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

CRIMINAL WRIT PETITION NO.3426 OF 2018

Anil Ramchandra Parab

..Petitioner

Vs

The State of Maharashtra & Anr.

..Respondents

Mr. Karl Rustomkhan for the Petitioner.

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

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

DATE : 14th February 2019.

P.C.:

1] Heard the learned counsel for the petitioner and the learned APP for the respondent-State.

2] Rule. Rule is made returnable forthwith and taken up for final disposal.

3] The petitioner was convicted for an offence punishable under Section 307 of the Indian Penal Code along with other offences under the Arms Act and is sentenced to suffer life imprisonment.

4] By an Order dated 29th September 2016, the State Government came to the conclusion that the case of the petitioner for premature release

cannot be considered and the prayer for premature release has been rejected.

5] The State Government in the said communication mentioned that the petitioner fired a bullet at a witness who was present in the Court of learned Metropolitan Magistrate, 22nd Court, Andheri. The State Government relied upon the observations made in the Judgment and Order under which the petitioner was convicted. In the said communication, it is mentioned that in the judicial appraisal, the learned Sessions Judge has observed that considering the antecedents of the petitioner, it is desirable to ask the petitioner to suffer imprisonment so awarded.

6] The learned counsel for the petitioner submitted that the case of the petitioner ought to have been considered for premature release as per the policies prevailing and only on the ground that he has committed the offence in open Court, the State cannot refuse to consider the case of the petitioner. The learned APP invited our attention to the observations made by the Sessions Court as well as the this Court by which the conviction of the petitioner was confirmed.

7] We have considered the submissions. There is no dispute that from time to time, the policies were framed by the State Government for

laying down the guidelines for premature release of the convicts who are undergoing the life sentences. The guidelines were issued in the years 1978, 1992, 2008 and 2010. It is not the case of the State Government that in any of the guidelines it is stated that a person who commits offence of the type committed by the petitioner is dis-entitled to premature release. The law on this aspect is very well clear. In the case of the *State of Haryana Vs. Jagdish*¹, the Apex held that the remission or premature release cannot be claimed as a matter of right. However, a prisoner has a limited right to the extent that the case of the prisoner should be considered in accordance with the rules or policies of the State Government.

8] In the present case, there is a breach of the limited right in the sense that the State Government has not applied its mind to the question whether any of the policies were applicable to the case of the petitioner. As none of the policy excludes this category from consideration for premature release, it was the duty of the State Government to ascertain in which category specified in the relevant policy, the case of the petitioner will fall. As regards the question which policy will apply, the law is already laid down by the Supreme Court in the case of *State of Haryana Vs. Jagdish (supra)*. Therefore, the impugned communication dated 29th September

1 AIR 2010 SC 1690.

2016 cannot be sustained.

9] We, therefore, pass the following Order:

(a) We direct the State Government to consider the case of the petitioner for premature release as per the policies framed by the State Government. The consideration shall be in terms of law laid down by the Apex Court in the case of *State of Haryana Vs. Jagdish (supra)*;

(b) Appropriate decision shall be taken by the State Government as expeditiously as possible and in any event within a period of one month from the date on which this Order is uploaded, considering the fact that upto 30th September 2018, the petitioner had already undergone imprisonment for 20 years, 8 months and 27 days including remission.

(c) Rule made absolutely in the aforesaid terms.

(d) As soon as the State Government takes decision, a copy of the Order shall be forwarded to the petitioner through the concerned Jail Superintendent.

(A.S.GADKARI, J.)

(A.S. OKA, J.)