :

"26. Powers of State Government and Inspector General to revoke remissions:-

The State Government or the Inspector General may, at any time, called for the record of the case regarding remissions granted to a prisoner and if it or he is satisfied that any prisoner was granted remission without sufficient reasons, by order, revoke, in whole or in part, any ordinary or special remission granted to such prisoner or remove him from the remission system for the period specified in the order"

Thus, it cannot be said that the orders passed by the State Government or the authority of the State Government suffer from an arbitrariness. Once this position is accepted, then there is hardly any scope to accept the submission of learned Counsel for the petitioners that the convict enjoys the right of seeking remission. As

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such, the submission of learned Counsel for the petitioners that the action of the State Government is unsustainable cannot be accepted.

We may also draw support from the latest decision of the Honourable the Apex Court, dated 22nd April, 2019 in a bunch of Civil Appeals, namely, Civil Appeal No.3086 of 2016 in the matter of **State of Rajasthan & ors. vs. Mukesh Sharma** with the other connected appeals. Paragraph Nos.5 and 12 of the said judgment are relevant for our considerations and the same read thus:

5. It was next submitted that remission after completion of 14 years in custody was not a matter of right, but was dependent on a host of considerations. Maru Ram (supra) has not been correctly appreciated. Life imprisonment normally means an imprisonment for life. Section 433A, Cr.P.C. stipulates that where sentence for imprisonment for life is imposed for an offence for which death is one of the punishments such person shall not be released from prison unless he had served at least fourteen years of imprisonment. Thus, the State in its wisdom

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could easily provide that life imprisonment shall not be subject to any remission or provide limitations on the same. Remission, in the present case, being a matter of State policy as incorporated in statutory rules falling within the domain of the State, could not be claimed as a matter of fundamental right. Reliance was placed on Mohd. Munna vs. Union of India & ors., (2005) 7 SCC 417. The State Government could, therefore, always insist on a minimum number of years before premature release of a convict serving life sentence.

12. Manifestly remission not being a matter of right, much less upon completion of 14 years of custody, but subject to rules framed in that regard, including complete denial of the same in specified circumstances, as a matter of State policy, nothing prevents the State from imposing restrictions in the manner done by Rule 8(2)(i) to consider claims for remission. In Maru Ram (supra) this Court held:

“30.A possible confusion creeps into this discussion by equating life imprisonment with 20 years’ imprisonment. Reliance is placed for this purpose on Section 55 IPC

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and on definitions in various Remission Schemes. All that we need say, as clearly pointed out in Godse, is that these equivalents are meant for the limited objective of computation to help the State exercise its wide powers of total remissions. Even if the remissions earned have totalled up to 20 years, still the State Government may or may not release the prisoner and until such a release order remitting the remaining part of the life sentence is passed, the prisoner cannot claim his liberty. The reason is that life sentence is nothing less than lifelong imprisonment. Moreover, the penalty then and now is the same — life term. And remission vests no right to release when the sentence is life imprisonment. No greater punishment is inflicted by Section 433A than the law annexed originally to the crime. Nor is any vested right to remission cancelled by compulsory 14year jail life once we realise the truism that a life sentence is a sentence for a whole life."

22. It would be useful to refer to the judgment of the Hon'ble the Apex Court in the matter of ***State of Haryana vs Mahendra Singh and***

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another reported in **2007 (4) Mah. L.R. 283 (SC)**.

The Hon'ble the Apex Court in clear and unambiguous words observed thus :

"25. It is true that no convict has a fundamental right of remission or shortening of sentences. It is also true that the State in exercise of its executive power of remission must consider each individual case keeping in view the relevant factors. The power of the State to issue general instructions, so that no discrimination is made, is also permissible in law."

23. As per guidelines dated 16th November, 1978, premature release of prisoners was considered by categorization of crime. Clause-6 of the guidelines deals with the escapees. Now, guidelines dated 15th March, 2010 refers to categorization of crime and period of imprisonment to be undergone for premature release and period of imprisonment including subject to minimum 14 years actual said period for premature release.

24. It may be useful for us to refer to the judgment of the Division Bench of this Court in the matter of **Shaikh Rajjak Shaikh Salim vs State of Maharashtra and another**, reported in **2017(4) Bom.C.R. (Cri.) 195**, wherein an identical issue was raised.

25. Learned Counsel for the petitioners, by drawing support from the judgment in the matter of **State of Haryana vs Jagdish** (cited supra), submitted that the petitioners could not have been placed in the category 1(d) of the guidelines of 1992 and category 2(c) of the guidelines of 2010. In the matter of Petitioner Shaikh Rajjak, he was convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. Petitioner Shaikh Rajjak who had been released on furlough leave, failed to surrender prison authorities on due date i.e. 25th April, 2009 and was brought back to the prison by effecting arrest on 20th December, 2012. Learned Additional Sessions Judge, Aurangabad, in the judgment of conviction

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was pleased to observe that the accused was standing nearby when his wife was burning and large quantity of kerosene was used to set victim on fire and injuries were 100% sufficient to deep degree burns.

26. Considering findings of the trial Court, the Division Bench was pleased to observe in paragraph-13 of the judgment in above referred matter thus :

"13.....
..... If the said findings are considered, there is no manner of doubt that, the appellant not only intended death of Barkatbegum but the said death was committed with exceptional violence so as to ensure death of Barkatbegum."

27. The Division Bench was pleased to observe that the petitioner was rightly placed in category 1(d) of guidelines for premature release. The Division Bench on finding that the petition is devoid of merits, ultimately rejected the petition.

28. In the present case, both the petitioners were convicted by learned Additional Sessions Judge, Aurangabad on the backdrop of findings that the petitioners were members of unlawful assembly, armed with weapons and committed murder of the deceased. At the cost of repetition, we state that appraisal reflected in letter dated 16th December, 2015 by learned Additional Sessions Judge, Aurangabad refers to the injuries caused to the victim which were total 30 in number and Medical Officer opined that these injuries were ante post mortem, as such, the accused committed murder of deceased in brutal condition. Thus, it can safely be said that victim was subjected to an extreme violence with exceptional violence, as such, the petitioners would certainly fall in category 4(e) of guidelines dated 15th March, 2010 and they would be entitled for premature release after 26 years period of imprisonment to be undergone including remissions, subject to minimum of 14 years actual imprisonment including said period.

29. A similar view was taken by the Division Bench of this Court in the matter of **Gotya @ Raju Durgya Jadhav vs The State of Maharashtra**, reported in **2013 ALL M.R. (Cri.) 4006**. The Division Bench refers to the Government Resolution/Guidelines dated 11th May, 1992 and 15th March, 2000. In the matter of **Gotya @ Raju Durgya Jadhav** (cited supra), it was submitted before the Division Bench on behalf of the petitioner that the petitioner ought to have been treated as falling in category 1(c) of guidelines of 1992 and it should have been held that the crime was committed without premeditation (in the present matter also, it is similar submission of Mrs. Gunjal, learned Counsel for the petitioners). The Division Bench was unable to accept the submission of learned Counsel and observed thus :

"8. We are not impressed by the arguments advanced by learned counsel for the petitioner. In the Government Resolution of 1992, Category 1(e) had

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category of crime "Where the crime is committed with exceptional violence or perversity". In the resolution of 2010, this category has been modified as 2(c) with the words "Where the crime is committed with exceptional violence and/or with brutality or death of victim due to burns". The State has rightly categorised crimes where death of victim is caused by burns, at par with crimes where there is exceptional violence and/or brutality. No doubt, in the Government Resolution of 1992, there was no separate category for bride killing by burning. However, that does not mean that where death of the victim has been caused by burning, the crime at that time was in any way less so as not to attract category of "exceptional violence". In our view, even if Government Resolution of 1992 is to be resorted to where the victim suffered death due to burning, it should be treated as crime with exceptional violence falling in category 1(e)."

30. We may say that Government Resolution dated 15th March, 2010 refers to the manner of crime i.e. murder in clause 4 and 4(e) further adds

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that murder committed with exceptional violence/brutality/kidnapping.....

31. Though Mrs. Gunjal, learned Counsel for the petitioners vehemently submitted that the respondents - authorities in the matter of petitioner Shaikh Amin Shaikh Bapu reviewed its order and the State Government is having no such powers of review, insofar as powers of review is concerned, there is no dispute that appropriate Government exercises powers under the provisions of Section 432 of the Code of Criminal Procedure and as per Section 432(7) of the Code of Criminal Procedure, appropriate Government means :

In this section and in section 433, the expression " appropriate Government" means,-

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central

Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

In the present matter, in view of the provisions, the State Government exercising its powers of granting benefit of remission in the matter of sentence is not deprived of reviewing its order.

Considering the above referred aspects, the only inescapable conclusion can be drawn and i.e. the petitions san merit and accordingly deserve to be dismissed. Accordingly, the petitions are dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

(PRASANNA B. VARALE)
JUDGE