

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

CRIMINAL WRIT PETITION NO. 1826 OF 2022

Tractor Raja @ Rajendra Sajan Sonawane

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mrs. B.B. Gunjal, Advocate for petitioner

Mrs. V.N. Patil-Jadhav, A.P.P. for respondent - State

....

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

DATE : 11th JANUARY, 2023

PER COURT :

1. With consent, taken up for final hearing at the stage of admission.
2. By this petition the petitioner challenges impugned order dated 26th September, 2019, whereby the petitioner is placed in category 4(b) of the guidelines dated 11th May, 1992 and 5(b) of the guidelines dated 15th March, 2010.
3. The petitioner was tried for offences under Sections 302, 143, 147, 148, 149 and 120-B of the Indian Penal Code and under Section 4/25 of the Arms Act. He has been acquitted of the offence under Section 120-B I.P.C. and convicted and sentenced to undergo imprisonment for life for

offence under Section 302 read with Section 149 I.P.C. The petitioner's case was put up for premature release. By order dated 26th September, 2019, the petitioner has been placed under 5(b) category of 15th March, 2010 guidelines since the murder was committed with premeditation, due to political rivalry and political interest. The fallout of which is that the petitioner cannot be released unless he completes 26 years of actual imprisonment, including remission.

4. Mrs. Gunal, learned counsel for the petitioner submits that the categorization of the petitioner under 5(b) is totally arbitrary. It is her contention that the petitioner is acquitted of the offence punishable under Section 120-B of the Indian Penal Code and therefore, this case falls under the categories 4(a) and 5(a) of guidelines dated 11th May, 1992 and 15th March, 2010 respectively. It is also sought to be argued that the procedure contemplated for taking decision of remission has not been followed.

5. Learned A.P.P. opposed the said submission by referring to the impugned order wherein the opinion given by the trial Court has been duly incorporated. It is also contended that from the judgment of trial Court it is clear that this is a case of premeditated murder. He therefore, contends that the order does not warrant any interference.

6. It is not in dispute that the murder was committed due to political rivalry and political interest. The guidelines dated 15th March, 2010 categorizes such murders into two categories viz. 5(a) murder arising out of political rivalry and political interest, for which the period of imprisonment is 24 years and 5(b) murder arising from political rivalry and political interest with premeditation for which the period of imprisonment provided is 26 years. In the instant case, the petitioner has been placed in category 5(b) for being involved in committing murder due to political reason with premeditation. The argument canvased before us is that since the petitioner has been acquitted of offence of criminal conspiracy, he ought to have been placed under category 5(a). Suffice it to observe that criminal conspiracy as defined in Section 120-A I.P.C. is a distinct offence. The criminal conspiracy has its foundation in an agreement between two or more persons to achieve an illegal goal. It is a premeditated crime, but every premeditated crime is not a criminal conspiracy. Hence, the mere fact that a person has been acquitted of offence of criminal conspiracy does not lead to an inevitable conclusion that the murder was not premeditated or that it was committed on the spur of the moment.

7. In the instant case, a perusal of the judgment clearly indicates that the petitioner and the other assailants had gone armed with deadly weapons. The crime was not committed in a hit of passion or on the spur of moment

but as per the findings recorded by the trial Court, it was a planned premeditated murder. It may be noted that the acquittal of the accused of the offence punishable under Section 120-B of the I.P.C. only indicates that the prosecution was not able to prove the charge of criminal conspiracy against accused but this does not lead to an inference that it was not a premeditated murder. Learned counsel for the petitioner is right in contending that the convict is entitled to be placed in a category which is beneficial to him, but this does not mean that he can be placed in a category not applicable to the case. In the facts of the case 5(b) of guideline 2010 is the only category which could be made applicable to the present petitioner as murder in question has occurred out of political rivalry and political interest with premeditation. Hence, we do not find any error or arbitrariness in placing the petitioner under category 5(b) which provides for imprisonment of 26 years.

8. In the circumstances, we do not find any substance in the petition. Hence, criminal writ petition stands dismissed.

(R.M. JOSHI, J.)

SSD

(SMT. ANUJA PRABHUDESSAI, J.)