

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 360 OF 2021

Mahadeo Asaram Sillode

...Petitioner

versus

The State of Maharashtra and others

...Respondents

.....
Ms. Neha Kamble, advocate for the petitioner (appointed)
Mr. M.M. Nerlikar, A.P.P. for respondents
.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.
DATED : 31st JANUARY, 2022.**

ORAL ORDER (PER V.K. JADHAV, J.) :-

1. By consent of parties, heard finally at admission stage.
2. The petitioner is convict. He was convicted and sentenced by the 4th Adhoc Additional Sessions Judge, Jalna in Sessions Case No. 100 of 2005 on 20.6.2006 for the offence punishable under Section 302 of I.P.C. and sentenced to suffer imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo R.I. for two years. It appears that the said order of conviction and sentence is confirmed by this Court in criminal appeal No. 576 of 2006 and presently the petitioner is undergoing his sentence in Nagpur Central Prison. Further, it appears that when the petitioner was serving his sentence in Harsul Central prison, Aurangabad, in the year 2010, the petitioner was prosecuted for the offence punishable under Sections 307 and 333 of I.P.C. for having

made assault and causing injuries to A.S.I. Digambar Pagare. The learned Additional Sessions Judge, Aurangabad has convicted the petitioner for the offences punishable under Sections 307 and 333 of I.P.C. and sentenced him to suffer R.I. for 10 years respectively, directing further that both the sentences under Sections 307 and 333 shall run concurrently, vide judgment and order dated 8.3.2016.

3. This petition is filed for twofold purposes. The petitioner convict has questioned his premature release by placing him in certain categories and further to grant him benefit of remission under Government Resolution dated 3.6.2017.

4. So far as first prayer is concerned, this Court (Coram: T.V. Nalawade and R.G. Avachat, JJ.) had an occasion to consider the issue about premature release of the petitioner and by order dated 21.9.2020 in criminal writ petition No. 607 of 2020 with criminal writ petition No. 1154 of 2019, in para 3, has made the following observations:-

“3. To see the evidence given against the prisoner in the Trial court, this Court collected copy of the judgment delivered by the Trial Court. There is discussion of evidence of eye witnesses and the spot of offence. The discussion shows that the incident took place near the place of deceased and not near the place of the accused. Accused had used knife and at least three severe blows of the knife were given to the deceased by accused. Apparently, he had no reason to go towards that side. Evidence is also given that the relations between the deceased and the

accused were strained after marriage of a girl and the accused was against this marriage with the deceased. Quarrel had taken place in the past on the same count between the deceased and the accused. Due to all these circumstances, inference is possible that it was premeditated murder. As there is such material on the record, this Court hold that the respondents have not committed any error in placing the petitioner in the aforesaid category. In the result, Criminal writ petition No. 607 of 2020 stands dismissed and Criminal writ petition No. 1154 of 2019 is disposed of”.

5. So far as the second prayer for grant of concession to the petitioner convict in respect of sentence in view of the Government Resolution dated 3.6.2017, learned counsel for the petitioner submitted that the Additional Sessions Judge, Jalna has not given opinion as to whether the petitioner is entitled for the benefit as per the Government Resolution dated 3.6.2017. On the other hand, learned Judge has considered the issue about his premature release which is already concluded by this Court.

6. We have carefully gone through the judgment delivered by this Court in criminal appeal No. 576 of 2006 preferred by the petitioner against his conviction under Section 302 of I.P.C. and sentencing him to suffer imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo R.I. for two years. By the said judgment, this Court has confirmed the judgment and order of conviction and sentence passed by 4th Adhoc Additional Sessions Judge, Jalna in Sessions Case No. 100

of 2005 on 20.6.2006. The Division Bench of this Court (Coram: P.V. Hardas and P.R. Borkar, JJ.) has not only referred three incised wounds on the vital part of body of deceased caused by the appellant accused by using a sharp weapon knife but also referred injuries to lung, peritoneum and right kidney.

7. This Court (Coram: T.V. Nalawade and R.G. Avachat, JJ.) while disposing of criminal writ petition No. 607 of 2020 with criminal writ petition No. 1154 of 2019 has specifically observed that it was premeditated murder.

8. The petitioner convicted accused also further tried for the offence punishable under Sections 307 and 333 of I.P.C. vide Sessions Case No. 305 of 2011 for having assaulted on A.S.I. Digambar Pagare and one Bharat Bahure, Head Constable who were on duty at Central Jail, Harsool, Aurangabad and sentenced him to suffer 10 years imprisonment each for the offence punishable under Section 307 of I.P.C. and Section 333 of I.P.C.

9. In criminal writ petition No. 273 of 2019 and other connected writ petitions, the Full Bench of this Court has concluded the issue by recording a finding that it is necessary to obtain opinion of the Presiding Officer mentioned in Section 432(2) of Cr.P.C. in respect of the convict mentioned in Government Resolution dated 3.6.2017 to whom the benefit of remission is to be given. This Court has further recorded in

the affirmative that the said opinion given by the Presiding Officer of the Court as mentioned in Section 432(2) of Cr.P.C. is binding upon the authority.

10. In the instant case, though the learned Additional Sessions Judge, Jalna has mistakenly considered the matter pertaining to premature release, however, observed that the petitioner convict has intentionally assaulted deceased Raju resulting in causing his death. The learned Judge has also considered that the petitioner convict has committed murder with premeditation.

11. In view of the same and after considering the conviction of the petitioner in connection with the second crime while the petitioner undergoing the imprisonment of life in connection with the offence under Section 302 of I.P.C. we are of the considered opinion that the petitioner is not entitled for remission/concession in view of the Government Resolution dated 3.6.2017. We find no substance in this writ petition. The criminal writ petition is accordingly dismissed.

12. We quantify the legal fees and expenses of learned counsel Ms. Neha Kamble appointed to represent the cause of the petitioner at Rs.3000/- (Rupees Three thousand only) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)