

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 241 OF 2019

Pandit Atmaram Bhoir

... Petitioner

V/s.

The State of Maharashtra and others

... Respondents

Mr. N. N. Gawankar i/b Manas Gawankar for the petitioner
Mrs. P. P. Shinde APP, for State.

**CORAM : B. P. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : APRIL 5, 2019.

ORAL JUDGMENT: [PER: B.P. DHARMADHIKARI, J.]

Considering the nature of controversy, matter is heard finally by issuing Rule and making it returnable forthwith.

2 The petitioner has assailed the order dated 20/02/2019 by which he has been placed in either category 3(d) of guidelines issued on 11/05/1992 RLP 1092/13/252/Turung-3 or in guidelines 4(e) of policy decision dated 15/03/2010 and therefore he has to complete period of 26 years of imprisonment.

3 After inviting attention to facts of matter, the learned counsel for the petitioner submits that guidelines which are more liberal must apply and in present matter, guideline no. 4(d) of 2010 guidelines is squarely attracted. He submits that there is no exceptional violence or kidnapping and hence, use of guideline 4(e) is unsustainable.

4 Our attention is also drawn to guideline 3(e) which puts the convicts in 26 year category to show that it is attracted only when there is exceptional violence or perversity.

5 The learned APP has taken us through relevant paragraph of Judgment delivered by the Trial Court particularly paragraph 73, 74 and paragraph 87 to submit that crime has been committed with exceptional violence. It is further submitted that the demand for extending benefit of remission sanctioned on account of Dr. Babasaheb Ambedkar Jayanti in 2017 is rendered infructuous, because it is already granted. The learned APP further states that insofar as said demand for year 1991 is concerned, as the accused

has been convicted by Judgment delivered on 28/04/1994, the 1991 remission cannot be made applicable to the case of petitioner and in any case, he was on bail at that time and not in custody. In brief reply, counsel for the petitioner relied upon the fact that under section 428 of Code of Criminal Procedure, 1973, benefit has been given to petitioner for period from 07/05/1990 till 10/10/1990 and hence, period of imprisonment needs to be counted from 07/05/1990 and hence, relief in terms of 1991 remission needs to be given to the petitioner.

6 Perusal of Judgment delivered by Trial Court on 28/04/1994 shows that present petitioner was accused no. 2 and he was arrested in the crime on 07/05/1990 and he was released on bail after the Court order on 10/10/1990. The Trial Court has therefore ordered benefit of set off under section 428 of Code of Criminal Procedure, 1973 in his favour for this period.

7 The paragraphs of said Judgment on which the learned APP has placed reliance show that the injuries found on body of deceased have been mentioned in paragraph 73. After describing

internal injuries, in paragraph 74 doctor has opined that death was caused due to shock on account of subarchnoid haemorrhage due to head injury. He has also mentioned that injuries no.s 1 to 3 are caused by firearm. However, it was never the case of prosecution that there was any firearm injury on deceased and any firearm was used by any of the accused persons to eliminate deceased. Injury no. 4, 5 & 6 are scratch marks. Injury no. 8 is also a scratch mark. Injury no. 10 & 11 are contused lacerated wounds. Injury no. 7 is incised wound and injury no. 9 is also incised wound. It is not in dispute that chopper and sticks were used for committing offence.

8 Injuries mentioned supra therefore do not show any exceptional violence or perversity. Deceased was abducted and thereafter his body was found on railway line. Observations in that respect are contained in paragraph 87 of the Judgment. The learned APP has relied upon those observations to show the mentality of the accused persons. Finding in paragraph 87 only bring on record intention of accused persons to conceal the evidence and the commission of offence and with that aim, they threw dead body on railway line. Prosecution, however, does not claim that any train

thereafter ran over the dead body.

9 The perusal of guidelines issued on 11/05/1992 and looked into by respondents particularly clause 3(d) show that it deals with murder committed with pre-meditation and with exceptional violence or perversity. We have already found that there was no such element and hence, this entry is not relevant. Other entry vide clause 3(c) speaks of murders arising out of trade union activities and business rivalry. That also is not shown to be case here. Sub clause (a) envisages a murder which occurs in the course of quarrel without pre-meditation in an individual capacity. Here there was no quarrel and apparently murder has been committed with pre-meditation. Hence, 3(a) is not applicable. Hence, the only clause left out is 3(b) which speaks of murder with pre-meditation or by gang. There the convict has to be categorised in 24 year category.

10 As against this, in guidelines/resolutions dated 15/03/2010, clause 4 is on murder for other reasons and in it respondents relied upon 4(e), it is about murders committed with exceptional violence/brutality/kidnapping. There are also other sub-heads but

those sub-heads are rightly not pressed into service by respondents. Here we have already found that there is no exceptional violence and brutality. The deceased was dragged forcibly and the petitioner alongwith other gang members carried him in a jeep and then his dead body was found on railway line. There is conviction under section 364 of the Indian Penal Code. However, when this offence is viewed, it appears that it is for abduction and not for kidnapping. Words “kidnapping” in clause 4(e) used is kidnapping and when it is employed in relation to categorization of convicts for offence punishable under the Indian Penal Code, kidnapping cannot be said to include abduction. This is additional reason for not sustaining recourse to comply 4(e).

11 Clause 4(a) is about murders committed with pre-meditation. Sub-clause (b) is murder committed with pre-meditation or a person having criminal history. Sub-clause (c) is about murders resulting from trade union or business rivalry and sub-clause (d) is about murders committed by more than one person/group of persons. When these sub-clauses are read together, it is apparent that as present offence is not committed by an individual, clause 4(d) at the most becomes

relevant. It puts prisoner in 24 years category.

12 Thus, even if the petitioner is seen felling under clause 3(b) of 1992 guidelines or then clause 4(d) of 2010 resolution, he has to be in 24 year category. His categorization which stipulates 26 years imprisonment is therefore unsustainable.

13 Though there has been some argument before us about opinion expressed by the learned District Judge in the matter of categorization and the learned APP has pointed out that while considering the case of co-convict, the learned District Judge had given contrary opinion, we do not find it necessary to delve into this aspect.

14 As far as the benefit of 1991 Dr. Babasaheb Ambedkar Jayanti remission is concerned, the Judgment delivered by the Trial Court itself gives the petitioner benefit under section 428 of Code of Criminal Procedure, 1973. He has thus given benefit of imprisonment from 07/05/1990 to 10/10/1990. He has been convicted on 28/04/1994 for offence committed on 06/05/1990. Thus immediately, after the next date of commission of offence, he was taken in custody and was

released on bail on 10/10/1990. He was therefore “bailed out” subject to certain terms and conditions and was not a free citizen. This period spent by him as under trial prisoner has been treated as imprisonment after conviction by Judgment dated 28/04/1994. This remission scheme is in accordance with provisions contained in that respect in Code of Criminal Procedure, 1973. Thus, merely because he was not finally convicted on that day, it cannot be said that he is not entitled to benefit of remission declared later on i.e. in 1991. The benefit of said remission therefore can be extended to him after counting his total period of imprisonment including the bail period and treating it as per law. We therefore find that denial of said benefit is unsustainable.

15 Our attention was drawn by the learned APP to clause 4 of said policy decision. That policy decision lays down that prisoners unauthorizedly out of jail 15/04/1991 cannot be given benefit of this policy decision, however, said clause itself clarifies that convicts who are out on that day because of parole or furlow, duly sanctioned to them can be given benefit of the remission. Case of the petitioner therefore cannot be treated differently and he was always in custody of Court during trial. Respondents therefore can take this policy

decision dated 15/04/1991 accordingly and sanction the remission to the petitioner.

16 Thus, we quash and set aside the order of categorization dated 28/02/1990 and direct the respondents to put him in category of 24 years. We also direct to extend to him the benefit of 15/04/1991 Dr. Babasaheb Ambedkar Jayanti remission in the light of observations made supra.

17 Petition is thus partly allowed and disposed of.

(PRAKASH D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)