

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

CRIMINAL WRIT PETITION NO.583/2019

Lalsingh alias Lalaram Shankar Barela
(Pawara), aged about Major, r/o Barokhadi,
Tq. Sirsi, Dist. Guna, M.P., Presently
detained at Open Prison, Morshi,
Dist. Amravati, Convict No.C-409 **.....PETITIONER**

...V E R S U S...

1. The State of Maharashtra through
its Secretary, Home Department,
Mantralaya, Mumbai.
2. The Superintendent of Prison,
Open Prison, Morshi, Dist. Amravati,
Maharashtra. **...RESPONDENTS**

Mr. A. A. Pannase, Advocate appointed for petitioner.
Mr. M. J. Khan, A.P.P. for respondents-State.

CORAM:- V. M. DESHPANDE AND
ANIL S. KILOR, JJ.
DATE:- JANUARY 05, 2021

ORAL JUDGMENT (Per: V. M. Deshpande, J.)

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

 Heard Mr. Pannase, learned counsel for petitioner
appointed through High Court Legal Services Sub Committee,
Nagpur to represent the petitioner and Mr. Khan, learned A.P.P.
for respondents-State.

2. By filing present petition, petitioner is challenging the order passed by respondent no.1 dated 13.12.2018, by which the case of the petitioner is categorized as per Sub-clause (d) of clause (3) of 1992 Policy. The submission of learned counsel for petitioner is that case of petitioner ought to have been considered under Sub clause (b) of Clause (3) of 1992 Policy.

3. As per Sub Clause (d) of Clause (3) of 1992 Policy, the period of imprisonment to be undergone, including remission, subject to a minimum of 14 years of actual imprisonment including set off period is 26 years. Whereas, under Sub clause (b) of clause (3), the said period is 24 years.

As per submission of learned counsel for petitioner, petitioner has undergone imprisonment of 23 years 2 months 5 days till 30.09.2019.

4. The question is; by which clause case of petitioner will be governed.

5. The petitioner was tried in Sessions Case No. 84/2004 in the Court of learned 3rd Additional Ad hoc Additional Sessions

Judge, Dhule. In the said trial, the petitioner was tried for an offence punishable under Sections 302 and 307 of the Indian Penal Code. In short, case of the prosecution was that on 24.06.2004 in between 01.00 to 01.30 a.m. at village Khambale, the petitioner gave axe blows on the neck of Mersingh Apsingh Pawra, who died on the spot itself. At the same time, he also gave forceful blows of axe on the right and left parital region of head of Shivram Kalusingh Pawra causing grievous incised wound of 10 X 18 cms, and 8 X 10 cms. After a full fledged trial, the petitioner was convicted for the offence punishable under Sections 302 and 307 of the IPC and he was directed to suffer Life Imprisonments on both counts.

6. Clause (3) of the 1992 Policy reads thus:

3. *Murder for other reasons.*

a)	..	..
b)	<i>As at (a) above but with premeditation or by a gang.</i>	<i>24 years.</i>
c)	...	...
d)	<i>Murder committed with premeditation and with exceptional violence or perversity.</i>	<i>26 years.</i>

It is the submission of learned counsel for petitioner that the petitioner's case is governed by Sub Clause (b). Plain

reading of Sub Clause (b) shows that it has to be conjointly read with clause (a). As per clause (a), murder is committed during the course of a quarrel without premeditation in an individual capacity. Conjoint reading of clause (b) shows an eventuality where murder is committed in the course of quarrel with premeditation or by a gang and such accused will have to suffer 24 years of imprisonment.

7. In the present case, there is nothing on record to show that the petitioner has committed the gruesome murder during the quarrel. On the contrary, it is clear that the deceased was in his deep sleep when he was assaulted. As per clause (d), if the murder is committed with premeditation and with exceptional violence or perversity, in such a case, such an accused has to spent 26 years in jail. On the basis of the evidence, the learned Judge before whom the trial was conducted, recorded a finding that the petitioner has committed murder of deceased Mersingh Apsing Pawara, who died on the spot when he was in his deep sleep. He did not stop there and thereafter he committed offence punishable under Section 307 of the IPC by assaulting by means of axe on the injured Shivram Kalusingh Pawara.

8. Thus, in our view, the case of the petitioner is squarely covered under Sub Clause (d) of clause (3) of 1992 Policy. No exception can be taken for the same as done by the authority in categorizing the petitioner. Consequently, the petition must fail. The petition is therefore dismissed.

Mr. Pannase, learned counsel appointed through High Court Legal Services Sub Committee, Nagpur, shall be entitled to professional charges and we quantify it at Rs.2,500/- in addition to expenses for typing, etc. at Rs.1,500/-.

Rule is discharged.

JUDGE

JUDGE

kahale

**Yogesh
Kahale**

Digitally
signed by
Yogesh
Kahale
Date:
2021.01.06
15:44:51
+0530