

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1040 OF 2022

Sahebrao Kaluram Bhintade .Petitioner  
Aged 73 years  
R/o Flat No. 203, Dhanalaxmi Society,  
Sakinaka, Mumbai- 400072.  
presently residing as Convict No. 5587,  
Kolhapur Central Prison,  
Kalamba - 416007.

Vs.

1. The State of Maharashtra,  
Through its Home Ministry, Mantralaya,  
Madame Cama Road, Mumbai - 400001.

2. Superintendent,  
Kolhapur Central Prison,  
Kalamba - 416007

.Respondents

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Dr. Yug Mohit Chaudhary a/w. Mr. Anush Shetty i/b . Ms. Payoshi  
Roy for the Petitioner.  
Ms. S. D. Shinde, APP for the State.  
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CORAM : SUNIL B. SHUKRE AND  
ABHAY. S. WAGHWASE, JJ.

DATE : 21 MARCH, 2023

ORAL JUDGMENT: (PER:- SUNIL B. SHUKRE, J)

. Heard.

2. Rule. Rule made returnable forthwith. Heard finally  
by consent of the parties.

3. By this Petition, the Petitioner who has been convicted and sentenced to life imprisonment for offences punishable under Sections 3(1) (2) and Section 3(2) of Maharashtra Control of Organised Crime Act, 1999 [for short “**MCOC Act**”]. On 31<sup>st</sup> August, 2012, is seeking his premature release on the basis of the policy which was prevailing on the date of his conviction, that policy being more beneficial to him than the policy which came into force later on w.e.f. 1<sup>st</sup> December, 2015.

4. According to learned senior advocate, the policy which is more beneficial, must be applied to the case of the Petitioner and in the submission of learned APP, the modified policy which came into force w.e.f. 1<sup>st</sup> December, 2015, would have to be applied to the Petitioner. She submits that under the modified policy of 2015, the benefit of premature release is not available to a convict, that is the Petitioner who is undergoing sentence for offences punishable under the provisions of MCOC Act.

5. The law in this regard, is well settled as rightly submitted by learned senior advocate. In the case of **State of Haryana and Ors. vs. Jagdish (2010) 4 SCC 216**, it has been held

that the state has to exercise its power of remission also keeping in view any benefit which can be construed liberally in favour of a convict and that too depends upon the case to case and for that purpose, it should relate to a policy which would go in favour of the convict. It is also held that in case a liberal policy prevails on the date of the consideration of the case of convict sentenced to life imprisonment for his premature release, he must be given benefit of such a policy.

6. The above referred law has been reiterated in the case of Radheshyam Bhagwandas Shah @ Lala Vakil vs. State of Gujarat and Anr. (2022) SCC OnLine SC 617 and Rajkumar vs. State of Uttar Pradesh (2023) LiveLaw SC 144. In the case of Rajkumar (Supra), the Apex Court in particular has held as follows:

“5. *In several decisions of this Court, it has been held that the case of a convict for premature release is governed by the applicable policy on the date of conviction [State of Haryana Vs. Jagdish and State of Haryana Vs. Raj Kumar];*

6. *The Standing Policy of the State of Uttar Pradesh as formulated on 1 August, 2018 (as amended in 2021) contained a prohibition on the grant of premature release to convicts who had not completed the age of 60 years. The validity of the restriction was challenged before this Court in a batch of cases under Article 32 of the Constitution which eventually led to the*

*judgment of **Rashidul Jafar** (Supra). In the subsequent policy dated 27 May 2022, the bar on considering cases for premature release before a convict attains the age of 60 years stand lifted. This Court has hence directed that while, as a general principle, the policy which was in existence on the date of the conviction would govern the consideration of each case for premature release, in the event that a more liberalized policy is instituted subsequently, the case should be considered on the basis of the more liberalised provision.”*

7. It is thus clear that as a general principle, the policy which is applicable to a convict is the one which is prevailing on the date of his conviction and that would govern the consideration of his case for premature release, but in case a more liberalized policy is brought into force, subsequently the case must be considered on the basis of more liberalized policy. In other words, it is the policy which is more liberal and more beneficial to a convict which has to be applied while considering his case for premature release by granting remission in sentence.

8. In the present case, the more beneficial policy is the one which was applicable to the Petitioner on the date of his conviction and this policy was of the date of 10<sup>th</sup> January, 2006. As per that policy, all male prisoners above the age of 65 years are required to be produced before Medical Board and separately considered for premature release. Whereas, under the 2015

policy, the Petitioner having been convicted and sentenced to suffer life imprisonment under the provisions of MCOC Act, the Petitioner is not entitled for premature release. Obviously, 2006 policy is more beneficial to the Petitioner, and therefore, his case must be considered as per policy dated 10<sup>th</sup> January, 2006. That means, there is substance in this Petition and it deserves to be allowed.

9. The Petition is allowed.

10. The Respondents are directed to consider the case of the Petitioner for premature release by granting him remission in sentence as per the policy dated 10<sup>th</sup> January, 2006, he having already completed 14 years of imprisonment by actually undergoing it and take an appropriate decision in terms thereof. The compliance shall be made within a period of 8 weeks from the date of the judgment.

11. The Petition is disposed of. Rule is made absolute in the above terms.

( ABHAY. S. WAGHWASE J. )

( SUNIL B. SHUKRE, J. )