

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

CRIMINAL WRIT PETITION NO.1596 OF 2019

Subhash S/o. Raghunath Pawar. (C-31),
Age: 49 Years, Occ: Nil(Convict),
At Present R/o Open Prison Visapur, Tal.
Shrigondha, Dist. Ahmednagar ...Petitioner

Versus

1. State of Maharashtra,
Through Superintendent of Jail,
Open Prison, Visapur,
Tal. Shrigondha, Dist. Ahmednagar.
2. State of Maharashtra,
Through Secretary,
Home Department (Prison),
Mumbai – 400005. ...Respondents

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Mr. R.A. Jaiswal, Advocate for the Petitioner.
Mr. P.G. Borade, APP, for the Respondent – State.

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

DATE : JANUARY 03, 2023

PER COURT :

1. At the outset, learned Counsel appearing for the Petitioner seeks leave to amend the prayer clause 'A' by substituting category 4(d) with category 3(b) and prayer clause 'B' by substituting category 3(b) with category 2(b).

2. Leave granted. Amendment to be carried out

forthwith.

3. Rule. Rule made returnable forthwith. With the consent of learned Counsel appearing for respective parties, heard finally at the stage of admission.

4. The Petitioner has prayed for issuance of writ of mandamus or any other appropriate writ, order or direction in the like nature directing Respondent No.2 to place the Petitioner in category 3(b) of Guidelines of 2010 for release of Petitioner undergoing life sentence and or place him in category 2(b) of Guidelines of 1992.

5. Learned Counsel appearing for the Petitioner, by relying upon the decision of the Apex Court in the matter of State of Haryana and Ors Vs. Jagdish reported in 2010 DGLS(SC) 194, submitted that the Government has given benefit to the Petitioner of Guidelines dated 15.03.2010 and categorized him in category 5(b). He, however, canvassed that Petitioner is wrongly placed in category 5(b), which would apply in case of murder for political reason. Learned Counsel for the Petitioner submits that Petitioner has been convicted for

committing murder, occurred due to family feud and hence, the Petitioner ought to have been placed under category 3(b) of Guidelines dated 15.03.2010.

6. We have perused the record and considered the submissions advanced by learned Counsel appearing for respective parties.

7. The Petitioner herein has been convicted for the offence punishable under Section 302 of Indian Penal Code and sentenced to undergo imprisonment for life. The Petitioner has undergone sentence of 14 years and 9 months and including remission, he has undergone approximately 20 years and 8 months of imprisonment. The proposal for release of the Petitioner was submitted by the jail authorities categorizing him in category 5(b) which has been accepted by the Government and the Petitioner has been placed in category 5(b) of Guidelines dated 15.03.2010.

8. A perusal of the guidelines dated 15.03.2010 reveals that 5(b) relates to murder arising out of political rivalry and political interest with premeditation whereas, 3(b) pertains to murder arising

out of land dispute, family feuds, family prestige and superstition and crime committed with premeditation either individually or by a gang.

9. A perusal of the judgement in Sessions Case No. 72/2000 reveals that C.R. No.45/99 was registered against the applicant and others for committing murder of Ankush. The judgement reveals that deceased Ankush was residing with his father Bhausahab and other family members. Pandharinath (A 1) is the nephew (Son of Bhausahab), Haribhau is the son of maternal uncle of Pandharinath, Rajendra and the Petitioner and other accused were the friends of accused no. 1 and 2. The judgement further indicates that Devba Gholap had strained relations with his brother Bhausahab. The judgement further records that on the relevant day there was a quarrel between Ankush the father of A 1- Pandharinath due to which, the brothers of A 1 assaulted Ankush. The above factual matrix clearly shows that the murder was committed due to the family feud and not due to political rivalry and political interest. The Petitioner, therefore, ought to have been placed in category 3(b) of Guidelines dated 15.03.2010.

The action of the Government categorizing the Petitioner in category 5(B) is totally erroneous. Hence, the order dated 01.06.2019 passed by Home Department (Govt. of Maharashtra) cannot be sustained. In view of the above, we pass the following order:

ORDER

- (A) Writ Petition is allowed in terms of prayer clause 'A'.
- (B) Consequently, the Respondent No.2 is directed to place the Petitioner in category 3(b) of Guidelines dated 15.03.2010.
- (C) Decision to release the Petitioner be taken forthwith in the event he has undergone the actual imprisonment as stated in category 3(b) of Guidelines dated 15.03.2010.
- (D) Rule is made absolute in above terms.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)