

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

CRIMINAL WRIT PETITION NO.364 OF 2021

Madhav Bhaguje Handore,
Convict No. C/65,
Aged 61 Years, Occ. Nil,
Confined at Gadchiroli District
Open Prison, Gadchiroli.

....PETITIONER

---- VERSUS ----

1. State of Maharashtra Through
The Secretary Home Department,
Mantralaya, Nagpur – 32.
2. The Superintendent,
Gadchiroli Open Prison, Gadchiroli.

.... RESPONDENTS

Ms Shweta D. Wankhede, Advocate for the Petitioner.
Ms N. R. Tripathi, A.P P. for the Respondents/State.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 08.09.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.
2. Rule. Rule made returnable forthwith.
3. By this writ petition under Article 226 of the Constitution of India, the petitioner is seeking direction to release the petitioner after 22 years of imprisonment.
4. The petitioner is a convict for the offence punishable under Section 302 of the Indian Penal Code, and is undergoing

imprisonment for life.

5. It is the case of the petitioner that by order dated 09.03.2021, it is ordered that the petitioner will have to undergo 24 years of imprisonment before he would be released from the prison. It is the case of the petitioner that the petitioner has been wrongly categorized under the category 4(d) of guidelines of dated 15.03.2010 and the case of the petitioner would fall under Clause 3(b) of the Government Resolution dated 15.03.2010.

6. This Court by order dated 21.06.2021, issued notice to the respondents. The respondent No.1 has filed reply stating that the petitioner has been categorized vide order dated 09.03.2021 by the State Government under guideline No.3(b) dated 11.05.1992 and therefore, the petitioner will entitle to be released on completion of 24 years of imprisonment including remission. It is stated that the petitioner has been rightly categorized under 4(d) of the guidelines dated 15.03.2010.

7. We have carefully considered the averments in the petition and the reply filed by the respondent No.2; perused the material produced by the petitioner; the judgment in Sessions Case No.83/2006 passed by the learned Adhoc Additional Sessions

Judge – 1, Nashik; the guidelines dated 11.05.1992 and guidelines dated 15.03.2010.

8. Ms N. R. Tripathi, the learned Additional Public Prosecutor submitted that the petitioner is not entitled to benefit of Government Resolution dated 15.03.2010 as on the date of his conviction, guidelines dated 11.05.1992 were in force. Per contra, Ms Shweta Wankhede, the learned Advocate for the petitioner invited our attention to the judgment of the Hon'ble Supreme Court in the case of ***State of Haryana & Ors. Vs. Jagdish*** reported in ***AIR 2010 SC 1690***. The Hon'ble Supreme Court in paragraph 43 has observed as under :

“43.....The High Court, therefore, in our opinion, was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction. State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a 'life' for pre-mature release, he should be given benefit thereof.”

9. Reading of aforesaid judgment makes it clear that the policy which is more beneficial to the prisoner should be given effect to by the prison Authorities. Having considered paragraph Nos. 33 and 36 of the judgment convicting the petitioner, we are satisfied that the petitioner had committed murder of the deceased due to land dispute in the family. Since the learned Sessions Judge has recorded finding of premeditation against the petitioner, the case of the petitioner will be covered by Clause 3(b) of the Government Resolution dated 15.03.2010. Therefore, the period of imprisonment to be undergone including remission by the petitioner shall be that of 22 years.

10. We therefore, pass following order :

The petitioner shall be released after undergoing 22 years of imprisonment including remission subject to minimum of 14 years of actual imprisonment including set off period.

11. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE