

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1419 OF 2022

Dnyaneshwar Suresh Borkar] .. Petitioner

Vs.

1. State of Maharashtra,	]	
Through the Principal Secretary, Home Department,	]	
State of Maharashtra	]	
2. The Additional Director General Police (Prisons)	]	
and Inspector General of Prisons, M.S., Pune	]	
3. The Superintendent,	]	
Yerwada Central Prison, Pune	]	.. Respondents

Ms. Rebecca Gonsalves for the Petitioner.

Mr. A.R. Kapadnis, APP for the Respondents–State.

**CORAM : SUNIL B. SHUKRE & ABHAY S. WAGHWASE, JJ
DATE : 13TH MARCH, 2023.**

ORAL JUDGMENT : { Per Sunil B. Shukre, J. }

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. We find that the death sentence awarded to the petitioner has not been commuted by this court but has been modified by the Apex Court, as per its judgment dated 20th February 2019 in Criminal Appeal No.1411 of 2018, to life imprisonment. Power to commute sentence is conferred upon the appropriate Government under Section 433 of the Code of Criminal Procedure, 1973. It lays down that the appropriate Government may, without the consent

of the person sentenced, commute a sentence of death, for any other punishment provided by the IPC or even a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine. Similar provision for commuting a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced or for fine has also been made. What is important is that “commuting of any sentence is the power”, which is conferred upon the appropriate Government and not upon any Court. It is therefore obvious that commuting of sentence for any other lesser sentence of punishment is different from the modification of the sentence.

3. In the present case, the Supreme Court has, of-course, observed that in the facts and circumstances of the case and in view of the reasons stated in the judgment, the Supreme Court has commuted the death sentence to life imprisonment. The expression “commute the death sentence to life imprisonment” used by the Supreme Court in its judgment dated 20th February 2019 has to be understood in its general sense and therefore, it would only mean that what has been effectively done by the Supreme Court is modification and reduction of the sentence of death to the sentence of life imprisonment in exercise of its appellate powers.

4. Therefore, we are of the view that the facts of this case are squarely covered by the view taken by the two Co-ordinate Benches of this court in Criminal Writ Petition No.673 of 2017, decided on 4th July 2017 and Criminal

Writ Petition No.1328 of 2018, decided on 27th February 2019, wherein it has been held that when there is no order within contemplation of Section 433 of the Code of Criminal Procedure, the relevant clause to be applied for granting remission in sentence to the convicts would not be one which categorizes the prisoner whose death sentence has been commuted to life imprisonment, but, would be the one which categorizes prisoner in different categories for reasons other than commuting of death sentence to life imprisonment. Thus, we are of the view that the case of the petitioner would be covered by Category 4(e) of the 2010 Guidelines and not by Category 6(d) of the 2010 Guidelines. The Prison Authorities, however, have committed an error in categorizing the petitioner in Category 6(d) of 2010 Guidelines, which needs to be corrected by placing the petitioner in Category 4(e) of 2010 Guidelines, just as has been done in the case of accused no.2 by the Prison Authorities.

5. In view of the above, the petition is allowed. The impugned order is hereby quashed and set aside. Respondents are directed to take appropriate decision of placing the petitioner in Category 4(e) of 2010 Guidelines and grant him benefit of remission in sentence accordingly. Necessary order to be passed within one week of the date of receipt of the writ of this court.

6. Rule is made absolute in the above terms. No costs.

[ABHAY S. WAGHWASE, J.]

[SUNIL B. SHUKRE, J.]