

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1128 OF 2022

Sopan S/o Bhausahab Gunjal,
(Convict No – 4911)
Age : 39 years, Occu : Convict,
R/o Sulewadi, Tal. Sinnar, Dist. Nasik
(Undergoing his sentence
at Open Jail, Paithan)

.. Petitioner

Versus

1] State of Maharashtra,
Through Superintendent of Jail,
Open Jail, Paithan

2] Secretary,
Home Department (Prison),
Mantralaya, Mumbai – 400 005

.. Respondents

...
Mr. Rupesh A. Jaiswal, Advocate for petitioner
Mr. G.O. Wattamwar, APP for the respondent – State
...

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

**RESERVED ON : 30 MARCH 2023
PRONOUNCED ON : 12 APRIL 2023**

ORDER (MANGESH S. PATIL, J.) :

Heard.

2. In this petition under Article 226 and 227 of the Constitution of India, the petitioner is seeking premature release under section 432 of the Code of Criminal Procedure pursuant to the guidelines framed by the State Government under section 433 of the Code of Criminal Procedure.

3. The petitioner with other accused has been convicted for murder of his wife Kalpana on account of dowry and was sentenced to life imprisonment under section 302 of the Indian Penal Code. He has undergone 16 years of actual imprisonment and with inclusion of remission it would constitute 24 years of imprisonment.

4. The petitioner claims that considering the guidelines framed by the State government under section 433 of the Code of Criminal Procedure taking into consideration the circumstances in which he has been found guilty of committing murder, his case has been placed in category 1(E) of the guidelines of the year 1992 which is corresponding to category no. 2(c) of the guidelines of 2010. He ought to have been placed in category no. 2(b) of the guidelines of 2010 which prescribe punishment of 24 years.

5. Learned advocate Mr. Jaiswal would take us through the judgment of the trial Court whereby the petitioner was convicted and submitted that there was nothing before the trial Court to demonstrate that the crime was committed with exceptional violence or brutality. She had died of asphyxia due to drowning and in the peculiar circumstances, the trial Court concluded that it was doubtful if she was first killed and immediately thrown or was simply beaten and was thrown in the well. He would advert our attention to the evidence of the Medical Officer Dr. Vasant Karande who was examined as prosecution

witness no. 1. He would submit that though the report submitted by the trial Court under section 432 of the Code of Criminal Procedure mentions that the crime was committed with exceptional violence and/or brutality, the report does not take into consideration the entire judgment of the trial Court. He would submit that in every crime there would be some violence but that would not necessarily make it an exceptional violence. In order to distinguish the two he places reliance on the observations of this Court in the matter of *Rajaram Patil v. State of Maharashtra*; 1997 (99) Bom.L.R. 98.

6. Per contra, the learned APP referring to the affidavit-in-reply supports the decision placing the petitioner in category 2(c) of the government guidelines of 2010.

7. We have carefully considered the rival submissions and perused the papers.

8. In view of the Full Bench decision of this Court in the matter of *Yovehel Vijaykumar Gouri Vs. State of Maharashtra and others*; 2020 (6) Mh.L.J. 571 any opinion expressed by the Presiding Judge of the trial Court under section 432 of the Code of Criminal Procedure is binding on the authorities. Consequently, when the trial Court in its report submitted under section 432 of the Code of Criminal Procedure has expressly stated that the crime was caused with exceptional violence, obviously, the respondents were legally bound to

obey such observation. However, that will not denude this Court the power of examining the correctness of the view expressed under section 432 of the Code of Criminal Procedure.

9. In the report submitted by the Adhoc Additional Sessions Judge, Nasik dated 27-12-2016 it has been mentioned that the deceased – Kalpana was subjected to ill-treatment on account of their demand for money, she was repeatedly assaulted causing injuries on her person and was killed by drowning into the well and would constitute the dowry death. It was committed within three months of the marriage. It is for this reason that the report submits that the petitioner could be appropriately placed in category no. 2(c) of the Government guidelines dated 15-03-2010 and liable to suffer actual imprisonment for 26 years.

10. It is necessary to note that considering the evidence before the trial Court, the Judge who rendered the conviction had minutely referred to the testimonies of the witnesses. Though there was evidence that there were some injuries on the person of Kalpana which had appeared in the post-mortem report, the Medical Officer Dr. Karande (PW1) had opined that those were caused 2-3 days prior to her death and that the evidence demonstrated that she was beaten on the earlier days and on the date of the incident she was thrown in the well.

11. Though unfortunate and though the crime was committed barely within three months of the marriage and there was evidence regarding demand for dowry and about beating, which injuries were caused 2-3 days prior to the incident, in our considered view in view of the following observations in the matter of *Rajaram Patil* (supra), these circumstances would not constitute exceptional violence or demonstrates perversity of mind. Following observations are relevant :

"4. Every murder is a result of some kind of violence. Use of weapon or blows on the vital part by itself cannot be termed to be an exceptional violence. Such a violence would be ordinary violence for committing murder. It appears that the State Government wanted to create a separate category of murders in which there is an exceptional violence or which show that the perversity of mind. In a peace loving society, every murder is bound to shock the members of the society but the exceptional violence creates tremors of shock and indignation. We do not wish to give examples which amount to exceptional violence but suffice it to say that, the present case is not one which can be labelled as a case of exceptional violence. Though every offence of murder is creation of an ill-mind, perversity is something more than that. Perverse individuals may act in a fashion in committing the murder as would show that depravity of balance of mind. We do not see anything in the acts committed by the present petitioner which show any perversity in his mind. The question as to whether there is an exceptional violence or there is perversity in a particular case will have to be decided on the basis of the facts and circumstances of that case and no yardstick of universal application can be available for this purpose."

Therefore, in our considered view, the view expressed by the Presiding judge of the trial Court under section 432 of the Code of Criminal Procedure is not factually tenable.

12. It is trite, as has been laid down in the matter of *State of Haryana and others Vs. Jagdish*; AIR 2010 SC 1690, the policy beneficial to the prisoner has to be adopted. Category 2(c) in which the petitioner is placed in the impugned order by the respondents covers the cases where the crime is committed with exceptional violence or brutality whereas clause 2(b) covers the crimes which have been committed against women and minors without any criminal history but with premeditation.

13. The impugned order, therefore, is not sustainable in law.

14. The writ petition is allowed.

15. The order passed by the respondent no. 2 dated 10-06-2021 (Exhibit B) is quashed and set aside.

16. We direct the respondent no. 2 to pass the order afresh in the light of the observations made herein-above for placing the petitioner in category no. 2(b) of the government guidelines dated 15-03-2010. The order shall be passed as expeditiously as possible and in any case within two weeks.

[ABHAY S. WAGHWASE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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