

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 324 OF 2023

Sandip s/o Manikrao Borate
Age 40 years, Occ. Nil, convict No.42,
R/o. At present in Central Open Prison
Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through Under Secretary
Home department,
Mantralaya, Mumbai

2. The Inspector General of Prisons
Maharashtra State, Pune

3. The Superintendent of
Central Open Prison, Aurangabad

...Respondents

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Mrs. Bharti B. Gunjal, advocate for the petitioner
Mr. R. V. Dasalkar, A.P.P. for respondents

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**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED: 19.06.2023**

JUDGMENT (PER SANJAY A. DESHMUKH J.):

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at admission stage.

2. This writ petition is filed for challenging the order dated 6.7.2020 passed by respondent No.1 and further seeking directions to the respondent No.1 to place the petitioner under clause 3(b) of

the Government Guidelines dated 15.03.2010.

3. The learned advocate for the petitioner submitted that the petitioner is convicted for the offences punishable under Sections 302 and 363 of I.P.C. vide the judgment and order dated 27.3.2008 delivered by the Additional Sessions Judge, Karad, in Sessions Case No. 48 of 2005. The petitioner had challenged the said judgment, by preferring criminal appeal bearing No. 441 of 2008 before the Principal Seat of this Court. The said appeal was dismissed on 25.8.2014 and the conviction of the petitioner was confirmed.

4. The learned advocate for the petitioner further submitted that the petitioner has undergone the sentence for more than 20 years in the Central Open Prison at Aurangabad. His behaviour in the prison was good and therefore, the State Government has exercised its power under Section 432 of Cr.P.C. Accordingly, a proposal for remission of his punishment and sentence with all necessary documents was forwarded to the Home department of the State Government. Respondent No.3 has also sought the opinion of the concerned Sessions Court on 25.10.2018. It is also favourable to the petitioner.

5. The learned advocate for the petitioner further pointed out that respondent No.1 has fixed category of the petitioner as per the Government guidelines dated 11.5.1992 and 15.3.2010. The

petitioner's case was considered as covered as per the Appendix I clause 3(b) of the Government Guideline dated 11.5.1992 and as per the clause 4(e) of the Government Guidelines dated 15.3.2010. It is also observed that the murder was committed by the petitioner with premeditation with exceptional violence for which he has undergone 26 years of imprisonment including the remission.

6. The learned advocate for the petitioner further pointed out that respondent No.1 did not peruse the judgment of the learned Sessions Court as well as the guidelines. Though there were allegations that the accused committed murder of a child, it was not for ransom as held by the trial court. The murder was committed due to the family dispute, as deceased was the nephew of the petitioner. The charge of ransom is not proved. Therefore, the petitioner's case falls in clause 2(b) of Appendix 1 of the Government guidelines dated 11.5.1992 i.e. under the head of murder arising out of the land dispute, family feuds, family prestige and superstition with premeditation and it also covers by clause 3(b) of the Government guidelines dated 15.3.2010 which are most liberal. The learned advocate for the petitioner submitted that the respondents did not consider the facts of the case and failed to apply proper guidelines. The reasons given by respondent No.1 are not legal and correct. It is lastly prayed to quash and set aside the impugned order by allowing the writ petition with direction to place the petitioner in clause 3(b) of the Government Resolution dated 15.03.2010.

7. The learned A.P.P. for the respondents, on the other hand, strongly opposed the petition by contending that the reasoned order is passed by the respondents. Clause 3(b) of the Government guidelines dated 15.3.2010 is not applicable to the case of the petitioner. There is no illegality committed by the respondent authorities in passing the impugned order. The learned A.P.P. lastly prayed for dismissal of the writ petition.

8. Perused the judgment delivered by the learned Additional Sessions Judge, Karad dated 27.3.2008 in Sessions Case No. 48 of 2005 as well as the judgment of this Court in criminal appeal No. 441 of 2008, delivered on 25.08.2014. The charge of ransom was framed against the petitioner, however, that is not proved. This aspect was not considered by respondent No.1. On the contrary, respondent No.1 has erroneously concluded that the petitioner's case for ransom is covered under clause 3(d) of the guidelines dated 11.5.1992 and clause 4(e) of the Government guidelines dated 15.3.2010. The order passed by the authority is thus, not legal and correct and it is not sustainable in the eye of law. Therefore, the impugned order challenged in this petition deserves to be quashed and set aside by invoking the powers under Sections 482 and 433 of the Cr.P.C. The petitioner is entitled for the benefit of clause 3(b) of the Government guidelines dated 15.3.2010. The petition is accordingly allowed in terms of prayer clauses "B" and "C" with further directions to the

authorities concerned to place the petitioner in category 3(b) of the March 2010 guidelines and give the petitioner appropriate relief within a time frame of five months from the date of order. No costs.

10. Rule is made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

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