

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

CRIMINAL WRIT PETITION NO. 738 OF 2019

Vijaykumar S/o Shrirang Jadhav (C-31)
Age: 49 years, Occ: Nil (Convict),
At present R/o Open Prison Visapur,
Tal. Shrigondha, Dist. Ahmednagar ... Petitioner

V E R S U S

1. The State of Maharashtra
Through Superintendent of Jail,
Open Prison, Visapur,
Tal. Shrigondha, Dist. Ahmednagar
2. State of Maharashtra,
Through Secretary,
Home Department (Prison),
Mumbai 400 005. ... Respondents

...

Mr. Rupesh A Jaiswal, Advocate for Appellant
Smt. V.N. Patil-Jadhav, APP for respondents

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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 26th JUNE, 2019.

ORAL JUDGMENT :- (Per: T. V. Nalawade, J.)

1. Rule. Rule made returnable forthwith. Heard finally, with consent of learned counsel for parties.
2. The proceeding is filed challenging the order dated 14th March, 2019 passed by respondent No. 2 placing the petitioner - prisoner in category 4(e) of the Guidelines of 2010 and thereby asking him to undergo imprisonment for 26 years. This Court has gone through the Guidelines of 1992 and Guidelines of 2010. The Guidelines of 1992 show that there was category No. 3 having title "*Murder for other Reasons.*" There is category like murder with premeditation or by

a gang and for that sentence of imprisonment provided is 24 years. Similar to this category, there is category No. 4(d) in the Guidelines of 2010 under similar title and it is for murders committed by more than one person/group of persons and for that imprisonment period provided is 24 years. These two categories appear to be similar in nature. The authority has used category 4(e), which is murder committed with exceptional violence/with brutality/kidnapping. For that category, period of imprisonment is 26 years. This category does not include offence committed by mob. There is category of dacoits but it is separate category that cannot be treated offence of murder by mob. The respondent found that Guideline 3(d) of 1992 is applicable to the petitioner. According to category 3(d) of Guidelines 1992 (murders committed with premeditation and exceptional violence or perversity), for that also imprisonment for a period of 26 years is provided, but this category is not murder committed by mob. The facts and pleadings show that accused were tried for one murder. There were three injuries found on dead body. Out of them, one injury was on head and prosecution proved that said injury was caused by present petitioner by using sword. Other two injuries, which were found on chest near sternum were caused by other dangerous weapon like knife by accused No. 1. Only three injuries were found on the dead body. The case is tried against those persons. The judgment shows that prosecution did not lead the evidence on the point of motive.

3. In view of aforesaid, this Court holds that category 4(d) from the Guidelines of 2010 is proper category for present petitioner. The record shows that Advisory Committee had suggested this category for

the present petitioner. Therefore, we proceed to pass following order:

:: ORDER ::

- (i) The Criminal Writ Petition is allowed.
- (ii) The order made by respondent is hereby set aside and it is directed to place the petitioner-prisoner under category 4(d) of the Guidelines of 2010 for which imprisonment period is given as 24 years.
- (iii) The Rule is made absolute in those terms.

Sd/-

[K. K. SONAWANE]
JUDGE

Sd/-

[T.V. NALAWADE]
JUDGE

MTK