

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 4544 OF 2021

Uday S/o Dhaku Sutar ...Petitioner
Versus
The State of Maharashtra & Anr. ...Respondents

***WITH
CRIMINAL WRIT PETITION NO. 4545 OF 2021***

Ranjay S/o Laxman Sawant ...Petitioner
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Rupesh Jaiswal, for the Petitioner in both the Writ Petitions.
Mr. J. P. Yagnik, APP, for the Respondent–State in Writ Petition No.
4544 of 2021
Ms. M. H. Mhatre, APP, for the Respondent–State in Writ Petition No.
4545 of 2021

**CORAM : REVATI MOHITE DERE &
MADHAV J. JAMDAR, JJ.
DATED : 8th SEPTEMBER 2022**

Order : (Per Madhav J. Jamdar J.)

1. Heard. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP

appearing for the respective Respondents wave notice on behalf of the said Respondents.

2. The Petitioner in each of the above Petition has challenged the order dated 09th July, 2021 passed by Home Department (Government of Maharashtra), by which their respective case by separate orders has been classified in category no. 3(b) of guidelines dated 11th May, 1992 and category no. 4(d) of the Guidelines dated 15th March, 2010 and accordingly, both of them have been directed to be released after completion of 24 years of imprisonment including remission.

3. Mr. Rupesh Jaiswal, learned counsel appearing for the Petitioner submitted that, the incident in question has taken place on account of a rivalry between two trade unions namely Mumbai Labour Union and Bhartiya Kamgar Sena. He submitted that, the deceased was a member of the Mumbai Labour Union, whereas, both, the Petitioners belonged to the Bhartiya Kamgar Sena. Learned counsel relied on the

judgment of the Supreme Court in case of *State of Haryana & Ors. Vs. Jagdish* reported in (2010) 4 SCC 216 and the judgment dated 25th February, 2020 passed by the Nagpur Bench of Bombay High Court in *Criminal Writ Petition No. 40 of 2020*. He submitted that, case of Petitioners falls under the category 4 (c) of the Guidelines dated 15th March, 2010.

4. On the other hand, Mr. J. P. Yagnik, learned APP submitted that the Respondents have rightly categorised the Petitioners' case as falling under category 4 (d) of the Guidelines dated 15th March, 2010 as murder is committed by more than one person.

5. We have perused the judgment of the Additional Sessions Judge, Greater Bombay dated 10th August, 2007 passed in Sessions Case No. 695 of 2004. By the said judgment *inter-alia* the respective Petitioners i.e. Uday Dhaku Sutar and Ranjay Laxman Sawant (Accused No. 1 and 3) alongwith Prakash Yeragi (Accused No. 2) were convicted for the offences punishable under Section 302 read with 34 of Indian

Penal Code and were sentenced to suffer rigorous imprisonment for life.

6. A perusal of the judgment shows that, the deceased in the year 2000 was in the employment of Nanavati Hospital. At that time, there were two unions in Nanavati Hospital namely, the Bhartiya Kamgar Sena and the Mumbai Labour Union. The deceased was a member of the Mumbai Labour Union, whereas, all the accused were members of the Bhartiya Kamgar Sena. In the year 2000, due to dispute between these two unions there was quarrel and deceased caused grievous hurt to the Petitioner—Uday Sutar. In respect of the said incident, Santacruz Police Station had registered a crime as against the deceased and he was arrested. On 02nd June, 2004, incident in question took place when all the Accused belonging to the Bhartiya Kamgar Sena, all of a sudden assaulted the deceased belonging to the Mumbai Labour Union. On 04th June, 2004 the deceased succumbed to his injuries.

7. The above factual position on record clearly shows that, the incident in question had taken place due to trade union activities. It is the contention of Adv. Jaiswal that category 4 (c) of Guidelines dated 15th March, 2010 applies to the present case, whereas, the contention of the State is that category 4 (d) of said 2010 Guidelines is applicable. The said 2010 Guidelines are issued under Section 438 of Criminal Procedure Code, 1973. Both these categories namely 4 (c) and 4 (d) of 2010 Guidelines are set out hereinbelow :-

Category no.	Sub category	CATEGORISATION OF CRIMES	PERIOD OF IMPRISONMENT TO BE UNDERGONE INCLUDING REMISSION SUBJECT TO A MINIMUM OF 14 YEARS OF ACTUAL IMPRISONMENT INCLUDING SET OFF PERIOD.
4		MURDERS FOR OTHER REASON.	
	c	Murder resulting from trade union activities and business rivalry.	22 years
	d	Murder committed by	24 years

		more than one person/ group of persons.	
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8. The guideline no. 4 (c) is regarding murder resulting from trade union activities and business rivalry. The factual position on record clearly shows that the incident in question had taken place due to trade union activities. The guideline no. 4 (d) which has been applied by the State of Maharashtra is regarding murder committed by more than one person/group of persons. It is true, that in the present case, murder has been committed by three persons, however, Guideline no. 4 (c) specifically contemplates murder resulting from trade union activities. The said Guideline does not further prescribe that the same will apply only if murder has been committed by one person. What is relevant is murder should have been committed as a result of trade union activities and therefore, whether murder has been committed by more than one person/group of persons is totally irrelevant.

9. In the judgment of the Supreme Court in the case of **State of Haryana and Ors. vs. Jagdish** (supra) in paragraph no. 54 it has been held as follows:

“54. The 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 premature release, he should be given benefit thereof.”**

(Emphasis added)

Thus Supreme Court has held that in case of convicts the

policy which was prevalent when the conviction takes place will apply and if any other liberal policy prevails on the date of consideration of case for premature release then such policy will apply. The said principle of giving benefit to the convict of beneficial policy certainly applies to the two different policies/guidelines but the same will also apply to the categories in the same policy/guidelines, if case falls under both the categories.

10. The present case is squarely governed by the Guideline no. 4 (c) as the murder took place as a result of trade union activities. Even if, it is assumed that the petitioners' case falls under both the categories namely category no. 4 (c) and category no. 4 (d) of 2010 Guidelines, then also, it is clear that more beneficial category i.e. category no. 4 (c) will apply to the Petitioners' case.

11. In view of the above discussion, we quash and set aside impugned order dated 09th July, 2021 passed by the Respondent No. 1 vis-a-vis both the Petitioners and direct that case of the Petitioners be

classified as falling under category no. 4 (c) of 2010 Guidelines.

12. Rule is made absolute in the above terms and Petitions are disposed of.

13. All parties to act on an authenticated copy of this order.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.

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