

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

CRIMINAL WRIT PETITION NO.523 OF 2022

Amar Singh Narendra Singh Bais
Convict No.C/27, Aged 44 years,
Occupation – Nil,
R/o Gajanan Nagar,
Behind Vithoba Lawn,
Pipla Road, Hudkeshwar-440024

(Presently confined at Gadchorili
District Open Prison, Gadchiroli)

...PETITIONER

VERSUS

1. State of Maharashtra,
through the Secretary,
Home Department
Mantralaya, Mumbai – 32
2. The Superintendent,
Gadchiroli District Open Prison,
Gadchiroli

...RESPONDENTS

Ms S.D. Wankhede, Advocate for the petitioner.
Mrs. N.R. Tripathi, Additional Public Prosecutor for the
respondents/State.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : OCTOBER 13, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

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

2. The claim for grant of remission in the sentence imposed for the offences punishable under Sections 302, 498-A and 201 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the Code' for short) on the basis of the Government Resolution dated 15/03/2010 issued by the Home Department, Mantralaya, Mumbai laying down the policy of granting remission has been rejected on the ground that as the crime is committed with exceptional violence and or with brutality or death of victim due to burns and, therefore, the petitioner has to undergo 26 years imprisonment. Said order passed by the Jail authorities on the basis of report of Additional Sessions Judge, Chandrapur under Section 432(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Cr.P.C.') is under challenge in the present petition.

3. The petitioner was prosecuted in the offence punishable under Sections 302, 498-A and 201 read with Section 34 of the Code. On basis of report lodged by Munnibai Rameshsingh Rathod who is the mother of the deceased on an allegation that the present petitioner Amar Singh Narendra Singh Bais was married with Kiran who is the daughter of the informant on 15/05/2002. After marriage, the petitioner had treated his wife with cruelty and demanding unlawful demands. As the demands are not fulfilled he ill-treated his wife by assaulting and

abusing her and on 08/04/2003, he had strangled the deceased Kiran and committed her murder by pressing her neck to fulfill his demand of Rs.50,000/-. After due investigation, the Investigating Officer had filed charge-sheet and the trial was conducted. During trial the Sessions Court come to the conclusion that the petitioner had committed an offence and, therefore, the petitioner was sentenced to suffer rigorous imprisonment for life under Section 302, 498-A and 201 read with Section 34 of the Code in Sessions Case No.90/2003 by passing judgment on 31/03/2007. Thus, since 2007, the petitioner is in jail. He had undergone total sentence without remission of more than 17 years as on 31/03/2022 for imprisonment.

4. Respondent No.2 – The Superintendent, Gadchiroli District Open Prison, Gadchiroli has forwarded the proposal of premature release of the petitioner to the respondent No.1-State of Maharashtra, through the Secretary, Home Department, Mantralaya Mumbai. As per the procedure laid down in Section 432(2), the report of the Sessions Judge, Chandrapur was called. On 10/10/2016, the In-charge Sessions Judge, Chandrapur submitted the report that the petitioner is sentenced to imprisonment for life for the offence punishable under Section 302 of the Code. The accused has preferred an appeal before the High Court vide Criminal Appeal No.132/2007. The High Court has dismissed the

appeal and sentence was confirmed. As per the guidelines issued by the Government of Maharashtra, the relevant category applicable as per the said Government Resolution Clause 2(c) “where the crime is committed with exceptional violence and or with brutality of death of victim due to burns and or murder with rape” for which 26 years punishment is provided. On the basis of the said report, respondent No.1 rejected the said proposal.

5. Being aggrieved with the same, the present petition is filed by the petitioner on the ground that in view of Government Resolution dated 15/03/2010 under Clause (1) offences relevant to crime by women and Clause 2(b) where the crime as mentioned above committed with premeditation wherein minimum sentence for the life imprisonment convicts provided is 22 years. Thus, Clause 2(b) is applicable and not the Clause (c). Now, he had already completed 22 years in jail and undergone the imprisonment of 22 years, therefore, he is entitled for the remission.

6. We have heard Ms S.D. Wankhede, learned Counsel for the petitioner and Mrs. N.R. Tripathi, learned Additional Public Prosecutor for the respondents/State.

7. Learned Additional Public Prosecutor submitted that Clause 2(c) under the head of 'offence relating to crime against women and minors' is applicable in the present case and as per the Clause 2(c) minimum punishment provided is 26 years, therefore, the petitioner is not entitled for any remission. He further submitted that as per the chart given in the reply, the petitioner had completed 22 years 1 month and 5 days in the prison. Taking into consideration the facts, respondent No.1 has rightly categorized and decided the premature release proposal of the petitioner vide order dated 09/07/2021.

8. We have gone through the Government Resolution dated 15/03/2010. By the said resolution the Government had revised guidelines for premature release of prisoners undergoing for sentence from time to time. These guidelines are applicable to the prisoners committing crimes mentioned in the Indian Penal Code. However, said guidelines does not cover grave offence such as life imprisonment under stringent laws like TADA, MCOCA, POTA etc. Therefore, in exercise of power vested in the State Government under Section 432 of the Cr.P.C., 1973 the State Government has decided to modify the existing guideline. As per Clause (1) which deals with the offences relating to crime by women and Clause (2) deals with offence relating to crime against women and minors. It is required to be seen that whether the

petitioner-prisoner covers in any of the excepted categories mentioned in the Government Resolution. It is not the case of the respondents that the petitioner falls in any of the excepted categories so as to deny him the benefits of the said Government Resolution. The reason assigned in the opinion that the petitioner-prisoner is the convict for the offence of murder of his wife which was committed with exceptional violence and or with brutality of death of victim due to burns.

9. We have perused the opinion of the Sessions Judge as well as the judgment of the trial Court.

10. The petitioner is prosecuted for the offences punishable under Sections 302 and 498-A of the Code on an allegation that he got married with the deceased Kiran on 15/05/2002. After the marriage deceased Kiran was treated with cruelty for the demand of Rs.50,000/-. She was ill-treated, abused and beaten by the petitioner. As per the prosecution case, she expressed apprehension that in the matrimonial house she is suffering from ill-treatment and she apprehended the death. On 05/04/2003, the petitioner had talked with deceased Kiran on phone at the house of her elder sister and the petitioner asked her to bring Rs.50,000/-. Deceased Kiran had shown her inability. Deceased Kiran returned to her matrimonial house on 08/04/2003. The informant who

is the mother of the deceased received a phone call of the petitioner, therefore, she immediately went at the house of the petitioner and saw the deceased Kiran. It reveals that deceased Kiran died due to strangulation. She lodged the report at the police station. On the basis of evidence the Sessions Judge arrived at a conclusion that the evidence on record is sufficient to prove that it is the petitioner who caused homicidal death of the deceased by strangulating her. Accordingly, accused was convicted and sentenced to suffer rigorous imprisonment for life. Said conviction was challenged by the accused-petitioner by preferring an appeal before this Court vide Criminal Appeal No.132/2007. Said appeal was dismissed and the sentence was upheld. As per the contention of the petitioner he had undergone more than 17 years of sentence and prayed for remission. Respondent Nos.1 and 2 had submitted the chart and as per the chart, the petitioner had undergone 22 years 1 month and 5 days of the sentence. Admittedly, the petitioner is not convicted under the stringent laws like TADA, MCOCA, POTA. Considering the allegation and the evidence adduced by the prosecution and from the judgment it is seen that the case of the petitioner is not covered under Clause 2(c) of the Government Resolution. From the judgment of the trial Court nowhere it is reflected that the crime is committed with exceptional violence or with brutality of death of victim due to burns. The evidence adduced before the trial

Court shows that deceased Kiran was strangled by the accused by demanding Rs.50,000/- and by ill-treating her. As per the postmortem report two injuries in the nature of ligature mark are found on the person of the deceased. From the judgment of the trial Court nowhere it reflects that the deceased was died due to brutally assault on her and the case covers under the rarest of rare case, therefore, the case of the petitioner is covered under Clause 2(b) which reads as follows :

“where the crime as mentioned above that is offence relating to crime against women committed with premeditation and the minimum period provided is 22 years.”

11. The Prison authorities sought the opinion of the Judicial Officer in terms of Section 432(2) of the Cr.P.C. As per the said report, the case of the petitioner is covered under Clause 2(c) but as already observed that the case does not cover under the brutality or exceptional violence. The evidence recorded before the trial Court on the basis of which the punishment of life imprisonment was awarded and the reasoning shows that the petitioner had caused homicidal death of the deceased by strangulation which did not cover under the exceptional violence or the death is caused under the brutality. The opinion rendered by the Sessions Judge does not consider the aforesaid facts and, therefore, it is not sustainable.

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

(a) The criminal writ petition is allowed.

(b) The impugned communication i.e. opinion given by the In-charge Sessions Judge, Chandrapur dated 10/10/2016 and the rejection of remission by respondent Nos.1 and 2 are quashed and set aside.

(c) The respondent No.1 is directed to grant benefit of the said remission to the petitioner in terms of Government Resolution dated 15/03/2010 under the head of offence relating to crime against women as per Clause 2 (b).

13. Rule is made absolute in the aforesaid terms. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*