

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.26 OF 2021

1. Mr. V. V. Mohan,
aged 45 years, Indian,
Convict Prisoner No.539/02,
presently in judicial custody at
Modern Central Jail, Colvale,
Bardez Goa, represented
herein by his next friend,
Mr. Shantanu Salgaonkar
major of age, Indian national,
resident of House No.18/327
Tambdi Matti, Taleigao, Goa.

2. Mr. Basavraj Patil,
aged 60 years, Indian,
Convict Prisoner No.539/02,
Modern Central Jail, Colvale,
Bardez Goa, represented
herein by his next friend,
Mr. Shantanu Salgaonkar,
major of age, Indian National,
resident of House No.18/327
Tambdi Matti, Taleigao Goa.

... Petitioners

Versus

1. The State of Goa,
Through the Chief Secretary,
Government of Goa,
Secretariat, Alto Porvorim,
Bardez Goa.

2. The Secretary (Home)
Government of Goa,
Home Department,
Secretariat, Porvorim,
Bardez Goa.
3. State Sentence Review Board,
Government of Goa,
Secretariat, Porvorim,
Bardez Goa.
4. The Inspector General of Prisons,
Inspectorate General of Prisons,
1st Floor, Old Education Building,
18th June Road, Panaji Goa.
5. The Superintendent,
Modern Central Jail,
Colvale Goa.

... Respondents

Mr. Ryan Menezes, Mr. Nigel Fernandes, and Ms. Gina Almeida,
Advocates for the Petitioners.

Mr. Pravin Faldessai, Additional Public Prosecutor for the Respondents.

**Coram:- DIPANKAR DATTA, CJ &
M. S. SONAK, J**

Date:- 24th March 2021

ORAL ORDER (Per M. S. Sonak, J)

Heard Mr. R. Menezes with Ms. Gina Almeida for the
Petitioners and Mr. P. Faldessai, learned Additional Public Prosecutor for
the Respondents.

2. Petitioner No.1 was convicted and sentenced to life

imprisonment for an offense under Section 302 of Indian Penal Code vide judgment and order dated 30th April 2002 made by the learned Additional Sessions Judge, North Goa, Panaji, in Sessions Case No.10/2002. The appeal against the conviction was dismissed by this Court on 10th December 2003. On 5th June 2015, Petitioner No.1 completed 14 years of actual imprisonment.

3. Petitioner No.2 was convicted and sentenced to life imprisonment for an offense under Section 302 of IPC on 4th March 2002 by the learned Additional Sessions Judge, South Goa, Margao, in Sessions Case No.41/2000. The appeal against such conviction was dismissed by this Court on 25th February 2003. Petitioner No.2 completed 14 years of actual imprisonment on 5th June 2014.

4. The State Sentence Review Board (Board) in its meeting held on 16th April 2018, recommended the premature release of both the Petitioners. No action was taken by the Government on such recommendation but the cases of the two Petitioners were once again placed before the Board in its meeting held on 10th December 2018.

5. On 10th December 2018, the Board simply observed that since there was already a recommendation for the premature release of the two Petitioners, no further action was necessary from the Board. Again, the Government took no steps to act on the recommendation of

the Board.

6. The cases of the Petitioners were for the third time placed before the Board in its meeting held on 19th August 2019. This was quite unnecessary. This time, however, the Board, by reference to the decision of the Hon'ble Supreme Court in ***Sangeet and another Vs State of Haryana***¹ directed the Superintendent of the Central Jail to seek opinions of the Hon'ble convicting Courts and thereafter place the cases of the two Petitioners before the Board once again.

7. In Criminal Writ Petition No.110/2019 (*Ravi Patil Vs State of Goa and others*) this Court, vide its judgment and order dated 13th September 2019 held that there was no requirement of obtaining the opinion of the Hon'ble convicting Court before the Board considers the cases of the prisoners for premature release. It is only after the Board recommends the premature release then the opinion of the Hon'ble convicting Judges is to be obtained and the matter is then to be placed before the appropriate Government for a decision on the issue of premature release.

8. Based on the aforesaid decision, once again the cases of the two Petitioners were placed before the Board in its meeting held on 25th September 2019. Even this time the Board, considered the Petitioners' cases and unanimously recommended that the two Petitioners be

¹ (2013) 2 SCC 452

prematurely released.

9. From the return filed on behalf of the Respondents, it was pointed out that the opinion of the Hon'ble convicting Judges was sought for on 13th November 2019 itself. However, since no such opinion was received, the Government could not decide the issue of premature release of the Petitioners.

10. Upon the aforesaid being pointed out to us on 23.3.2021, we called for the reports from the two Principal District Judges on our Administrative side, particularly, since the issue of liberty was involved.

11. The Principal District Judge, South Goa, filed a report dated 23rd March 2021, to which was annexed the opinion of the Additional Sessions Judge, South Goa, Margao bearing the same date. The learned Additional Sessions Judge has opined that the case of Petitioner No.2 may be considered for the remission if other conditions are complied with. The Principal District Judge vide communication dated 23rd March 2021 has forwarded the report of the learned Additional Sessions Judge to the Under Secretary (Home).

12. Given the aforesaid development, now, it is for the appropriate Government to take into consideration the recommendation of the Board and the opinion of the learned Additional Sessions Judge

and thereafter take a decision on the issue of premature release of the Petitioner No.2. Having regard to the actual imprisonment of almost 20 years suffered by the Petitioner No.2, we direct the appropriate Government to decide on the premature release of the Petitioner No.2 as expeditiously as possible and in any case within one month from today.

13. The Principal District Judge, North Goa has also submitted a report dated 23rd March 2021 to this Court. In the report, he has stated that the file concerning the opinion sought for the premature release of the Petitioner No.1 was misplaced. He has, however, on behalf of the learned Additional Sessions Judge applied for one month to furnish the report on the recommendation made by the Board concerning the Petitioner No.1.

14. According to us, the extension as prayed for can be granted. However, the learned Additional Sessions Judge must make every endeavor to furnish her opinion to the appropriate Government within one month from today. Further, the appropriate Government, to take a final decision on the issue of premature release of the Petitioner No.1 within one month from the date of receipt of an opinion from the Additional Sessions Judge. We order accordingly.

15. The appropriate Government to communicate its decisions to both the Petitioners no sooner such decisions are taken. In case the

Petitioners are aggrieved by such decisions, they will have the liberty to take out appropriate proceedings for questioning the same. All contentions of all parties are therefore kept open.

16. The petition is finally disposed of in the aforesaid terms. There shall be no order as to costs.

17. All concerned to act based on the authenticated copy of this order.

M. S. SONAK, J

CHIEF JUSTICE

at*

TARI AMRUT
NAGESH

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