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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4302 OF 2021

Gulam Dastagir @ Budda Rahimtulla Shaikh .. Petitioner

v/s.

The State of Maharashtra .. Respondent

....

Ms. Payoshi Roy, i/b. Dr. Yug Mohit Chaudhry, for the Petitioner.

Mrs. M.H. Mhatre, APP, for State.

....

CORAM: NITIN JAMDAR &
N.R. BORKAR, JJ.

DATE : 23 JUNE 2022.

P.C:-

By this petition, the Petitioner is seeking to direct the Respondent State to categorise the Petitioner under Category 4(a) of the Guidelines for Premature Release under the “14 Year Rule” of Prisoners serving life sentence framed by Govt. of Maharashtra of 15 March 2010.

2. The Petitioner has been classified under Category 4(b), for which the period of imprisonment required to be undergone under this resolution is 22 years of actual imprisonment, including set of period. It is the Petitioner’s case that the Petitioner falls under the category

4(a), for which the minimum imprisonment is 20 years, which the Petitioner has already completed.

3. Category 4(a) and 4(b), which fall under the head ‘Murders for other reasons’, read thus:

“(a) Where a murder is committed without premeditation in an individual capacity and the person has no previous criminal history. - 20 years

(b) Murder committed with premeditation, or a person having criminal history. - 22 years”

Therefore, to accept the contention of the Petitioner, it will have to be demonstrated that the murder was committed without premeditation in an individual capacity and the person has no previous criminal history.

4. The contention of the Petitioner is that perusal of the judgments of the trial court and this Court in appeal would show that there was no premeditation and the incident occurred on spur of the moment during the scuffle that took place. The learned Counsel for the Petitioner contended that the case of the Petitioner/Appellant that the incident took place during a quarrel and that case would be covered by Exception-4 (Section 300) of the Indian Penal Code was considered

by this Court and on a different ground that is on the nature of assault that the Court held that the case would not fall within the Exception of Section 300 of Indian Penal Code. The learned Counsel sought to contend that the record would demonstrate that there was no premeditation.

5. We have perused the orders of the trial court and this Court. The trial court has noted the prosecution case that there was a quarrel day before the incident. This Court, while negating the contention of the Petitioner, regarding Exception-4 of Section 300, has given no finding that there was no premeditation and, in fact, the contention of the Petitioner that the case would fall under Section 300 (Exception-4) was rejected. Since this contention was advanced, but rejected with no specific finding in favour of the Petitioner, it cannot be said that there was no premeditation on the part of the Petitioner. Therefore, we find no error in the categorisation made by the State.

6. The learned APP has informed us that as per the categorisation made by the State, the Petitioner is due to be released on 1 September 2022.

7. The petition is, accordingly, rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)