

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1328 OF 2018

Santosh Kumar Satishbhushan Bariyar,
(C-4762), Open Prison,
Paithan.

...PETITIONER

VERSUS

- 1) State of Maharashtra,
Through Superintendent of Jail,
Open Prison, Paithan,
- 2) State of Maharashtra,
Through Secretary,
Home Department (Prison),
Mumbai-400005.

...RESPONDENTS

...

Mr.N.N. Gawankar Advocate h/f. Mr. R.A. Jaiswal
Advocate for Petitioner.
Mr.S.B. Narwade, A.P.P. for Respondent
Nos.1 and 2.

...

**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

DATE OF RESERVING JUDGMENT : 26TH FEBRUARY, 2019

DATE OF PRONOUNCING JUDGMENT: 27TH FEBRUARY, 2019

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. The Petitioner is praying for quashment of order dated 25th June, 2018 and corrigendum dated 29th October, 2018, issued by the State Government holding that the Petitioner is liable to be released on completion of imprisonment for a period of 30 years inclusive of period of remission, in view of Guidelines issued on 11th May, 1992 and 15th March, 2010.

3. The Petitioner was arrested in connection with offence punishable under Section 302 read with Section 120-B, Section 364-A read with Section 120-B of the Indian Penal Code, and on

completion of trial in Sessions Case No.14 of 2001, the Petitioner was sentenced to death penalty. Thereafter the Appeal filed by the Petitioner bearing Criminal Appeal No.754 of 2004 before the High Court of Bombay, at Principal Seat, Mumbai, was dismissed on 12th August, 2015. Thereafter the Petitioner preferred Criminal Appeal No.1478 of 2005 before the Supreme Court, and the Supreme Court by Judgment and Order dated 13th May, 2009, has modified the sentence and the Petitioner has been sentenced to undergo rigorous imprisonment for life. Considering the case of the Petitioner, in view of Guidelines dated 11th May, 1992 and 15th March, 2010, he has been categorized under Category 7(a) and 6(d) for pre-mature release as per the corrigendum issued by the Government of Maharashtra on 29th October, 2018, and as such it was directed that the Petitioner shall undergo 30 years of imprisonment with remission.

4. Learned counsel appearing for the Petitioner has invited our attention to Guidelines 7(a) as well as 6(d) contained in the Government Resolutions dated 11th May, 1992 and 15th March, 2010, where-under it has been recorded that the convict whose death sentence is commuted to life imprisonment, shall be released on completion of imprisonment of 30 years inclusive of the period of remission, subject to minimum 14 years of actual imprisonment. It is submitted that the sentence of the Petitioner has not been commuted by the State and as such, a serious mistake has been committed in categorization of the Petitioner and directing his release on completion of 30 years of imprisonment. Learned counsel submits that Section 433 of the Code of Criminal Procedure relates to power to commute the sentence, which is invested with the appropriate Government. In the present case, there is no order as per the

provisions of Section 433 of the Code of Criminal Procedure and as such, the conclusion arrived at by the State Government under order dated 25th June, 2018, and further corrigendum dated 29th October, 2018 is erroneous. Learned counsel submits that in the facts of the case, the case of the Petitioner, at the highest, would be covered under Category 4(e) of the Guidelines of 2010, requiring the convict to undergo 26 years of imprisonment with remissions. It is submitted that the Petitioner has completed period of 26 years of imprisonment with remissions and he is therefore, entitled to be released, forthwith. In support of his submissions, learned counsel appearing for the Petitioner has placed reliance upon the exposition of law in the unreported Judgment of the Division Bench of the Bombay High Court, Bench at Aurangabad (CORAM: R.M. BORDE & A.M. DHAVALA, JJ.) in the case of Raosaheb Ramchandra Thombare vs. the State of Maharashtra (Criminal Writ Petition

No.673 of 2017), dated 4th July, 2017.

5. On the other hand, learned A.P.P. appearing for the State, referring to the affidavit in reply filed on behalf of Respondent No.1, submits that Respondent No.2 vide order dated 25th June, 2018, has decided the proposal for premature release of the Petitioner and ordered that the Petitioner has to undergo 30 years of imprisonment including remission as per Category 7(a) of Guidelines dated 11th May, 1992 read with Category 6(d) of Guidelines dated 15th March, 2010. It is submitted that the said order was corrected by Respondent No.2 vide corrigendum dated 29th October, 2018, in as much as, inadvertently there was typographical error in the said order while mentioning the category. It is submitted that, in the order dated 25th June, 2018, instead of category 7(a) of Guidelines dated 11th May, 1992, it was wrongly typed as category 3(a). Likewise,

instead of category 6(d) of Guidelines dated 15th March, 2010, it was wrongly typed as category 6(c). It is submitted that the said order dated 25th June, 2018, was accordingly corrected by corrigendum issued on 29th October, 2018.

6. Learned A.P.P. further submits that the Petitioner's case falls under Category 7(a) of the Guidelines dated 11th May, 1992 and Category 6(d) of the Guidelines dated 15th March, 2010. Therefore, the Petitioner has to undergo 30 years of life imprisonment including remissions. Referring to the observations made by the Sessions Court, Pune in Para 107 of the Judgment in Sessions Case No.14 of 2002, learned A.P.P. submits that the case of the Petitioner does not fall under Category 3(a) of the Guidelines dated 11th May, 1992. Learned A.P.P. submits that the order passed by Respondent No.2 is just, legal and proper, and the Writ Petition deserves to be

dismissed. In support of his submissions, learned A.P.P. placed reliance upon the exposition of law in the case of Jagdish vs. State of Madhya Pradesh¹.

7. We have heard learned counsel appearing for the Petitioner and learned A.P.P. appearing for the State. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, annexures thereto, reply filed on behalf of the Respondents, the relevant Guidelines of 1992 and 2010, and the Judgments relied upon by learned counsel appearing for the parties.

8. We have carefully perused the Judgment and Order dated 13th May, 2009 passed by the Hon'ble Supreme Court in Criminal Appeal No.1478 of 2005, filed by the Petitioner and Criminal Appeal No.452 of 2006 filed by the State of

¹ 2019 DGLS(SC) 286

Maharashtra. In concluding paragraph of the Judgment, it is observed as under:-

"For the reasons aforementioned, we are of the opinion that this is not a case where death penalty should be imposed. The appellant, therefore, instead of being awarded death penalty, is sentenced to undergo rigorous imprisonment for life. Subject to the modification in the sentence of appellant (A1) mentioned hereinbefore, both the appeals of the appellant as also that of the state are dismissed."

9. Thus, the Supreme Court has specifically observed that, the Petitioner is sentenced to undergo rigorous imprisonment for life. After considering the facts of the present case and the relevant Guidelines of 1992 and 2010, we are of the considered opinion that the decision taken by the State Government is erroneous, since the Petitioner has not been extended benefits in view of the provisions of Section 433 of the Code of

Criminal Procedure and no order of commutation has been issued. The sentence imposed against the Petitioner has been modified in appeal presented by him before the Supreme Court and he has been sentenced to undergo rigorous imprisonment for life. The opinion expressed by learned Additional Sessions Judge, Pune appears to be on erroneous interpretation of the concerned Government Resolution.

10. For the reasons afore stated, the order dated 25th June, 2018, and the corrigendum dated 29th October, 2018, issued by the State Government, are quashed and set aside. The Respondent - State Government is directed to re-consider the case of the Petitioner for his pre-mature release in consonance with the relevant Government Resolutions as well as applicable directives. The State Government shall take appropriate decision as expeditiously as possible, preferably within

the period of six weeks from the date of receipt
of copy of this order.

11. Rule made absolute in above terms. The
Writ Petition stands disposed of, accordingly.

[R.G. AVACHAT, J.]

[S.S. SHINDE, J.]

asb/FEB19