

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 285 OF 2021

Suresh s/o Jagan Patil
Age 47 years, Occ. Nil Convict No.07,
R/o. At N-3, F-1, 6/13, Rana Pratap Chowk,
CIDCO, Nashik
at present in District prison Dhule

...Petitioner

versus

1. The State of Maharashtra,
Through Under Secretary
Home Department,
Mantralaya, Mumbai.

2. The Inspector General of Prisons,
Maharashtra State, Pune

3. The Superintendent of District
Open Prison, Dhule

...Respondents

.....
Mrs. Bharti B. Gunjal, advocate for the petitioner
Mr. G.O. Wattamwar, A.P.P. for respondents
.....

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

**Date of Reserving
the Judgment :22.06.2021**

**Date of pronouncing
the Judgment : 25.06.2021**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. Rule. Rule made returnable forthwith. By consent, heard finally at admission stage.

2. The petitioner is undergoing the sentence of life

imprisonment. The petitioner was convicted for the offences punishable under Sections 143, 144, 148, 149, 302, 324 of I.P.C. and sentenced to suffer imprisonment for life. The petitioner has undergone 20 years of imprisonment, including remission and actual prison of 16 years and 06 months. The behaviour of the petitioner in the prison is good and therefore, the respondent State in exercise of the powers conferred under sub-Section (1) of Section 432 of Cr.P.C. remitted the petitioner's sentence of imprisonment of life and forwarded a proposal of the petitioner in the year 2017 to the Home Department, Mantralaya, Mumbai with required documents. Furthermore, while forwarding the proposal, respondent No.3 had sought approval from the Sessions Court, Jalgaon.

3. By impugned order dated 6.7.2020 by referring the judgment of the Apex Court in the case of ***State of Haryana and others vs. Jagdish, reported in AIR 2010 SC 1690***, respondent No.1 has fixed the category of the petitioner and passed the impugned order. It has been observed in the impugned order that the provisions of Government guidelines dated 11.5.1992 and the Government guidelines dated 15.3.2010 are applicable to the case of the petitioner and as such, his case is covered by Appendix I in clause 3 (b) of the guidelines dated 11.5.1992 and clause 4(d) of the guidelines dated 15.3.2010. It is stated in the impugned order that murder is committed "for other reasons with premeditation" for which the petitioner has to undergo 24 years of imprisonment, including the

remission. Hence, this writ petition.

4. Learned counsel for the petitioner submits that respondent No.1 has not gone through the judgment and order of conviction passed by the learned 2nd Adhoc Additional Sessions Judge, Jalgaon, against the petitioner and also the provisions of guidelines itself. It has been observed by the learned Sessions Judge while convicting the petitioner that the incident had occurred in between the relatives and that the incident took place due to family feuds. Learned counsel submits that the case of the petitioner falls in Appendix I in clause 2 (b) of the Government guidelines dated 11.5.1992 and Appendix I clause 3(b) of the Government guidelines dated 15.3.2010 which covers the crime of murder arising out of land dispute, family feuds, family prestige and superstition and with premeditation. Learned counsel submits that in terms of ratio laid down by the Supreme Court in the case of **State of Haryana and others vs. Jagdish (supra)** that a liberal policy prevails on the date of consideration of the case of a "lifer" for pre-mature release, he should be given benefit thereof. Learned counsel submits that appropriately, the guidelines dated 15.3.2010 prevails on the date of consideration of the case of the petitioner for his pre-mature release and as such, he is entitled for the benefit thereof.

5. Learned A.P.P. for the respondent State and authorities submits that the present petitioner and other co-accused persons

were convicted for the offences punishable under Sections 302 r.w. 149 of I.P.C. and they were sentenced to suffer imprisonment for life for committing murder of Bapu Shravan Patil by inflicting blow of axe on his head, vide order dated 12.10.2004 in Sessions case No. 114 of 2003 passed by the learned 2nd Adhoc Additional Sessions Judge, Jalgaon. Being aggrieved by the same, the petitioner had filed criminal appeal No. 72 of 2005 before this court and this Court has confirmed the order of conviction and the sentence thereof of the petitioner for the offences punishable under sections 302, 323 r.w. 34 of I.P.C. This Court while disposing of the criminal appeal in para 8 of the judgment has observed that,

“ 8. The totality of the evidence, thus, establish that during the course of occurrence, these accused developed a common intention to mount fatal assault on the deceased. The nature of the injury, the part of the body harboured a grudge against the deceased on account of the complaint filed by P.W.7 against accused Nos. 4, 5 and wife of accused No.5, are sufficient to establish that accused No.6 inflicted fatal injury to the deceased with intention of causing his death.”.

Learned A.P.P. submits that even the learned 2nd Adhoc Additional Sessions Judge, Jalgaon has made observations in his judgment in the similar manner.

6. Learned A.P.P. submits that the State Government is conferred with the power to grant remission and suspend the sentence under Section 432 (1) of Cr.P.C. In exercise of those powers, the State of Maharashtra, being the appropriate Government, has framed the guidelines for premature release of convict prisoners. Those guidelines are revised from time to time by the State of Maharashtra. Learned A.P.P. has not disputed that, in a particular case of a premature release of a convicted prisoner is based upon the guidelines as laid down by the Hon'ble Supreme court in the case of ***State of Haryana vs. Jagdish, (supra)***. Learned A.P.P. submits that there is no dispute that a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given benefit thereof. Learned A.P.P. submits that these guidelines dated 15.3.2010 for premature release of the petitioner convict were in existence at that point of time. So far as the category No. 3(b) of the guidelines dated 11.5.1992 is concerned, the petitioner is to be released prematurely on completion of 24 years of imprisonment, including the remission. In terms of guidelines dated 15.3.2010 which covers the murder committed for "other reasons" and in terms of clause 4(d) thereof, if the murder committed by more than one person/group of persons, the period of imprisonment to be undergone is 24 years. Learned A.P.P. submits that the petitioner's premature release proposal has been decided in the categories as per the mandate and statute and in terms of the ratio laid down by the Supreme Court. It is valid and reasonable

classification and the petitioner has been correctly categorized as per the policy guidelines prevailing on the date of his conviction.

7. Learned A.P.P. submits that in para 2 of the judgment and order in Sessions Case No. 114 of 2003 a brief history of the prosecution story is recorded by the learned 2nd Adhoc Additional Sessions Judge, Jalgaon. On 11.7.2003 cousin sister of the complainant by name Laxmibai demanded the amount which she had lent to accused Bharat and annoyed by her demand, Bharat, his mother Bayajabai and his father Jagan assaulted her and also threatened her. Thus, Laxmibai lodged a report at Mehunbare police station on 12.7.2003. On 13.7.2003 in the morning when deceased was cleaning his teeth on the platform in front of his house, all accused persons arrived in front of their house and then incident had taken place. Learned A.P.P. submits that so far as the prosecution story, as briefly recorded in the judgment and order of the Sessions Court, the incident had taken place on account of demand of money lent by Laxmibai to one of the accused person and since she was beaten and threatened for the demand of the amount, the said Laxmibai had lodged a complaint in the concerned police station against one of the accused person. Learned A.P.P. submits that the incident had not taken place out of the land dispute, family feuds, family prestige and superstition. In view of the same, category No.4 of the guidelines dated 15.3.2010 enumerates the murder for any other reasons and clause (d) is rightly attracted and accordingly, the

period of imprisonment to be undergone is considered in terms of category No. 4(d) as 24 years. There is no substance in the writ petition. Writ petition is liable to be dismissed.

8. So far as guidelines dated 11.5.1992 and revised guidelines dated 15.3.2010 for premature release of the prisoner serving life sentence are concerned, it is not disputed that the application of the above said guidelines for a particular prisoner for his premature release is based upon the ratio laid down by the Supreme court in the case of ***State of Haryana and othes vs. Jagdish (supra)***. The Hon'ble Supreme Court has ruled that the case of the prisoner was to be considered on the strength of policy that was existing on the date of his conviction. However, the Supreme Court has further qualified it by observing that in case a liberal policy prevails on the date of consideration of the case of a "lifer" for pre-mature release, he should be given benefit thereof.

9. In terms of revised guidelines for pre-mature release of the prisoner dated 15.3.2010 the petitioner contends that his case falls in category No.3, sub category No. (b) under the title "murders arising out of the land dispute, family feuds, family prestige and superstition" and the period of imprisonment to be undergone, including the remission, is 22 years. Whereas, the State claims that the case of the petitioner falls in the category No.4 which laid down the categorization of crime of "murders for other reason" and in terms of

the sub clause (2) i.e. “the murder committed by more than one person or group of persons”, the period of imprisonment to be undergone is prescribed as 24 years. So far as category No. 4(d) of the guidelines dated 15.3.2010 is concerned, it is for the murders for other reasons and the period of imprisonment to be undergone, including remission is 24 years. However, in the guidelines dated 11.5.1992 there is no category for the murder arising out of the land dispute, family feuds, family prestige and superstition and the same is introduced in revised guidelines dated 15.3.2010.

10. It further appears that while forwarding the proposal, respondent No.3 has also sought approval from the Sessions Court and the Sessions Court has opined that the petitioner has undergone 14 years of sentence and considering the nature of offence and improvement in the behaviour of the petitioner, the State may take appropriate decision for extending benefit to him. Learned Sessions Judge has not given clear opinion as to under what circumstances the petitioner convict has committed crime and which category for his pre-mature release stands attracted.

11. We have thus carefully gone through the judgment and order passed by the 2nd Adhoc Additional Sessions Judge, Jalgaon dated 12.10.2004 in Sessions Case No. 114 of 2003. The present petitioner is accused No.6 in the said Sessions case. In para 45 of the judgment, the learned Sessions Judge has made the following

observations:-

"45. It is further submitted during the course of arguments that motive was not proved by the prosecution. In the complaint itself PW 3 mentioned that the cause of this incident is the report lodged by Laxmibai on earlier day. Besides this, there are other reasons like excavation of his plot for construction of plinth by accused no.5 Jagan, which was strongly objected by deceased Bapu Shravan Patil, and his sons. Moreover, it is an admission by sons of the deceased that they are not on talking terms since long and their relations were strained, is sufficient to prove the motive. I have already observed that lodging of report on 12.7.2003 was the last straw on the back of a camel, and the accused decided to finish Bapu Shrawan Patil. Moreover, when direct evidence is cogent, consistent and trustworthy, motive takes back seat. Hence, I hold that the accused are guilty for the offences with which they are charged except the offence punishable under Section 37 (1) (3) r.w. 135 of the Bombay Police Act as I.O. PW 14 did not utter a single word that at the time of offence there was any promulgation by the District Magistrate, Jalgaon under Section 37 (1)(3) of Bombay Police Act and proceed to hear them on the point of sentence."

12. Undisputedly, accused No.1 Lotan and accused No.5 Jagan are real brothers of deceased Bapu Shravan Patil. The petitioner herein is son of accused No.5 Jagan Shravan Patil. In the aforesaid para, it has been specifically observed that the families were not on talking terms since long and their relations were strained. In the backdrop of these facts, since the cousin sister of the complainant by name Laxmibai had lodged a report at Mehunbare police station on

12.7.2003 against accused No.4 Bharat, who is also real brother of the petitioner, their mother Baijabai and accused No.5 Jagan (father of the petitioner), the learned Judge of the trial court in the aforesaid para has further observed that lodging of report by Laxmibai on 12.7.2003 was a last straw on the back of a camel and accused therefore, decided to finish Bapu Shravan Patil. Even in para 28 of the judgment, the learned 2nd Adhoc Additional Sessions Judge, Jalgaon has specifically observed that the incident took place due to family feud and in the house of deceased. If two families were not on talking terms since long and their relations were strained, it is but obvious that due to the complaint lodged by cousin sister of the complainant viz. Laxmibai, it has become suddenly flared.

13. Thus, we are of the firm opinion that in terms of guidelines dated 15.3.2010 the petitioner's case falls under category No.3(b), i.e. under categorization of crime "murders arising out of land dispute, family feuds, family prestige and superstition" for which the period of imprisonment to be undergone, including remission, is mentioned as 22 years. In our opinion, category No.4 of the guidelines dated 15.3.2010 under title "murders for other reasons" especially clause No. 4(d) which prescribes the imprisonment to be undergone is 24 years is not attracted in the facts and circumstances of the case. Thus, the impugned order passed by respondent No.1 dated 6.7.2020 is liable to be quashed and set aside. In view of the above, we proceed to pass the following order:-

O R D E R

- I. Writ petition is allowed in terms of prayer clauses “B” and “C”.
- II. Writ petition is accordingly disposed of. Rule made absolute in the above terms.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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