

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1135 OF 2017

Madhav BhilLa Kuwar (C-4079)
Age: 58 years.

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through Secretary, Home Department,
Mantralaya, Mumbai – 4000 032.
2. The State of Maharashtra,
Through Additional Director General of
Police (Prison).
3. The State of Maharashtra,
Through Superintendent of Central
Prison, Harsool Jail, Aurangabad.
4. The State of Maharashtra,
Through the Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai-32.
5. Deputy Secretary, Home Department,
Mantralaya, Mumbai-32.
6. Joint Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai-32.
7. The Inspector General of Prison,
Maharashtra State, Pune.
8. Section Officer, Home Department,
Mantralaya, Mumbai-32.

... **RESPONDENTS**

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Ms Neha B. Kamble, Advocate for Petitioner (Appointed).

Mr. S. B. Yawalkar, for Respondent / State.

Mr. V. J. Dixit, Senior Counsel for Respondents.

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

DATE : 25th April, 2019.

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

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The Petitioner is sentenced to suffer imprisonment for life for the offences punishable under Sections 302 and 376 etc. of the Indian Penal Code. The decision is given by the Sessions Court, Nandurbar. The appeal filed by the Petitioner is dismissed by this Court.

3 As per the guidelines of 1992, it is the case of the Petitioner that he was placed in category 1 (e) viz “murders relating to

sexual matters or arising out of relations with women, dowry deaths or other form of bride killing with exceptional violence or with perversity". According to Petitioner, he was required to undergo actual imprisonment of 24 years and he was entitled to premature release after completion of 28 years of imprisonment including all remissions. It is the case of Petitioner that on 28th July, 2014, he completed 28 years of imprisonment including all remissions and so he was entitled to get released on 29th July, 2014. It appears that in **Writ Petition (CRL.) No.48 of 2014**, (*Union of India Vs. V. Shriharan @ Murugan and ors.*), the Apex Court had restrained the State Government from exercising the power of remission and commutation of sentence under Section 432 and 433 of the Code of Criminal Procedure to life convicts. This order was modified and it was made clear that only when the order of sentence was preventing such premature release, the order of prevention made by the Apex Court would be made applicable. This matter came to be decided and it was held by the Apex Court that it is not open to the Court to make any special category of sentence in substitution of death sentence and put that category beyond application of remission. It is also laid down that it would not be permissible to stipulate any mandatory period of actual

imprisonment inconsistent with the one prescribed under Section 433A of the Code of Criminal Procedure.

4 The submissions made and record show that the aforesaid order was received by the Respondent authority, but no decision was taken in respect of present Petitioner immediately. Due to that, the Petitioner remained behind bars for 3 and 1/2 years more than the category in which he was placed. This period is the period of illegal detention. He was placed in aforesaid category by order dated 11th August, 2009 and so after the decision of **Writ Petition (CRL.) No.48 of 2014**, (*Union of India Vs. V. Shriharan @ Murugan and ors.*), further steps were expected from the Respondents. Thus, only the order made by the Respondents on 11th August, 2009 was to be implemented but due to the inaction on the part of the Respondents, order was not implemented.

5 In the present proceeding, the Respondents were expected to take action against the person, who are held responsible for illegal detention that action is being taken. Considering the age of Petitioner, which was given as 58 years in the year 2017 and the

period of life lost in jail and the dependency, this Court holds that the Respondents need to be made to pay the compensation of Rs.4,00,000/-.

6 The learned senior counsel representing the Respondents today showed to this Court the correspondence made by the Chief Secretary, Government of Maharashtra with him showing that necessary inquiry was made and two persons were found responsible in the present matter. It is informed to him that after receiving the explanation from them, appropriate action will be taken against them under the Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979. Short affidavit in that regard needs to be filed in the present matter, which need to include names of officer against whom Respondents are proposing the Department Enquiry. There is one more relief claimed in the petition and i.e. of compensation. As this Court has already noted the proposed action of the Respondents against the persons responsible for illegal detention of the Petitioner, the purpose of remaining part of the petition only survives. However, it will be necessary for the Respondents to inform the decision of the proposed action to the Petitioner on the address given. Final decision

about the action is to be taken within 1 and 1/2 year from today and it is to be informed to this Court and also to the Petitioner so that the Petitioner can take further appropriate steps.

7 The petition in respect of prayer clause (D) and amended clause for compensation is partly allowed. The Respondents are hereby directed to pay the compensation of Rs.4,00,000/- to the Petitioner. The amount is to be deposited in the Court within 45 days from today. If the amount is not deposited within 45 days, the amount shall carry interest at the rate of 12% per annum. Rule is made absolute in those terms.

8 The fees of the appointed counsel is quantified as Rs.6,000/- and it is to be paid through the High Court Legal Services Authority.

[MANGESH S. PATIL, J.]

[T. V. NALAWADE, J.]