

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

(I) CRIMINAL WRIT PETITION NO.375 OF 2020

Rahul s/o Harishchandra Mhaiskar,
 age major, Convict No.C-381,
 Morshi Open Jail, Morshi,
 Tahsil Morshi, District Amravati.

... Petitioner

- Versus -

- 1) State of Maharashtra, through
 its Secretary, Department of Home,
 Mantralaya, Mumbai – 32.
- 2) The Additional Secretary,
 Department of Home, Mantralaya,
 Mumbai – 32.
- 3) Superintendent of Jail Prison,
 Morshi Open Jail, Morshi,
 Tahsil Morshi, District Amravati.

... Respondents

Smt. D.I. Charlewar, Advocate for petitioner.

Shri A.A. Madiwale, Additional Public Prosecutor for respondents.

(II) CRIMINAL WRIT PETITION NO.381 OF 2020

Roshan Harishchandra Mhaiskar,
 aged about 48 years, occupation :
 nil, presently in Open Jail Atpadi,
 Tahsil and District Satara,
 through his mother, Ashabai
 Harishchandra Mhaiskar,
 aged about 72 years, occupation :

housewife, r/o Mondha, Tahsil :
Hingna, District Nagpur.

... Petitioner

- Versus -

- 1) State of Maharashtra, through
its Secretary, Department of Home,
Mantralaya, Mumbai – 32.
 - 2) The Additional Secretary,
Department of Home, Mantralaya,
Mumbai – 32.
 - 3) Superintendent of Jail Prison,
Open Jail, Atpadi,
Tahsil and District Satara.
- ... Respondents

Smt. D.I. Charlewar, Advocate for petitioner.

Shri A.M. Deshpande, Additional Public Prosecutor for respondents.

(III) CRIMINAL WRIT PETITION NO.382 OF 2020

Sharad s/o Daulat Moon,
aged about 48 years,
Convict No.C-85,
r/o Mondha, Tahsil Hingna,
District Nagpur.

... Petitioner

- Versus -

- 1) State of Maharashtra, through
its Secretary, Department of Home,
Mantralaya, Mumbai – 32.
- 2) The Additional Secretary,
Department of Home, Mantralaya,
Mumbai – 32.

3) Superintendent of Jail Prison,
Central Jail, Nagpur.

... Respondents

Smt. D.I. Charlewar, Advocate for petitioner.

Shri A.A. Madiwale, Additional Public Prosecutor for respondents.

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATED : DECEMBER 8, 2020

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

Rule. Rule is made returnable forthwith. Heard finally
by consent of learned Counsel for the parties.

2) These three petitioners were co-accused in Sessions
Trial No. 79/2003 and they were tried together on the charge of
having conspired to commit murder of one Nandu and did actually
commit his murder. The petitioners along with one more accused
were tried for the offences punishable under Section 120-B read
with Section 302 of Indian Penal Code and also under Section 302
read with Section 34 of Indian Penal Code. Prosecution of the
petitioners resulted into they being found guilty for the offences
with which they were charged and tried. The learned third Ad hoc
Additional Sessions Judge, Nagpur by his judgment and order dated

19/8/2005 sentenced these accused persons to life imprisonment twice - one for the offence of criminal conspiracy punishable under Section 120-B read with Section 302 of Indian Penal Code and other for the offence of murder punishable under Section 302 read with Section 34 of Indian Penal Code.

3) As pointed out by Smt. Charlewar, learned Counsel for the petitioners, the concerned learned Additional Sessions Judge gave his opinion that for the purpose of giving of remission of sentence to these accused persons, i.e. petitioners, their case would fall in the category mentioned at serial no.3(b) of the Government Resoltuion dated 15/3/2010. His such opinion, however, was not accepted by the competent authority and the competent Authority found that the case of the petitioners would fall under category at serial no.6(c) of the Government Resolution dated 15/3/2010, which is apt for all the petitioners for the reason that they have been awarded more than one life sentence and both the life sentences have been directed to run concurrently. An order to this effect came to be passed by the respondent no.2 on 31/7/2020. This order is challenged in each of these petitions.

4) According to Smt. Charlewar, learned Counsel for the petitioners, the applicable category is the one, which is mentioned at serial no.3(b) of the Government Resolution dated 15/3/2010, which has been disagreed to by Shri Madiwale and Shri Deshpande, learned Additional Public Prosecutors for the respondents.

5) The category appearing at serial no. 3(b) of the Government Resolution dated 15/3/2010 is in respect of convicts, who have committed crime of murder arising of land dispute, family fueds, family prestige and superstition, with premeditation either individually or by gang and the release of such convicts can be ordered after they undergo actual imprisonment of 22 years. In the present case, there is no doubt about the fact that murder of Nandu was committed out of concern for the family prestige and, therefore, apparently one may think that the category at serial no.3(b) is applicable to the case of each of the petitioners, but on deeper examination of the issue, we find that the apparent impression so gathered is incorrect and the category, which is actually applicable to each of the petitioners is one, which is mentioned at serial no.6(c) of the said Government Resolution, which category reads as under :

- “6. Murder – serious offences :
- (c) Convict awarded more than one

life sentence and sentences
running concurrently. ... 30 years”

6) There is, however, one more Government Resolution of the date 11/5/1992, which could also have been considered by the respondent no.2 for deciding the question of premature release of the petitioners. On going through the impugned order, it does appear that the respondent no.2 has followed this Government Resolution dated 11/5/1992 in deciding the issue. In this Government Resolution, there are two categories, which could be considered as relevant for the purpose of these petitions. The first category is at serial no. 2(b), which is in respect of convicts of murders arising out of land dispute, family feuds, family prestige and superstition and the offence is committed with premeditation or by a gang. For this category, the prescribed period of actual imprisonment is of 24 years. The second category is of prisoners, who have escaped from the lawful custody while undergoing imprisonment or who absconded while on parole or furlough. For this category, the minimum period of imprisonment prescribed is of 28 years. All these three petitioners, as submitted across the Bar by the learned Additional Public Prosecutor, had over-stayed out of Jail after their release on either parole or furlough and, therefore, they

have been considered as falling in the category of “escaped prisoner” at serial no.6(a). Even in the impugned order, it is stated so, about which there is no dispute from the petitioners. Accordingly, the petitioners have been directed to undergo actual imprisonment of 28 years before their release could be considered by the Authorities.

7) It is a well settled law that when two Government Resolutions are applicable to the prisoner, the one, which confers maximum benefit upon the prisoner has to be followed and implemented. In the present case, Government Resolutions dated 11/5/1992 and 15/3/2010 both are applicable and the former confers more benefit upon each of the petitioners and, therefore, the same would have to be passed on to the petitioners. This is what the impugned order reflects and, therefore, we find no error in the impugned order. The petitions deserve to be dismissed and they stand dismissed accordingly. Rule is discharged. No order as to costs.

JUDGE

JUDGE

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