

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

CRIMINAL WRIT PETITION NO.1802 OF 2022

Umesh @ Aaba Mohan Birkhade
(Convict No.C/4939), Age 50 years,
Occu. Nil, R/o At present Paithan Open
Prison, District Aurangabad

... **PETITIONER**

VERSUS

- 1) The State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya, Mumbai - 400 032

(Copy to be served on P.P., High Court
of Judicature of Bombay,
Bench at Aurangabad)

- 2) The Superintendent,
Paithan Open Prison,
Dist. Aurangabad

... **RESPONDENTS**

.....
Ms Sharada P. Chate, Advocate for petitioner
Mr. R.B. Bagul, A.P.P. for respondents
.....

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

DATE : 15th JUNE, 2023

ORDER :

Heard. The petitioner along with his brother have been
convicted for committing murder of their brother. For remission
purpose, the petitioner has been placed in Category 4(d) of the

guidelines dated 15/8/2010. the said category reads thus :

Category No.	Sub-Category	Caterogisation of Crime	Period of imprisonment to be undergone including remissions subject to a minimum of 14 years of Actual Imprisonment including Set-off period
4	(d)	Murders committed by more than one person or group of persons	24 years

2. According to learned counsel for the petitioner, the case of the petitioner falls in Category 3(b), which reads thus :

Cate-gory No.	Sub-Cate-gory	Caterogisation of Crime	Period of imprisonment to be undergone including remissions subject to a minimum of 14 years of Actual Imprisonment including Set-off period
3		Murder arising out of Land dispute, family feuds, family prestige and superstition	
	(a)		
	(b)	Crime committed as above with premeditation, either individually or by a gang	22 years

3. Learned counsel for the petitioner takes us through the judgment of conviction and consequential sentence. Close reading of the judgment itself indicates that, it was a case of the prosecution that, four brothers including the present petitioner and the co-convict were on one side and the deceased on the other. Those

four brothers were not happy over partition of the family land. When the deceased had moved an application for crop loan, an objection was raised by the brothers including the petitioner herein. The murder is a fall out of the said dispute.

4. The learned A.P.P. submits that, partition of the landed property took long back. In a property dispute, there ought to have been a suit for reopening of a partition or some kind of dispute over the landed property. Such was not the case. When the deceased had moved an application for crop loan, the four brothers came together and committed brutal murder of their brother. The complainant had also suffered injury. According to him, it was a case of attempt to commit murder of the complainant in addition to the murder of the brother of the petitioner. According to learned A.P.P., the case of the petitioner has, therefore, rightly been placed in Category 4(d) as it was a murder committed by more than one person.

5. We have considered the submissions advanced. True, it was a case of murder committed by more than one person. The reason therefor was, as per the prosecution case itself, that the petitioner, co-convict and their two brothers were not happy with the partition of the family property. The same suggests that there was a dispute among all the brothers over the landed property. It will also

suggest that it was a case of family feud. If a person simply moves for crop loan, no other person would have reason to object if the landed property is not family property for which the loan was sought. It was a case of dispute over land. In our view, therefore, the State Government ought to have placed the petitioner in Category 3(b) instead of Category 4(d).

6. We are, therefore, inclined to allow the petition. The petition therefore succeeds. The petition is allowed. The State Government is directed to place the petitioner in Category 3(b) and grant him necessary relief within a time-frame of six weeks from today.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-