

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4619 OF 2019

Bacchi @ Ramchandra Sitlaprasad
Pandey, Age : 62 years,
Occupation : Business,
Permanently residing at Anand Niwas,
Kalimata Mandir, Kolsawadi,
District – Thane – 421 306.
And at presently lodged in Yerwada
Central Prison, Pune – 411 006,
vide Prisoner No.C-16775

...Petitioner

Versus

1) The State of Maharashtra,
Through the Office of
Public Prosecutor, High Court,
Bombay.

2) The Home Department,
(Through Secretary Home and Prisoner
Government of Maharashtra,
Main Building, 2nd Floor, Hutatma
Rajguru Chown, Madam Cama Marg,
Mantralaya, Mumbai-400 032.

3) Inspector General of Prisons,
Western Zone, Pune Division,
District Pune.

4) The Jail Superintendent,
Yerwada Central Prison, Pune.

5) The Senior Inspector of Police,
Vithalwadi Police Station,
Ulhasnagar, District – Thane.

...Respondents

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Mr.Milan Desai i/b Ms. Ashwini Desai for petitioner.
Mrs. A.S. Pai, PP for State.

**CORAM : S.S. SHINDE &
N.J. JAMADAR, JJ.**
DATE : 4th AUGUST 2021.

JUDGMENT (PER N.J. JAMADAR, J.) :

1. Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, heard finally.
2. The challenge in this petition is to an order dated 9th July 2019, passed by the respondent-State, whereby the proposal of premature release of the petitioner-convict came to be rejected.
3. The factual backdrop leading to this petition can be stated in brief as under :-

(a) The petitioner was convicted, along with six others, for the offences punishable under sections 302, 120-B, 450, 506(2), and 353 read with section 34 of the Indian Penal Code, 1860 ('the Penal Code') and section 27(2) of Arms Act, 1959 and sentenced to suffer imprisonment for life for the major offences in Sessions Case No. 218/1999, by judgment and order dated 29th November 2013 passed by the learned Addl. Sessions Judge, Kalyan.

(b) An appeal thereagainst being Criminal Appeal No.1323 of 2013 came to be dismissed by a Division Bench of this Court by

judgment and order dated 14th October 2014.

(c) As an undertrial prisoner and convict, the petitioner has undergone actual imprisonment of 22 years 1 month 25 days as of 10th July 2019. The proposal of the petitioner for release under section 432 of the Code of Criminal Procedure, 1973 was submitted to the State Government.

(d) By the impugned order, dated 9th July 2019, the Competent Authority rejected the prayer for categorization in accordance with the Government Resolution, dated 15th March 2010 which incorporates guidelines for premature release under “14 Year Rule” of prisoner serving life sentence.

(e) The Competent Authority referred and relied upon the observations of the learned Addl. Sessions Judge in paragraph No.106 of the judgment in Sessions Case No. 218 of 1999, which reads as under :

“106 Admittedly, the accused no.1 is on bail in several offenses. Accused Nos.3, 6 and 7 have already been convicted previously and are presently out on bail in other offenses. Despite this, prima facie it seems that there are other offences being registered against all the aforementioned accused, even while they are out on bail. As such, criminal activities prima-facie have not ceased though fact remains that dozens of offences are registered against all the aforementioned accused and they are on bail in several of the cases arising out of the same. From this it seems on the very face of it that they have violated conditions of bail in

several cases. Accused nos. 3, 6, 7 are apparently habitual offenders and their actions do not show any remorse, in spite of being convicted previously. Also as far as accused no.1 is concerned, I have already observed in the body of the judgment itself that his activities have led to wide spread fear and terror in the minds of the common man on the street. His record indicates that possibility of his indulging in criminal activities again cannot be ruled out."

An apprehension was also expressed by the Competent Authority that the release of the petitioner would be prejudicial to the maintenance of law and order and there was a strong possibility of the petitioner committing cognizable offences in the event of his premature release.

4. The petitioner has assailed the order dated 9th July 2019 on multiple grounds, including a ground that initially the petitioner was categorized under the category which permits the release of the prisoner after 24 years of imprisonment.

5. A submission to that effect was made before this Court on 15th January 2020. A Division Bench (Coram : B.P. Dharmadhikari & N.R. Borkar, JJ.) noted the said submission and also took on record a letter addressed by Shri S.N. Dhamal, the Research Officer dated 28th August 2017 (Exhibit "A") to the Principal Secretary, wherein categorization was referred to. The

said letter was in respect of a co-convict Gabriel @ Baba Hana Moben. It appears that in the said letter, a reference was made that the petitioner (co-convict of the said Gabriel) was to be placed under the category 5(b). The Division Bench granted time to the learned APP to take instructions.

6. An affidavit in reply has been filed on behalf of the State. By making reference to the observations in paragraph No.106 in the judgment of the trial Court, (extracted above) the prayer of the petitioner for premature release was sought to be contested. Reliance has also been placed on the Police Verification report dated 28th May 2019 which commented adversely on the proposal of premature release.

7. Today, when the matter was taken up, Mr. Milan Desai, the learned counsel for the petitioner, invited the attention of the Court to an order dated 9th January 2020, passed by this Court in Criminal Writ Petition No.1500 of 2019, whereby the order passed by the State Government on the very day, i.e. 9th July 2019 rejecting the prayer of the above-named co-convict Gabriel @ Baba Hana Moben for premature release was quashed and set aside and the matter was remanded back to the respondents for reconsideration.

8. Mr. Desai further submitted that in pursuance of the aforesaid order dated 9th January 2020, the State Government, by an order dated 4th January 2021 categorized the co-convict under category 5(b) in the Annexure-I appended to the Government Resolution, dated 15th March 2010 and the ordered the release of the said co-convict. It was submitted that there is no reason to apply a different standard to the petitioner as the role attributed to the petitioner in the offences was exactly identical with that of the co-convict.

9. Mrs.Pai, the learned PP, on instructions, did not dispute that the co-convict-Gabriel @ Baba Hana Moben has been categorized and ordered to be released by order dated 4th January 2021, after completion of 14 years of actual imprisonment or 26 years of imprisonment with remission, whichever is later.

10. The information furnished by Yerwada Central Prison, Pune, wherein the petitioner is undergoing the sentence, reveals that as of 10th July 2019, the petitioner had undergone 22 years 1 month and 25 days of actual imprisonment and 25 years 10 months and 07 days imprisonment with remission. It could not be disputed that, as of today, the petitioner has undergone more than 24 years of actual imprisonment and almost 28 years of imprisonment with

remission.

11. Category 5(b) of the Annexure-I appended to the Government Resolution dated 15th March 2010 reads as under :

Category No.	Sub-Category	Categorization of crime	Period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off period.
	...		
5.	MURDER FOR POLITICAL REASONS		
	(b)	Murder arising out of political rivalry and political interest, with premeditation	26

12. It is imperative to note that in paragraph No.105, the learned Addl. Sessions Judge had recorded as under :

“105/- In the present case, as already discussed in the main body of the Judgment, there is a history of bitter political rivalry between the factions to which accused no.1 belongs and the faction to which victim belonged. Admittedly, the victim, his uncles, father and other close relatives as well as the accused no.1 and his uncle and other close relatives are all politicians and had at some point or the other occupied official posts like Municipal Councilor, President of Ulhasnagar Municipal Council, MLA etc. There was bitter rivalry between the two factions which led to a spurt of murders of victims belonging to both factions including the present case. From this, it is clear that this is a political murder and does not fall within the category of rarest of rare cases justifying death penalty.”

13. In the order dated 4th January 2021, the State Government adverted to the observations in aforesaid paragraph No.105 to lend support to its categorization that 'the murder was committed out of political rivalry'.

14. In the aforesaid view of the matter, it would be an invidious discrimination to reject the prayer of the petitioner of premature release when the similarly circumstanced co-convict Gabriel @ Baba Hana Moben is extended the benefit of premature release under category 5(b). No distinction in the role of the petitioner from that of the co-convict Gabriel @ Baba Hana Moben could be pointed out so as to disentitle the petitioner from claiming the said benefit of premature release. In our view, the further incarceration of the petitioner would be wholly unsustainable and also in teeth of principle of equality. The fact that the petitioner has undergone more than 24 years of actual imprisonment and almost 28 years of imprisonment with remission impels us to direct the authorities to pass the order of release of the petitioner, instead of again remitting the matter back to the authorities.

15. Hence, the following order :

O R D E R

- (i) The petition stands allowed.

(ii) The impugned order dated 9th July 2019 stands quashed and set aside.

(iii) The respondents are directed to release the petitioner-Bacchi @ Ramchandra Sitlaprasad Pandey, on the same terms and conditions on which the co-convict Gabriel @ Baba Hana Moben was ordered to be released by order, dated 4th January 2021.

Rule made absolute in the aforesaid terms.

All concerned to act on an authenticated copy of this judgment.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)