

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1966 OF 2022

Bhushan Narayan Tandel. ... Petitioner.

V/s.

The State of Maharashtra and others. ... Respondents.

Mrs.Mallika Ingale for the Petitioner.

Mr.K.V.Saste, APP for the Respondent- State.

CORAM : NITIN JAMDAR AND
ARUN R. PEDNEKER, JJ.

DATE : 21 July 2022.

P.C. :

Rule. Rule made returnable forthwith. Taken up for disposal.

2. The Petitioner is aggrieved by the decision of the State dated 27 February 2020, refusing the prayer for premature release. The impugned order is passed by Respondent No.1, the Under Secretary, Home Department, Mantralaya.

3. It is the Petitioner's case that, having completed total imprisonment of 20 years, four months and four days on 30 June 2022, he is entitled to premature release. The Petitioner based on

the decision of the Supreme Court in the case of *State of Haryana v. Jagdish*¹ contends that the policy that existed on the conviction date can be considered if it is more beneficial to the convict or any subsequent policy that is more beneficial to the convict. There is no dispute at this proposition at the bar. The dispute before us is whether the murder committed by the petitioner can be called '*with exceptional violence and or brutality*' and or '*premeditation*'. The learned counsel for the parties agree that once this aspect is settled, the Petitioners case can be classified in the appropriate category for consideration of premature release.

4. The impugned order would show that it is founded on two factual premises. That the offence is committed by the Petitioner with premeditation and with exceptional violence and or brutality. Regarding exceptional violence or brutality, the Division Bench of this Court, while dismissing the appeal of the Petitioner, has recorded a finding that the deceased received 24 wounds, out of which four wounds were on the scalp, and 20 wounds were on the abdomen, and the murder was a brutal murder. Therefore, the learned APP is right in contending that the murder would have to be classified as with exceptional violence and/or brutality.

5. The second issue that arises is premeditation. This is also made a foundation of the impugned order. It is the basis of the prosecution case that the Petitioner called the deceased home. The

¹ Crim.Appeal No.566/2010 decided on 22 March 2010,

Petitioner had a knife; therefore, it was clear that there was premeditation to commit the offence. It was also urged by the learned APP that the Division Bench while considering the argument as to whether there was any sudden provocation, has observed that there was no sudden provocation and the case would not fall within the purview of section 304-II of the Indian Penal Code. Based on this factual position emerging from the decision of the Trial Court and the Appellate Court, the learned APP contended that the murder was with premeditation.

6. Perusal of the order of the Division Bench in appeal would show that the prosecution case itself was that the Petitioner and the deceased were close friends. The families of both persons had cordial relations. Therefore, calling the deceased home alone cannot be considered premeditation. There is a reference to the deceased advancing loans to the Petitioner, which the deceased was insisting that the Petitioner should return. This loan was advanced 7 to 8 years back. As per the prosecution case, the Petitioner had made preparation for having a dinner/ party with the deceased. But due to the existence of cordial relations and being friends it cannot be treated as an unusual circumstance. Further, it is the case of the prosecution that during this party, after consuming liquor, a dispute arose between the Petitioner and the deceased over the money transaction, there were shouts of quarrel, and at that time, it is alleged that the Petitioner stabbed the deceased. The case is of circumstantial evidence. Because the Appellate Court rejected the

argument of sudden provocation does not necessarily mean that there was premeditation. It is the prosecution case itself that the offence took place during the quarrel between two friends after consuming liquor. Thus, the petitioner's case will have to be classified in the appropriate category as with exceptional violence and/or brutality, but without premeditation.

7. The impugned dated 27 February 2020 is set aside. We direct the Respondent Authorities to take a decision regarding the premature release of the Petitioner in light of the observations above and in terms of the policy within six weeks and communicate the same to the Petitioner. Rule is made absolute regarding prayer clause (i) with the above directions.

(ARUN R. PEDNEKER, J.)

(NITIN JAMDAR, J.)