

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1525 OF 2022

Ashok s/o Bhaskar Patil,
Age 63 years, Occu. Nil, Convict No.54,
R/o At Hingone, Post Dodhavad,
Tq. Amalner, Dist. Jalgaon
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

(Copy to be served on A.P.P.,
High Court of Bombay,
Bench at Aurangabad for
respondent No.1 to 3)

... RESPONDENTS

.....
Mrs. Bharati B. Gunjal, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondents
.....

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 11th JANUARY, 2023

ORAL JUDGMENT (PER R.M. JOSHI, J.) :

With the consent of learned counsel for rival parties,

heard finally at the stage of admission.

2. This petition is filed by the convict in Sessions Case No.2/2006, whereby he was sentenced to suffer life imprisonment. On completion of 14 years of imprisonment, the petitioner has sought remission and in that regard, the impugned order came to be passed on 11/11/2020, whereby the petitioner was put in Category 3(d) of the guidelines of 1992 and 4(e) of guidelines of 15/3/2010, whereby he was called upon to undergo imprisonment for 26 years.

3. It is the case of the petitioner that, the incident in which the deceased has died, occurred out of family feud and hence, for the purpose of categorising him for remission, both in guidelines of 1992 as well as 2010, he would at the most come in Category 2(b) and 3(b) respectively.

4. Learned counsel for the petitioner drew attention of this Court to the judgment of the trial Court, wherein it is observed that, the incident occurred on account of family feuds. Learned counsel for the petitioner submitted that, the convict is the son of deceased Bhaskar. On the date of incident, at the relevant time, since Bhaskar declined to bring wife of the accused, he became annoyed and caused assault on him by means of wooden log. Thus, according to the her, the present

case is squarely covered by the category of murder out of family feud.

5. Learned A.P.P. opposed the said submission, by referring to the manner in which the murder is committed and thus, according to him, there is no error committed by the concerned authority in placing the petitioner in Category 3(d) of guidelines of 1992 and Category 4(e) of 2010 guidelines. It is, however, not disputed that murder in present case has occurred on account of family feud.

6. The Hon'ble Apex Court, in case of **State of Haryana & ors. Vs. Jagdish [(2010) 4 SCC 216]** has held that, where the two guidelines are applicable, the beneficiary guideline should be considered for the purpose of remission. The State Government, in exercise of its powers under Section 432 of the Code of Criminal Procedure read with the restrictions under Section 433-A, has framed guidelines for the pre-mature release of the prisoners serving life sentence under the 14 years rule. The guidelines not only specify the categories of crimes and sentence to be undergone but these guidelines are also reviewed. It is pertinent to note that, in case of murder relating to "sexual matters or arising out relations with women etc.", a separate category is carved out, wherein the crime of this

nature is committed with exceptional violence or perversity. Similarly, in case of "murders for other reasons", 26 years of imprisonment is prescribed for exceptional violence or perversity. In our view, the State Government has consciously excluded the consideration of said situation of exceptional violence or brutality in case of murder arising out of family feud. Since it is a matter of policy of the State, we do not wish to enter into the said domain, and it will be for the State to consider the said aspect, if so desired.

7. Suffice it to say that, on the basis of existing guidelines of 1992 as well as 2010, the petitioner since was convicted for the murder arising out of family feud, ought to have been included in Category 2(b) of the guidelines of 1992 and Category 3(b) of 2010 guidelines.

In the result, the petition stands allowed in terms of prayer clauses (B) and (C). The respondent No.1 is directed to place the petitioner in Category 3(b) of the guidelines dated 15/3/2010. Follow-up action be taken expeditiously.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-