

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1215 OF 2017**

Mubarak Rehmatullah ManiyarPetitioner

Vs.

The State of MaharashtraRespondent.

Mr. Prosper D'souza for the Petitioner.

Mr. Arfan Sait, APP for the Respondent-State.

**CORAM : A. S. OKA, AND
A. S. GADKARI, JJ.
DATE : 7th MARCH, 2019.**

P.C.:-

Heard the learned counsel appointed to espouse the cause of the Petitioner and the learned APP for the State.

2 Rule has been issued. The prayer made in this Petition received through Jail in substance is for directing the State Government to Order pre-mature release of the Petitioner, who is undergoing life sentence.

3 Under the Judgment and Order dated 6th January, 2007, the Additional Sessions Judge, Malegaon convicted the Petitioner for the offence punishable under Section 302 of the Indian Penal Code as

well as under Section 3 read with Section 25 of the Indian Arms Act. The learned Additional Sessions Judge directed that the cases of accused Nos. 2 and 9 shall be separated from the case of the present Petitioner.

4 A compilation is tendered by the learned APP. By an Order dated 20th February 2019, the State Government came to the conclusion that case of the Petitioner will be governed by Sub-clause (a) of Clause 6 of Annexure-I to the Government Resolution dated 15th March, 2010 and therefore, the case of the Petitioner for pre-mature release will be considered after undergoing sentence for 28 years, including all remissions.

5 The submission of the learned counsel appearing for the Petitioner is that only the Petitioner has been convicted for the offence punishable under Section 302 of the Indian Penal Code and therefore, the categorization made is erroneous. He submitted that the case will be governed by Sub-clause (b) of Clause 3 of Annexure-I to the said Government Resolution. He submitted that in any case, there is no finding recorded by the Sessions Court that the murder was committed by the Gangsters, Contract Killers, Racketeers etc. and hence, Sub-clause (a) of Clause (6) of Annexure-I will have no application.

6 The learned APP invited our attention to the findings recorded by the Sessions Court as well as this Court in Appeal. He submitted that one bullet each was fired by the Petitioner and the absconding accused and therefore, if clause 6 is not applicable it will be a case of murder with exceptional brutality covered by Sub-clause (e) of Clause 4 of Annexure-I to the said Government Resolution.

7 We have considered the submissions. We have perused the Judgment under which the Petitioner was convicted by the Sessions Court as well as the Judgment under which the conviction was confirmed by this Court. Even going by the prosecution case, one bullet each was fired by the Petitioner and the absconding accused. If the findings of the Court are considered, merely because one bullet was fired by the Petitioner it will not bring the case within the purview of Sub-clause (e) of Clause 4 which is attracted when the murder is committed with exceptional violence or exceptional brutality. Sub-clause (a) of Clause 6 of Annexure-I is applicable when murder is committed by Gangsters, Contract Killers, Racketeers etc.

8 Going by both, the Judgments of the Sessions Court and this Court, there is no finding recorded that the Petitioner is a Gangster or Contract Killer or Racketeer. Therefore, Sub-clause (a) of

Clause 6 will have no application. Sub-clause (b) of Clause 3 cannot apply as it applies to murders arising out of land dispute, family feuds, family prestige and superstition. Clause 4 is applicable murders for other reasons. The Sub-clause (d) of Clause 4 covers the category of murder committed by more than one person/ group of persons. The said sub-clause will be attracted in the present case and therefore, the case of the Petitioner will have to be considered after undergoing sentence for 24 years including all the remissions.

9 Accordingly we pass the following Order.

- a) The Order dated 20th February, 2019 passed by the State Government is hereby set aside;
- b) We hold that the case of the Petitioner is covered by Sub-clause (d) of Clause 4 of Annexure-I to the Government Resolution dated 15th March, 2010 and therefore, the case of the Petitioner for pre-mature release shall be considered on the Petitioner undergoing sentence for a period of 24 years (including all remissions), subject to undergoing actual sentence for 14 years;

- c) The State Government shall pass a formal Order in terms of this Order which shall be immediately communicated to the Petitioner through the concerned Jail Superintendent;
- d) The Order shall be passed within a period of two months from the date on which this Order is uploaded;
- e) Rule is made partly absolute in terms of above;
- f) A copy of this Order shall be forwarded to the Petitioner through the concerned Jail Superintendent.

(A.S. GADKARI, J.)

(A.S. OKA, J.)