

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

1001 CRIMINAL WRIT PETITION NO.928 OF 2022

CLINT S/O. ERNEST FERNANDES (C-161)

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioners : Ms.Chate Sharada P.

APP for Respondents-State : Mr.R.V.Dasalkar

...

**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 5 April 2023

PER COURT :-

1. Heard both the sides.

2. Petitioner is aggrieved by his placement for granting remission in category 7(a) of the Government Guidelines of the year 1992, which according to him is not applicable since the death sentence was commuted by the Supreme Court and not by the Government. He claims to be placed in the category 3(b).

3. In spite of Judgment of the Constitution Bench of the Supreme Court in the matter of ***Union of India vs. Sriharan @ Murugan and others; [(2014) 11 SCC 1]*** and in spite of the decision of the Full Bench of this Court in ***Yovehel Vijaykumar Gouri vs. State of Maharashtra and Others; [2020 (6) Mh.L.J. 571]***, though the Presiding Officer of the Court in report

submitted under Section 432 of the Code of Criminal Procedure had expressly, for the reasons recorded in the communication dated 01-12-2018, stated that the petitioner can be suitably placed in categories 3(b), 4(c) and 4(d) of the Government Resolution dated 11-05-1992, 11-04-2008 and 15-03-2010 respectively, prescribing minimum imprisonment of 24 years, the State has not followed the mandate of the law. There is not even a whisper as to why the State was not accepting the report submitted by the learned Judge of the City Civil and Sessions Court. The order is absolutely unsustainable in law.

4. We allow the criminal writ petition and quash and set aside the impugned order and direct the State to pass a fresh order in accordance with the view / opinion expressed by the Presiding Officer under Section 432 of the Code of Criminal Procedure as expeditiously as possible and in any event within two weeks.

(ABHAY S. WAGHWASE)
JUDGE

(MANGESH S. PATIL)
JUDGE