

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL WRIT PETITION NO. 274 OF 2019.**

Shantabai Datta Ghodse,  
(In Jail)  
Aged about 50 years,  
Convit No.11,  
Akola Mahila Open Prison,  
Akola, resident of Near Iata Bhatti,  
Washim Shelu Road,  
Washim, District Washim.

... **PETITIONER.**

**VERSUS**

1.State of Maharashtra,  
through its Secretary,  
Home Department,  
Mantralaya, Mumbai – 32.

2. Inspector General (Prisons),  
Pune (Maharashtra).

3.The Superintendent of Prison,  
Akola Mahila Open Prison,  
Akola.

... **RESPONDENTS.**

-----  
Ms. S.B. Khobragade, Advocate for the Petitioner.  
Shri H.D. Dubey, A.P.P. for Respondents.  
-----

**CORAM : M.G. GIRATKAR &**  
**VINAY JOSHI, JJ.**

**DATE : OCTOBER 07, 2020**

**ORAL JUDGMENT (PER M.G. GIRATKAR, J) :**

Heard. **Rule.** Rule made returnable forthwith. By consent of learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. By this petition, the petitioner, a female convict is seeking benefit of Government Resolution dated 15.03.2010, in the matter of grant of remission. The Government of Maharashtra has time to time framed policy, thereby making provision for remission of sentence to life convicts. The said policy was revised in the year 2010, laying the categories for premature release under “the 14 years rule” for convicts serving life sentence. Home Department has issued Government Resolution No. RLP-1066/CR-621/PRS-3 dated 15.03.2010 to that effect, by which revised guidelines for premature release have been introduced.

3. In accordance therewith, the Authorities have placed the petitioner in category no.2[c] of the said guidelines, whereby the prescribed period of imprisonment is of 26 years. According to the petitioner, she could not have been placed in said category i.e. category no.2[c], but, ought to have been placed in category 2[b], which provides for imprisonment for 22 years. Thus, the challenge

is to the categorization made by the Authority in terms of the Government Resolution dated 15.03.2010.

4. The State has resisted the petition by filing reply – affidavit. The learned A.P.P. submitted that the petitioner has committed murder, where the deceased died due to burn injuries and therefore, she squarely falls in category 2[c] of the guidelines dated 15.03.2010.

5. The petitioner, a woman, has been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, by judgment and order dated 19.09.1992. The learned Counsel for the petitioner would submit that category 2[c] covers the crimes committed with exceptional violence or with brutality or death of victim due to burns. According to the petitioner, the crime was committed with premeditation, and therefore, she would fall in category 2[b] of the guidelines dated 15.03.2010.

6. There is no dispute regarding the applicability of the revised guidelines issued vide Government Resolution dated 15.03.2010. The petitioner was convicted in the year 1992, however, the Hon'ble Supreme Court in case of **State of Haryana**

**and others .vrs. Jagdish (AIR 2010 SC 1690)**, has specifically answered the question as to whether the policy which makes a provision for remission of sentence should be that which was existing on the date of conviction or should be the policy that exists on the date of consideration of a case of convict for premature release. In that regard, it is expressed that the policy which was in favour of the convict should be applied for giving benefit thereof. In view of that guidelines issued by the State Government dated 15.03.2010 would squarely apply and there is no denial to that effect.

7. We have minutely examined the government resolution dated 15.03.2010, pertaining to revised guidelines for premature release of prisoners undergoing life imprisonment. The State has issued revised guidelines in terms of Section 433-A of the Code of Criminal Procedure, specifying the criterias. These revised guidelines are divided into two parts, namely Annexure-I and Annexure-II. The First Annexure relates to the crime where the offence of murder has been committed, whilst the Second Annexure pertains to the convicts of the offences not involving murder. Annexure-I makes categorization in Clauses 1 to 8 depending upon the nature of crime. The said categorization Nos. 1 to 8 reads as under :

- (1) Offences relating to Crime by Women.
- (2) Offences relating to Crime against Women and Minors.
- (3) Murders arising out of Land Dispute Family Feuds, Family Prestige and Superstition.
- (4) Murders for other reasons.
- (5) Murder for Political reasons.
- (6) .....
- (7) Punishment under the Special Acts such as TADA, MCOCA, POTA for Murder.
- (8) Any other such offences which are of an exceptional heinous nature and not specifically covered in above categories.

8. A bare reading of categorization discloses that Category No.1 has been specially carved out to deal with the cases of Female Convicts, under the caption of “Offence relating to crime by Women”. Rest of the categories makes no distinction on gender basis. It is apparent that a special category has been made to deal with the cases of female convicts under Category No.1, whilst rest of the categories are in general nature. When a specific category has been made to deal with female convicts, it would certainly prevail over the general categories. We may recall the latin maxim “*Generalibus Specialia Non Derogant*”, i.e. if a special provision is made on a certain subject, that subject is excluded from the general

provisions. Therefore, if the convict is a female, her case has to be examined and restricted to see under which sub-category of category No.1 would apply, and not under rest of the categories.

9. True, some cases may fall in more categories also. For example, if a crime is committed due to burns by female convict, then category No.2[c] would also attract, however, as noted above, since there is a specific provision to deal with female convicts, she could not be placed in category no. 2[c], only on the basis of the nature of crime. The guidelines are silent on the point as to its applicability, if a particular convict falls in more than one category. We have amply expressed above that in view of creation of specific category carved out to deal female convicts, the only question remains to see that in which sub-category of Category No.1, the female / convict would fall.

10. We have examined the judgment of conviction delivered on 19.09.1992 in Sessions Case No.243/1991. It was prosecution case that the convict [accused no.2] was married to accused no.1 and had no issue from the wedlock. In view of such position, accused no.1 [husband] remarried with the deceased lady. There happen to be frequent quarrel in between the petitioner and

deceased, who were co-wife. On the date of occurrence in the early hours the deceased woke up and was cleaning the house. At that time, the petitioner poured kerosene on her person and set her ablaze. Therefore, it is abundant clear that the incident was not the outcome of sudden quarrel or on the spur of moment, but, it was premeditated act. Since the crime was committed with premeditation, it would fall in Category No.1[b] of the guidelines dated 15.03.2010, which prescribes 20 years period of imprisonment.

11. In view of above discussion, Writ Petition is allowed. The impugned communication dated 06.12.2018 placing the petitioner in Category No.2[c] of the guidelines dated 15.03.2010, is hereby quashed and set aside. The petitioner is placed in category no.1[b] of the revised guidelines dated 15.03.2010. Respondents are directed to take steps for the release of petitioner in accordance with the said categorization. Rule is thus made absolute in aforesaid terms.

**JUDGE**

**JUDGE**

Rgd.