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

CRIMINAL WRIT PETITION NO.2693 OF 2017

Ronald James Alvares

..Petitioner

Vs

The State of Maharashtra & Anr.

..Respondents

**WITH
CRIMINAL APPLICATION NO.451 OF 2018
AND
CRIMINAL APPLICATION NO.546 OF 2018
IN
CRIMINAL WRIT PETITION NO.2693 OF 2017**

Dr. Yug Mohit Chaudhary for the Petitioner.

Ms. P.P. Shinde, APP for the State.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

DATE : 14th February 2019.

ORAL JUDGMENT (Per A.S. Oka, J.):-

1] Perused the Order dated 30th January 2019 passed by this Court. In terms of the said Order, the Jail Superintendent has recorded a statement of the petitioner on 5th February 2019. In the said statement, he has stated that, if Dr. Yug Chaudhary who is appointed by him in this petition appears in the Court and argues the matter, he has no objection to

continuing his appearance.

2] Accordingly, we have heard Dr. Youg Mohit Chaudhary, the learned counsel for the petitioner and the learned APP for the respondent-State.

3] The challenge in this petition under Article 226 of the Constitution of India is essentially to the Order/communication dated 13th May 2011 of the State Government by which it was directed that the case of the petitioner (who has been convicted to suffer life imprisonment) for premature release will be considered only after he completes the age of 65 years.

4] The petitioner is the accused No.2. The petitioner was convicted for various offences including the offence punishable under Section 302 and sub-section (g) of sub-section (2) of Section 376 of the Indian Penal Code.

5] Our attention is invited to the decision of the Apex Court in Criminal Appeal preferred by the petitioner against the order of conviction confirmed by this Court. The said Criminal Appeal was decided on 5th March 1998¹. The operative part of paragraph No.48 of the said decision reads thus:

1 1998 Cri. L.J. 1638.

“ Considering the cumulative effect of all the factors, it cannot be said that the offences were committed under the influence of extreme mental or emotional disturbance for, the whole thing was done in a pre-planned way: having regard to the nature of offences and circumstances in which they were committed, it is not possible for the Court to predict that the appellant would not commit criminal act of violence or would not be a threat to the society. A-1 is 35 years' old, A-2 is 35 years old and A-3 is 25 years' old. The appellants cannot be said to be too young or too old. The possibility of reform and rehabilitation, however, cannot be ruled out. From the facts and circumstances, it is not possible to predict as to who among the three played which part. It may be that role of one has been more culpable in degree than that of others and vice versa. Where in a case like his it is not possible to say as to whose case falls within the “rarest of the rare” case, it would serve the ends of justice if the capital punishment is commuted into life imprisonment.

Accordingly, we modify sentence awarded by Courts below under Section 302 read with Section 34 from death to life imprisonment. The sentences for the offences for which the appellants are convicted, except under Section 376(2)(g), I.P.C shall run concurrently; they shall serve sentence under Section 376(2)(g) I.P.C consecutively, after serving

sentence for other offences.”

6] By impugned Order dated 13th May 2011, as stated above, the State Government declined to consider the case of the petitioner for premature release as far as the life sentence is concerned and directed that the consideration of the case of the petitioner will be after completion of 65 years.

7] The learned counsel for the petitioner invited our attention to the decision of the Constitution Bench of the Apex Court in the case of *Muthuramalingam & Ors Vs. State represented by Inspector of Police*². He invited our attention to what is held in the paragraph Nos.33 and 35 of the said decision which reads thus:

“33] We are not unmindful of the fact that this Court has in several other cases directed sentences of imprisonment for life to run consecutively having regard to the gruesome and brutal nature of the offence committed by the prisoner. For instance, this Court has in Ravindra Trimbak Chuthmal V State of Maharashtra ((1996) 4 SCC 148 : 1996 SCC (Cri) 608), while communicating death sentence penalty to one of imprisonment for life directed that the sentence of seven years rigorous imprisonment under Section 207 IPC shall start running after life imprisonment has run its due

2 (2016) 8 SCC 313.

course. So also in Ronny V. State of Maharashtra ((1998) 3 SCC 625 : 1998 SCC (Cri) 859) this Court has while altering the death sentence to that of imprisonment for life directed that while the sentence for all other offences shall run concurrently, the sentence under Section 376(2)(g) IPC shall run consecutively after running of sentences for other offences. To the extent these decisions may be understood to hold that life sentence can also run consecutively do not lay down the correct law and shall stand overruled.

35] *We may, while parting, deal with yet another dimension of this case argued before us namely whether the Court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The Trial Court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in [Section 31](#) of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction*

shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. Whether or not the direction of the Court below calls for any modification or alteration is a matter with which we are not concerned. The Regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs.”

(Emphasis added)

8] The submission of the learned counsel for the petitioner is that firstly the case of the petitioner ought to have been considered in the light of the policies of the State Government which govern premature release. His second submission is that in view of what is held in paragraph Nos.33 and 35 of the decision of the Apex Court in the case of *Muthuramalingam & Ors Vs. State represented by Inspector of Police (supra)*, now the sentence under Section 376(2)(g) must run concurrently along with sentence for the offence punishable under Section 302 read with 34 of the Indian Penal Code. He submitted that in view of the decision of the Constitution Bench, the direction issued specifically in the case of the petitioner directing that

the sentence for the offence punishable under Section 376(2)(g) of Indian Penal Code shall run consecutively stands overruled.

9] The learned APP submits that considering the gravity of the offence and the findings recorded by the Sessions Court which are confirmed by the Apex Court, no interference is called in the impugned Order dated 13th May 2011.

10] We have considered the submissions. The first prayer is for quashing of impugned Order dated 13th May 2011 and the second prayer is for categorizing the petitioner in the category of 3(d) of the Guidelines of 1992 and for releasing the petitioner on completion of 26 years of sentence. On plain reading of the prayers, it is crystal clear that both the prayers relate only to the consideration of prayer for premature release on the basis of Guidelines of 1992 which deal with the issue of premature release of the convicts who are undergoing the life sentence. Therefore, the scope of the petition is confined to the question whether the State Government ought to have considered the prayer of the petitioner for grant of premature release, as far as the life sentence is concerned. In this petition, we are not called upon to decide the question whether in view of the subsequent decision of the Constitution Bench of the Apex Court, the

direction given in the case of the petitioner of consecutive running of sentence under Section 376(2)(g) stands overruled and it is for the petitioner to raise the said issue in appropriate judicial proceedings before the appropriate forum.

11] Now coming to the Order dated 13th May 2011, the perusal of the affidavit-in-reply filed by Mr. Jaysing L. Pawara shows that it is not the case of the State Government that any of the four policies of the State of the years 1978, 1992, 2008 and 2010 provide that the petitioner's case for premature release can be considered only after completion of 65 years of age.

12] The law is well settled. Though a convict is sentenced to undergo imprisonment for life, if there is a rule or a policy of the Government dealing with premature release, such convict has a right to be considered for premature release in terms of the said Rules or Policies, as case may be.

13] In the present case, there is no dispute that there are four policies of the State Government dealing with issue of premature release of the convicts who are undergoing life sentence. Going by the impugned Order, the case of the petitioner has not been considered in terms of any of

the four policies. The petitioner has undergone sentence for about 28 years (including all remissions). It is, therefore, necessary for the State Government to immediately consider the case of the petitioner.

14] Accordingly, we dispose of the petition by passing following Order:-

(a) The impugned Order/communication dated 13th May 2011 (Exh.A to the petition) stands set aside;

(b) We direct the State Government to immediately consider the case of the petitioner for premature release in accordance with the policies of the State Government in the light of the law laid down by the Apex Court in the case of State of *Haryana & Ors. Vs. Jagdish*³ and appropriate decision shall be taken by the State Government as expeditiously as possible and in any event within a period of one month from today:

(c) Even if a copy of this Order is not available, the aforesaid direction shall be communicated by the Office of the Public Prosecutor to the State Government;

(d) As regards the submission of the petitioner that now the sentence for the offence punishable under Section 376(2)(g) of the Indian Penal Code shall run concurrently, we make it clear that it will be open for

3 AIR 2010 SC 1690

the petitioner to raise this issue in an appropriate proceedings before the appropriate forum;

(e) The decision taken by the State Government as aforesaid shall be immediately communicated to the petitioner through the Jail Superintendent;

15] In view of Order passed in Criminal Writ Petition No.2693 of 2017, Criminal Application Nos.451 and 546 of 2018 do not survive and the same are accordingly disposed of.

(A.S.GADKARI, J.)

(A.S. OKA, J.)