

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO.654 OF 2021

Vencil Roy Miranda
Aged 39 years,
Convict No.9634
R/o 4/405 Tulips Bldg, Saibaba
Vihar Complex, G.B. Road,
Kasarvadvali PO,
Thane(W) - 400615

...PETITIONER

VERSUS

1. State of Maharashtra through
its Secretary, Home Department,
Mumbai - 32
2. Superintendent of Jail,
Central Prison, Nagpur,
District Nagpur

...RESPONDENTS

Shri Mir Nagman Ali, Advocate for the petitioner.
Shri M.K. Pathan, Additional Public Prosecutor for the respondents
/State.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : NOVEMBER 15, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard finally with the consent of learned Counsel for the
parties.

2. By this petition, the petitioner is seeking directions to the respondents-authority to categorise the petitioner in category (1) of Annexure-II of the guidelines framed by the State Government for premature release in the Government Resolution dated 15/03/2010 issued by the Home Department, Mantralaya, Mumbai.

3. The present petitioner is undergoing imprisonment for life and is convicted for the offences punishable under MCOC Special Case No.01/2010(1) under Section 120-B of the Indian Penal Code (hereinafter referred to as “the IPC” for short) and sentenced to suffer life imprisonment with fine of Rs.25,000/- only, in default, to suffer rigorous imprisonment for four years. For the offences punishable under Section 307 read with Section 120-B, 34 of the IPC he is sentenced to suffer life imprisonment with fine of Rs.25,000/- only, in default, to suffer rigorous imprisonment for four years. He is also convicted under Section 3 read with Section 25(i-B)(a) of the Indian Arms Act, 1959 and is sentenced to suffer rigorous imprisonment for three years with fine of Rs.1000/- only, in default, to suffer simple imprisonment for six months. He is also sentenced under Section 5(1)(a) read with Section 27 of the Indian Arms Act, 1959 and is sentenced to suffer rigorous imprisonment for five years with fine of Rs.1000/- only, in default, to suffer simple imprisonment for six months and also convicted under Section 37(1) read with Section 135 of the Bombay Police Act, 1951 and is sentenced

to suffer rigorous imprisonment for six months with fine of Rs.500/- only, in default, to suffer Simple imprisonment for two months.

4. It is the contention of the petitioner that he is undergoing an imprisonment for life at Central Prison, Nagpur. He made a representation to the State Government for his premature release but the State Government by its order dated 25/02/2019 rejected his representation assigning the ground that the case of the petitioner covers under Category 21 and being the offence of the present petitioner is grievous in nature and on his release he may commit similar such offences and application is rejected.

5. It is the contention of the petitioner that he was convicted on the basis of false and fabricated evidence produced by the prosecution. During the period of 2015 to 2019 he was released on furlough and parole on 5 occasions and every time he had surrendered on due date. There was no breach of peace and there were no offences registered against the petitioner. It is the contention of the petitioner that while rejecting the application of the petitioner, he was categorized under Clause 21 is wrongly made. In fact, he covers under the category (1) as per the Government Notification dated 15/03/2010. In view of said Government Resolution, he is entitled for the premature release and, therefore, the petitioner is seeking the directions from this Court for his

proper categorization in category (1) of Annexure-II of the guidelines framed by the State Government for premature release in the Government Resolution dated 15/03/2010.

6. Said petition is strongly opposed by the State on the ground that the offence committed by the petitioner is grievous in nature. He is undergoing imprisonment for life in this prison and is convicted for the offence punishable under the MCOC Special Case No.01/2010(1) under Section 120-B of the IPC and sentenced to suffer life imprisonment. The State Government is having discretionary powers to grant remission and suspension under Section 432(1) of the Code of Criminal Procedure and prayed for dismissal of the petition.

7. We have heard learned Counsel for both the sides.

8. The petitioner has relied upon the Government Resolution dated 15/03/2010. Annexure-II of the said Government Resolution describes various categories of the offences and period of imprisonment to be undergone including remission subject to minimum 10 years of actual imprisonment including set off period. The petitioner has challenged the order passed by the Superintendent of Central Prison, Nagpur.

9. Having heard the learned Counsel for both the sides and perusal of the order, we are of the considered opinion that the case of the petitioner has not been considered in accordance with the rules/policies of the State Government. Admittedly, the petitioner is convicted for the offence punishable under Section 307 of the IPC. The respondents have categorized the petitioner under Category 21. In fact, the petitioner is covered under Category (1) which states the category of the offences punishable under Sections 304, 304-A and 307 of the IPC. It was the duty of the State Government to ascertain in which category specified in the relevant policy the case of the petitioner will fall.

10. In this view of the matter, the order dated 14/07/2020 rejecting the case of the petitioner for premature release is quashed and set aside. We direct the State Government to consider the case of the petitioner for premature release as per the policies framed by the State Government by categorization him under proper category i.e. category (1) in Annexure-II. The consideration shall be in terms of law laid down by the Hon'ble Apex Court in the case of *State of Harayana and ors. Vs. Jagdish (2010) 4 SCC 216*.

11. In the result, we proceed to pass the following order :

- (i) The writ petition is allowed.

(ii) The respondents are directed to categorise the petitioner in category (1) of Annexure-II of Government Resolution dated 15/03/2010.

12. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*