

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2459 OF 2019**

Pradip Oliver D'Mello	]	
S/o Oliver D'mello	]	
Aged about 42 years,	]	
Incarcerated in Taloja Central	]	
Prison, Maharashtra - 410208.	]	
Resident of Anjur, Taluka Bhiwandi]		
P.O. - Anjur, District - Thane.	]	
Pin Code - 421 308.	]	Petitioner
Vs.		
The State of Maharashtra	]	
Through its Home Ministry	]	
Madame Cama Road, Mumbai	]	
400 001.	]	Respondent

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Dr. Yug Mohit Chaudhry, for Petitioner.

Mr. J.P. Yagnik, A.P.P, for Respondent-State.

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 10th JANUARY, 2023.

ORDER: [Per Prithviraj K. Chavan, J.]:

1. In view of the order dated 30th November, 2022, passed by the Co-ordinate Bench, "Not before the Bench of which Shri A.S. Gadkari, J. is a Member", the aforesaid petition has been placed before this Court.

2. Heard.
3. Rule.
4. Rule is made returnable forthwith, with the consent of the parties. Petition is taken up for final hearing.
5. Learned A.P.P. waives notice on behalf of respondent-State.
6. By this petition under Article 226 of the Constitution of India, the petitioner has impugned an order dated 6th December, 2018 passed by Department of Home, Government of Maharashtra, thereby, refusing to categorize the petitioner for his premature release under the guidelines of Premature Release under the "14 years Rule" of Prisoners serving Life Sentence, 2010 by the Government of Maharashtra.
7. The facts are as follows.
8. The petitioner has been undergoing incarceration in Taloja Central Prison, Maharashtra pursuant to his conviction by the Extra

Joint Ad-hoc Additional Sessions Judge, Court Room No.2, Sewree, Mumbai, for the offences punishable under sections 304 (Part-I), 328, 324, 272 and 273 r/w 34 of the Indian Penal Code (for short "I.P.C") along with sections 65 (d), 65(e) and 65 (f) of the Bombay Prohibition Act, *inter alia*, sentencing him to life imprisonment vide judgment and order dated 26th April, 2012.

9. As per the relevant guidelines for premature release dated 15th March, 2010, the petitioner became eligible for premature release for completing ten years of the imprisonment. It is contended that the petitioner, having completed actual imprisonment of thirteen years, eleven months and seventeen days, has challenged the impugned order being *prima facie* arbitrary, against the government's own policy and scheme for premature release.

10. The petitioner was arrested on 19th January, 2005 by Vikhroli Police in C.R. No.249 of 2004. He was enlarged on bail on 14th January, 2012. He was on bail for a period of three months before he came to be convicted, as above. Admittedly, the petitioner and other co-accused were acquitted of the charges under sections

302 and 326 r/w 109 and 120B of the I.P.C as well as section 65 (b) of the Bombay Prohibition Act. Rest of the thirteen co-accused were convicted and sentenced for rigorous imprisonment of three years each for commission of offence under section 65 (d) and 65 (e) of the Bombay Prohibition Act.

11. An appeal preferred by the petitioner came to be admitted by this Court on 19th June, 2012 bearing Criminal Appeal No.605 of 2012, which is pending. It is the contention of the learned Counsel for the petitioner that the petitioner is entitled to be categorized in Category 1 of Annexure II of the Guidelines of premature release under the "14 Year Rule" of prisoners serving life sentence, which stipulates that upon completion of fourteen years of imprisonment with remission, petitioner's case will come under the said category for his premature release.

12. While opposing the prayer of the petitioner, learned A.P.P submitted that the State Government is conferred to exercise its discretionary power to either suspend or remit the whole or any part of the punishment of a prisoner under Section 432 (1) of the Code of Criminal Procedure. The powers of the State Government

are to be exercised in appropriate cases and the petitioner cannot, as of right, claim remission of whole or part of any punishment. It is further submitted that as per section 432 (2) of the Cr. P.C, the appropriate government cannot exercise the power without obtaining the prior opinion of the Judge who has convicted the prisoner. He submits that obtaining of the prior opinion of the convicting Judge/Court is obligatory as per section 432 (2) for considering the proposal of the remission by the State Government. It is, according to the learned A.P.P, is in the nature of advisory whereas the final decision to remit whole or part of the sentence rests solely within the discretionary realm of the appropriate government.

13. The learned A.P.P strongly urged to refuse the prayer of the petitioner, more particularly, in light of the fact that the petitioner has been convicted in a case where there was a loss of eighty seven lives and almost one hundred eighty seven victims, who had suffered due to consumption of illicit liquor mixed with methanol, which was supplied by the petitioner and the co-accused. The human tragedy of such a magnitude has affected mostly lower strata of the society which is nothing but an outcome of greed of the petitioner,

who had knowledge that spurious liquor could result in such a mammoth of human casualties. As such, learned A.P.P has strongly opposed the prayer.

14. The guidelines for premature release under the "14 Year Rule" of prisoners serving life sentence by the Government of Maharashtra, Home Department provides category number, sub categories, categorization of crimes, period of imprisonment to be undergone including remission subject to a minimum of fourteen years of actual imprisonment including set off period. Annexure-II provides guidelines. For ready reference, they are reproduced below;

AnnexureII

"PERSONS GUILTY OF OFFENCES NOT INVOLVING MURDER WHO ARE SENTENCED TO LIFE IMPRISONMENT WHERE SECTION 433 (A) of CRPC IS NOT APPLICABLE.

Cate gory	I.P.C Section	Nature of Offence	Period of imprisonment to be undergone including remission subject to the minimum of 10 years of actual imprisonment including set off period
1	304, 304 (a), 307	Persons guilty of homicides not amounting to murder, causing	14

		death by negligence, attempt to murder etc	
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15. Our attention has been invited by the learned Counsel for the petitioner to the communication of the learned Special Judge, C.B.I, City Civil and Sessions Court, Court Room No.49, Greater Mumbai dated 14th September, 2018 to the Superintendent of Kolhapur Central Jail, Kalamba, Kolhapur, on the subject of premature release of the petitioner. It would be apposite to extract the relevant part of the said communication which reads thus;

"Looking to the gravity and seriousness of the incident wherein 87 prisoners lost their life because of consumption of illicit liquor manufactured by the convict prisoners, it is not a fit case to make premature release of the prisoner C-5419. However, it appears that he completed 11 years of sentence and taking into consideration his conduct during this period which is maintained by the jail authority if it appears appropriate to consider his case, then in my opinion he must be given a chance to prove himself to be a good citizen and to contribute his further life in the society and to render his services for public benefit. I therefore, recommend the case of convict prisoner C-5419 to take decision for is premature release".

16. It can thus be seen that the learned Additional Sessions Judge by the aforesaid communication dated 14th September, 2018, recommended premature release of the petitioner.

17. It is a matter of record that the petitioner had preferred a Writ Petition bearing No.3573 of 2018 on 18th June, 2018, *inter alia*, praying for his premature release under category I of annexure II of the "Guidelines for premature release under the "14 years Rule" of Prisoners serving Life Sentence, 2010 by the Maharashtra Government vide Government Resolution No. RLP 1006/C.R.621/PRS-3, Mantralaya, Mumbai dated 15th March, 2010. During the pendency of the said Writ Petition before this Court, the respondent sought fresh opinion from the Special Judge from C.B.I, City Civil Court, Court Room No.49, Greater Mumbai.

18. On 11th September, 2018, learned Additional Sessions Judge recommended case of the petitioner for consideration of his premature release with an observation that the petitioner must be given a chance to prove himself to be a good citizen and to contribute his services of public benefit.

19. After withdrawal of Writ Petition No.3573 of 2018 with liberty to file afresh, challenging the said impugned order dated 6th December, 2018, the petitioner has preferred the present petition. Learned Counsel for the petitioner has invited our attention to following chart indicating the break-up of the period of incarceration qua the petitioner. For ready reference, the chart is reproduced below;

1	Set off Period from 19.01.2005 to 14.01.2012	6 years 11 months 27 days
2	Period since conviction till present 26.04.2012 to 16.04.2019	6 years 11 months 22 days
3	Ordinary remission earned	2 years 3 months, 20 days
4	Total period of Actual imprisonment undergone	13 years 11 months 17 days
5	Total period inclusive of remission	16 years 3 months 5 days

20. It can thus be seen that the applicable guidelines are those which are prevalent on the date of conviction of the accused by the trial Court or subsequent guidelines whichever are more favourable to the convict. Since the petitioner herein was convicted on 26th April, 2012, guidelines of 2010 will be applicable to his case. The convict, therefore, required to be placed in category-I of Annexure-II of the guidelines applicable to the case.

21. It is apparent that the respondent has failed to comprehend the statutory right of the petitioner to be considered for premature release as per applicable guidelines after undergoing minimum of ten years of actual imprisonment. The petitioner herein has already undergone more than 10 years, however, it appears that he has not yet been awarded category. It is also apparent from the record that the respondent ignored recommendations of the learned Additional Sessions Judge for premature release of the petitioner, as stated hereinabove. Consequently, the following order is expedient;

: ORDER :

(a) The impugned order dated 6th December, 2018 refusing to grant premature release to the petitioner is quashed and set aside;

(b) The petitioner is placed in category-I of Annexure-II relating to section 304 (Part 1) of the IPC of the Guidelines for Premature Release under the "14 year Rule" of Prisoners serving Life Sentence dated 15th March, 2010;

(c) The prison Authorities are directed to release the petitioner forthwith.

(d) Rule is made absolute in the aforesaid terms;

22. Petition is disposed of.

23. All the parties to act upon the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]