

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

CRIMINAL WRIT PETITION NO.1867 OF 2022

**RAHUL BALABHAU MAGAR (C-499)
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

**. . .
Advocate for Petitioner : Mrs. Sharada P Chate
APP for Respondent – State : Mrs. M. A. Deshpande**

. . .

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

DATED : 29 MARCH 2023

PER COURT :

1. Heard both the sides.
2. The petitioner is claiming remission and is aggrieved by the order dated 18.01.2021 placing him in category 4(d) of the guidelines dated 15.03.2010 issued by the Government of Maharashtra in the matter of remission under section 432 of the Code of Criminal Procedure (Cr.P.C.). He claims that considering the circumstances in which the murder was committed, he ought to have been placed in category 3(a) of those guidelines since it was a murder arising out of a family feud.
3. The Petitioner is the brother of the wife of deceased. He along

with wife has been convicted. The trial court has specifically observed that the deceased was killed by both these accused in furtherance of their common intention on account of his insistence to bring back the articles and the money which she had delivered and paid to her brother. It would constitute a family feud as a category 3(b) rather than 4(d) which provides for murder for other reasons.

4. Per contra, learned APP supports the order and submits that relying upon the observations of the trial court, the petitioner has been placed in an appropriate category. Merely because, it is a murder committed by the wife and brother-in-law, that does not necessarily bring it into the category of family feud, when the only reason which forms the motive for killing was that the accused were not comfortable and agreeable to the insistence of the deceased to get back his articles and money.

5. We have carefully gone through the order under challenge and the rival submissions.

6. Following observations of the trial court in paragraph No. 67 have been relied upon while passing the impugned order :-

“67. Considering entire material on record, I come to the conclusion that prosecution has duly proved that Tukaram, Padmabai and Sunil have gone to Deomurti. Tukaram asked

Kakasaheb, Rahul and others for his amount and the articles. They refused to return the same to Tukaram. They assaulted Tukaram. So Tukaram with his son Sunil were returning back, at that time, Rahul and Padmabai followed them. Rahul caused Tukaram to fell down. He was assaulted. Then Padmabai kept towel around the neck of Tukaram and strangled him, due to which Tukaram died. This evidence on record is sufficient to prove that both accused in furtherance of their common intention, knowingly and intentionally killed Tukaram and committed his murder. The death of Tukaram is homicidal one. I answer point Nos. 2 and 3 as proved.”

7. It is equally necessary to look into the earlier part of the judgment as well. The judgment of the trial court while convicting the petitioner clearly mentions that the deceased and his wife had gone to Mumbai to earn their livelihood. Both were earning wages. She had paid the wages earned by her to her brother and the deceased was insisting that the money as also articles should be returned to him.

8. This was the motive that was established before the trial court. This is the reason for the inference drawn while passing the impugned order that it was not a family feud as is categorized in category 3(a), but falls under category 4(b) of the guidelines dated 15.03.2010. Merely because, the convicts are the family members of the deceased would not *ipso facto* make it a family feud, more so in the backdrop of the motive attributed and established during trial. If the insistence to get back the money and the articles was the cause which provided the motive to the petitioner and his

sister to kill the deceased, it cannot be said that it was a family feud.

9. The conclusion drawn by the authority while passing the impugned order to place the petitioner under category 4(d) of the guidelines dated 15.03.2010 which provides for murder for other reasons committed by more than one person cannot be said to be illegal.

10. Petition is dismissed.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)