

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 5499 OF 2018**

Santosh Changu Karnekar,
Age 37 years, Occ. Nil,
R/at- Village- Savroli, Taluka -Murud,
District- Raigad.
(At present lodged at Yerwada
Open Prison, Pune.)

.....Petitioner

Vs.

1 The State of Maharashtra
through Secretary, Home Department,
Mantralaya, Mumbai-400 032.

2 The Superintendent,
Yerwada Open Prison, Pune.

....Respondents.

Mr. Daulat G. Khamkar for the Petitioner.
Mr. Arfan Sait, APP for the Respondent-State.

CORAM : A. S. OKA, AND

A. S. GADKARI, JJ.

DATE : 30th JANUARY, 2019.

ORAL JUDGMENT(PER-A.S. OKA, J.):

Heard the learned counsel appearing for the Petitioner and
the learned APP for the Respondent-State.

2 Rule. The learned APP waives service for the Respondents.

3 The Petitioner was convicted under the Judgment and

Order dated 29th April, 2004 passed by the learned Additional Sessions Judge at Niphad for the offence punishable under Section 302 of the Indian Penal Code and has been sentenced to suffer imprisonment for life.

4 The chart tendered by the learned APP across the bar records that as of 31st December, 2018, the petitioner has undergone actual sentence of more than 15 years and 10 months and the sentence of 24 years and 9 months after taking into consideration the remissions.

5 By an Order dated 11th September, 2018 which is impugned in this Petition, the State Government came to the conclusion that the Petitioner will fall in category (e) of Clause 4 of Annexure-I to the Government Resolution dated 15th March, 2010, (for short, "*the said GR*"). Clause 4 of the aforesaid Annexure-I reads as under:-

<i>Category No.</i>	<i>Sub Category</i>	<i>Categorization of Crime</i>	<i>Period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment</i>

			<i>including set off period</i>
4.		MURDERS FOR OTHER REASONS	
	(a)	<i>Where a murder is committed without premeditation in an individual capacity and the person has no previous criminal history.</i>	20
	(b)	<i>Murder committed with premeditation, or a person having criminal history.</i>	22
	(c)	<i>Murder resulting from trade union activities and business rivalry.</i>	22
	(d)	<i>Murder committed by more than one person/ group of persons</i>	24
	(e)	<i>Murder committed with exceptional violence/ brutality/ kidnapping. Murder committed by dacoits and robbers in the act of committing dacoities and robberies. Murder committed by bootleggers, gamblers, flesh traders etc.</i>	26

6 On the earlier date, we directed the learned APP to produce the file with a view to ascertain as to whether there was a proper application of mind before passing the impugned Order.

7 Perusal of the file shows that there is no proper application of mind for arriving at a conclusion regarding the categorization of the case of the Petitioner. Therefore, in normal course, this Court would have been justified in sending back the matter for reconsideration. We are not adopting the said option for two reasons. The first is that the facts are undisputed and the second is that including the remissions, the Petitioner has already undergone sentence for about 24 years and 10 months.

8 With the assistance of the learned counsel appearing for the Petitioner and the learned APP for the State, we have perused the Judgment and Order under which the Petitioner was convicted. The Petitioner and his co-accused (absconding accused) were charged for offences punishable under Sections 302 and 397 read with Section 34 of the Indian Penal Code.

9 The findings recorded by the learned Sessions Judge show that he accepted that the prosecution has failed to establish the role played by the co-accused and therefore, Section 34 of the Indian Penal Code was not applied by him. There is a clear finding recorded to that effect in paragraph No. 26. The Petitioner was acquitted for the offence punishable under Section 397 of the Indian Penal Code.

There is nothing in the Judgment which indicates that the Petitioner has committed murder with exceptional violence/ brutality. There is no allegation of kidnapping. Therefore, in our opinion, the case will fall under Sub-Clause (b) of Clause 4 of Annexure-I to notification dated 15th March, 2010 and hence, the case of the Petitioner ought to have been considered for pre-mature release on completing/undergoing imprisonment for a period of 22 years subject to minimum of 14 years of actual imprisonment. Hence, the impugned Order will have to be set aside and we pass the following Order:-

- a) We hold that the case of the Petitioner will be governed by Sub-Clause (b) of Clause 4 of Annexure-I to the Government Resolution dated 15th March, 2010 and hence, the State Government shall consider his case for pre-mature release on completion of period of 22 years of imprisonment including remissions;
- b) As the chart submitted by the learned APP indicates that the Petitioner has suffered actual imprisonment for more than 15 years and imprisonment for 24

years and 10 months including the remission, the
Petitioner shall be immediately set at liberty unless
required in any other case;

c) Rule is made absolute in above terms.

10 All the concerned to act upon an authenticated copy of the
operative part of this Judgment and Order.

(A.S. GADKARI, J.)

(A.S. OKA, J.)