

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.312 OF 2023

Khawakash @ Khawachya Gopinath Kale
age 37 years, Occu. Labour,
R/o Sarangpur, Tq. Gangapur,
District Aurangabad

... PETITIONER

VERSUS

1. State of Maharashtra
through its Secretary,
Home Department,
Mantralaya, Mumbai – 32

(Copy to be served on Public
Prosecutor, High Court of Judicature
of Bombay, Bench at Aurangabad)

2. The Inspector General of Prisons,
Maharashtra State, Pune
3. The Superintendent,
Central Jail, Yerwada, Pune

... RESPONDENTS

.....
Mr. S.A. Gaikwad, Advocate for petitioner
Mr. R.B. Bagul, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : 10th AUGUST, 2023

JUDGMENT (PER R.G. AVACHAT, J.):

Rule. Rule made returnable forthwith and taken up for
final hearing with the consent of learned counsel appearing for the
parties.

2. This Writ Petition has been filed with the following main prayer :

(B) By passing appropriate writ, order or direction, the para No.2 of the operative part of the order passed by the learned trial Court in Sessions Case No.33/2008, that the accused is sentenced to suffer imprisonment for life till death for the offence punishable u/S 302 of I.P.C. may kindly be corrected/ clarified by observing that the accused is sentenced to suffer imprisonment for life for the offence punishable u/S 302 of I.P.C. in Sessions Case No.33/2008 passed by the learned Additional Sessions Court Shrirampur on 22/12/2010.

3. The petitioner was an accused in Sessions Case No.33/2008. Learned Additional Sessions Judge, Shrirampur convicted him for the offence punishable under Sections 302 and 394 of the Indian Penal Code and, therefore, sentenced him in following terms :

(2) The accused is sentenced to suffer imprisonment for life **till death** and to pay a fine of Rs.500/- (Rs.five hundred only), in default, to suffer further simple imprisonment for a period of one month for the offence punishable under Section 302 of the Indian Penal Code.

(3) The accused is sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.500/- (Rs.five hundred only), in default, to suffer further simple imprisonment for a period of one month for the offence punishable under Section 394 of Indian Penal Code.

(4) Both the substantive sentences of imprisonment shall run concurrently.

4. The petitioner has been unsuccessful in his appeal against conviction. As such, his conviction for the aforesaid offences has attained finality.

5. The question is whether the learned Additional Sessions Judge (trial Court) had jurisdiction/ authority to sentence the petitioner to imprisonment for life till death for offence punishable under Section 302 of the Indian Penal Code.

Section 302 of the Indian Penal Code prescribes punishment for offence of murder. The Section reads thus :

302. Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

Reading of the aforesaid Section would indicate that the words “till death” are not part of Section 302 of the Indian Penal Code. It is only in recent past some Sections of the Indian Penal Code have been amended prescribing punishment of sentence of life imprisonment till death. We are conscious of the fact, imprisonment for life means until natural life of a convict.

6. Imposing a sentence of life imprisonment till death has

serious consequences. The convict may become disentitled to avail remission and other concessions in sentence which are provided by the State. The issue is no longer res integra. The Constitution Bench judgment of the Apex Court in case of **Union of India Vs. Sriharan Alias Murugan & ors.** reported in (2016) 7 SCC 1, has observed thus :

Awarding of said special category sentence, in substitution of death sentence, that is, sentence barring remission under Cr.P.C. for specified term beyond 14 years, or life imprisonment barring remission for rest of life, held (per majority), is valid – Clarified, however power under Articles 72 and 161, which is not the same as the statutory power of remission, is not affected – Award of non-remittable specified sentence or life imprisonment barring remission for rest of life, held, not violative of separation of powers – Such special sentence when imposed under substantive provisions of I.P.C. does not overlap procedural power under Cr.P.C. either – Considering crime situation in India (particularly nexus between hardened criminals and ill-gotten wealth, and nature of heinous crimes on the rise), delay in disposal of cases, and balancing interests of victims with those of convicts, such special category sentence is necessary.

Further held (per majority), such special category sentence can only be imposed by High Court or Supreme Court and not by trial Court.

Per minority (dissenting only on this issue), since such special category sentence is not prescribed by any statute, barring operation of remission powers under Cr.P.C., invalid – Such special category sentence closes doors for reformation – Such

special sentence encroaches upon power of legislature by prescribing a new sentence – Criminal Procedure Code, 1973, Ss. 432, 433 and 433-A – Constitution of India – Arts. 72 and 161 – Victimology.

7. It has specifically been held that such special category of sentence can only be imposed by High Court or Supreme Court and not by trial Court. As such, the trial Court erred in sentencing the petitioner to imprisonment for life till death. We are, therefore, inclined to allow the Writ Petition. Hence the order :

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause (B).
- (ii) The words “till death” appearing in the order of sentence, passed by the trial Court are hereby withdrawn.
- (iii) Rule made absolute in above terms.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-