

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1436 OF 2021

Pratap Dinkar Chavan (C-5142)

...Petitioner

versus

The State of Maharashtra and others

...Respondents

.....
Mrs. Manjushri V. Narwade h/f Mr. V. P. Narwade, Advocate for the
petitioner

Mr. S. J. Salgare, A.P.P. for respondent State

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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 23rd FEBRUARY, 2022**

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

1. By consent of the parties, heard finally at admission stage.
2. The petitioner is convicted vide judgment and order dated 28.8.2007 passed by the learned Sessions Judge, Sangli in Sessions Case No. 38 of 2007 for the offence punishable under Section 302 r.w. 34 of I.P.C. and sentenced him to suffer imprisonment of life. The learned Sessions Judge held that accused Nos. 1 to 6, including the petitioner, in furtherance of their common intention, have committed murders of two persons on account of previous enmity. The appeal bearing criminal appeal No. 1102 of 2007 preferred against the said judgment and order came to be dismissed by this Court on 23.12.2015.

3. The petitioner claims that he has undergone 15 years and 4 months of actual imprisonment, and including the remission, he has undergone approximately 23 years of imprisonment.

4. The petitioner's proposal for premature release came to be submitted to respondent No.1 in terms of provisions of Section 432 of Cr.P.C. By the impugned order dated 11.11.2020, the respondent No.1 has put the petitioner in 'category 3(d) - 26 years of imprisonment' in terms of guidelines of the year 1992 and 'category 4(e) - 26 years of imprisonment' in terms of guidelines of the year 2010. The petitioner is accordingly directed to undergo 26 years of imprisonment. Hence, this writ petition.

5. Learned counsel for the petitioner submits that in terms of the ratio laid by the Supreme Court in the case of ***State of Haryana and others VS. Jagdish, reported in AIR 2010 SC 1690***, the petitioner convict would be entitled for the benefit as per the guidelines which are favourable to him. Learned counsel submits that the petitioner is required to be placed in 'category 3(b)-24 years of imprisonment' in terms of guidelines of the year 1992 as the crime has been committed with premeditation. Learned counsel submits that the petitioner should not have been placed in category 3(d) of the guidelines of the year 1992 and 4(e) of the guidelines of the year 2010 because it provides punishment for murder committed with

premeditation and with exceptional violence or perversity.

6. Learned counsel for the petitioner submits that the conduct of the petitioner in jail is good and he is therefore shifted to open jail at Paithan, district Aurangabad to undergo remaining part of sentence. Learned counsel submits that thus the impugned order is liable to be quashed and set aside. Learned counsel submits that the respondent needs to be directed to place the petitioner in 'category 3(b)-24 years of imprisonment' in terms of guidelines of the year 1992 and 'category 4(d)-24 years of imprisonment' of guidelines of 2010.

7. Learned A.P.P. for the respondents submits that the petitioner was convicted for the offence punishable under Section 302 r.w. 34 of I.P.C. and sentenced to suffer life imprisonment by the learned Sessions Judge, Sangli in Sessions Case No. 38 of 2007 by judgment and order dated 28.8.2007. By the impugned order dated 11.11.2020 the respondent has placed the petitioner in category No. 3(d) of 1992 guidelines and 4(e) of the 2010 guidelines for premature release.

Learned A.P.P. submits that the learned Sessions Judge has made observation in para 50 of the judgment in detail. The relevant portion of the same is reproduced herein below

“50. Here, in this particular case, two persons who were in the twenties were brutally murdered, leaving behind parents, as far as the case of deceased Sanjay Arun Potdar is concerned and wife as far as the case of deceased Somnath Ramchandra Sankpal is concerned.”

8. Learned A.P.P. submits that in terms of provisions of Section 432 (2) of Cr.P.C., the learned Sessions Judge, Sangli has submitted his opinion in tabular form and also mentioned that the incident is very serious so as not to release the petitioner with remission. Learned A.P.P. submits that the respondent has considered the proposal of the petitioner for premature release and decided that the petitioner should be released after 26 years subject to completion of actual imprisonment of 14 years.

9. Learned A.P.P. submits that there are four guidelines available for premature release of the convict, those are (i) 16.11.1978, (ii) 11.5.1992, (iii) 11.4.2008 and (iv) 15.3.2010. Learned A.P.P. submits that in terms of the ratio laid down by the Supreme Court in the case of ***State of Haryana and others vs. Jagdish (supra)***, the State has to exercise its powers of remission in terms of the liberal policy prevails on the date of consideration of the case of a ‘lifer’ for premature release.

10. Learned A.P.P. submits that the petitioner, alongwith co-

accused, assaulted deceased Sanjay and deceased Somnath with sickle and knife which resulted into their death. The petitioner and other co-accused persons committed brutal murders with exceptional violence. Learned A.P.P. submits that there is no substance in this writ petition.

11. In the case of ***State of Haryana vs. Jagdish (supra)*** the Supreme court in para 43 of the judgment has made following observations:-

“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 ‘lifer’ for pre-mature release, he should be given benefit thereof.”

12. In the case of ***Sharafat Ali vs. State of Uttar Pradesh and another*** the Supreme Court ***in writ petition (Criminal) No. 439 of 2021*** has laid down the same principles by referring the view expressed in the case of ***State of Haryana vs. Jagdish (supra)***.

13. The petitioner claims that he is required to be placed in 'category 3(b)-24 years of imprisonment' in terms of guidelines of 1992, the same is reproduced herein below:-

Categories 3 (a) and (b) of 1992 Guidelines

"3) MURDER FOR OTHER REASONS:-

- a) Where a murder is committed in the course of a quarrel without premeditation in an individual capacity and where the person has no previous criminal history. : 22 years
- b) As at (a) above but with premeditation or by a gang : 24 years"

Or in terms of category 4(d) of the guidelines of 2010 which is reproduced herein below:-

"4. MURDERS FOR OTHER REASONS

(a) to (c)

- (d) Murder committed by more than one person/group of persons. : 24 years"

14. We have carefully gone through the judgment and order of conviction passed by the Sessions Judge, Sangli. There were two murders committed by six accused persons including the petitioner with premeditation in furtherance of their common intention. They have freely used the weapon sickle (scythe) and knife in assaulting deceased Sanjay and deceased Somnath. Deceased Sanjay had sustained 29 injuries and deceased Somnath had sustained 12 injuries on various parts of their bodies. Internal corresponding injuries are mentioned in column Nos 19 and 20 of their respective post mortem reports. The learned Sessions Judge has made observation in para 50 of the judgment in detail. The relevant portion of the same is mentioned herein below:-

“50. Here, in this particular case, two persons who were in the twenties were brutally murdered.”

The learned Sessions Judge, Sangli, in terms of provisions of Section 432(2) of Cr.P.C. has also given his opinion in the tabular form and also mentioned that the incident is very serious so as not to release the petitioner with remission.

15. In view of the same and in terms of the guidelines dated 11.5.1992 respondent No.1 has rightly placed the petitioner in

category 3(d) for 26 years of imprisonment and guidelines dated 15.3.2010 in category 4(e) for 26 years of imprisonment. We find no substance in this writ petition.

16. So far as the categories as claimed by the petitioner are concerned, those simply contemplate murder committed by more than one person, though with premeditation, however, the factor 'with exceptional violence and/or brutality' is not contemplated in those categories. We find no substance in this writ petition. Hence, the following order:-

O R D E R

Criminal writ petition is hereby dismissed.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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