



Harish

WP 6018 of 2021.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 6018 OF 2021**

Sachin Raghunath Fulsundar
R/o Moka Bag, Yedgaon Kandli,
Shivevar, Tal. Junnar, Dist. Pune
presently residing as Convict No. 15538
Yerwada Central Prison, Pune.

...Petitioner

V/s.

The State of Maharashtra
through its Home Ministry, Mantralaya,
Madame Cama Road, Mumbai- 400001

...Respondent

Ms. Payoshi Roy i/b Dr. Yug Mohit Chaudhary for the Petitioner.
Ms. M. H. Mhatre, APP for the Respondent-State.

**CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.**

**RESERVED ON : 13th OCTOBER, 2023.
PRONOUNCED ON : 2nd NOVEMBER, 2023.**

JUDGMENT : (PER SHARMILA U. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties. Ld APP waives service on behalf of the Respondent-State.
2. By this Petition filed under Article 226 of Constitution of India, the Petitioner seeks to challenge the refusal of the Respondent

State to consider the case of the Petitioner for pre-mature release. The Petitioner further seeks categorization of the Petitioner in accordance with the guidelines for premature release under the '14-years Rule' of prisoners serving life sentence, dated 15th March, 2010 issued by the Respondent-State.

3. Heard Ms. Payoshi Roy, learned Advocate appearing for the Petitioner and learned APP for the Respondent-State.

4. At the outset, Ms. Roy, learned Advocate appearing for the Petitioner submits that, she is not pressing for prayer clause (a) seeking separate 'Likhans' for offences under Section 307 and 376 in Session Case No.408 of 2006. She has taken this Court through the Judgment in Sessions Case No.408 of 2006 decided on 21st May, 2009 convicting the Petitioner for life for the offences punishable under Section 307 and 376 of IPC and directing the sentences to run concurrently. She would submit that Annexure-II of the guidelines of 15th March, 2010 would be applicable to the case of the Petitioner and as, there is no composite categorization for the offences under Section 307 and 376 of IPC, category 8(a) of Annexure-II will apply providing for imprisonment for period of 18 years. She would point out the distinction between Annexure-I and Annexure-II of the guidelines of 2010 and contends that,

Section 433A of Cr.P.C. applies when the maximum sentence for the offence committed is punishable with death and hence, inapplicable to the case of the Petitioner. She would urge that, by the impugned order dated 14th May, 2021 the Respondent-State has declined to categorize the Petitioner for the reasons that, while on furlough/parole leave, the Petitioner had intimidated the complainant; he had absconded while on leave; there is possibility of him committing further offences, and considering the gravity of the offence, the Petitioner is not entitled to premature release.

5. On behalf of Respondent-State, an Affidavit dated 10th September, 2022 is filed by Smt. Rani Rajaram Bhosale-Superintendent of Yerwada Central Prison, Yerwada. It is stated in the Affidavit that, the Additional Sessions Judge, Pune has opined that the present case comes in category 8(a) of Annexure-II of the guidelines dated 15th March, 2010. It is stated that, the advisory committee had recommended the release of the Petitioner after undergoing 28 years of imprisonment with remission by categorizing him under category of 7 (b) of Government Resolution dated 15th March, 2010 guidelines. It is stated, that the Additional Superintendent of Police, Pune Rural has given an adverse police report that, the Petitioner tried to intimidate the victim and

witnesses when released on furlough.

6. Learned APP submits that, the State Government has taken a decision not to categorize the Petitioner in view of the observations of the Sessions Judge. He points out the Judgment of Sessions Court dated 21st May, 2009 and by this Court in Appeal proceedings and submits that, the Petitioner had raped his own daughter-in-law and attempted to cause her death. He would submit that, considering the facts of the instant case, the State Government has rightly rejected the Petitioner's proposal for premature release.

7. We have considered the submissions and perused the record. By the impugned Order, the Respondent-State has refused to consider the case of the Petitioner for premature release. Under the provisions of Section 432 of CR.PC., the State has the power to suspend or remit sentences, and, in exercise of the powers, guidelines have been issued by the Respondent-State from time to time for premature release of the prisoners serving life sentence. It cannot be denied that the offence committed by the Petitioner is serious and grave in nature as observed by the Sessions Judge, Pune in its Judgment dated 21st May, 2009.

8. The judgment of the Sessions Court was carried in appeal before this Court and the same came to be rejected vide Order dated 16th

July, 2013. This Court while rejecting the Application observed that, the offence committed expose the decay of human values, the betrayal of trust and throws to the wind the sanctity of human relationship.

9. In the case of State of *Haryana Vs. Jagdish* (1995 AIR 984 1995 SCC) the Apex Court in paragraph No. 38 has observed as under:

“At the time of considering the case of pre-mature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances”.

10. It is no doubt true that, the grant of premature release is not a matter of right, but it is the power conferred on the appropriate government in terms of Section 432 and 433 of Cr.P.C. In recent decision of the Apex Court in the case of *Rajo @ Rajwa @ Rajendra Mandal vs State of Bihar* [(2000) 7 SCC 626], the Apex Court reiterated the settled position that, the aim and ultimate goal of imprisonment, even in the most serious crime is reformatory after the offender undergoes a sufficiently long spell of punishment through imprisonment.

11. In the present case, the Petitioner has undergone 15 years 5 months and 4 days of imprisonment with remission. The record indicates that, the Sessions Judge has opined to categorise the Petitioner under Category 8(a) of guidelines dated 15th March, 2010. The Superintendent of Yerwada Central Prison has opined that the Petitioner be prematurely released after 28 years. The Advisory Committee recommended premature release after 28 years of imprisonment by applying Category 7(b) of guidelines of 15th March, 2010 and the Additional Director General of Police and Inspector General of Prisons, State of Maharashtra has opined that, the Petitioner be placed in Category 8(a) of guidelines of 11th April, 2008 and Category 8(a) of guidelines of 15th March, 2010.

The Additional Superintendent of Police has given an adverse police opinion. If we see the reasons for the adverse police opinion, it is stated that, while on leave, the Petitioner had intimidated the Complainant and the witnesses and that, they have expressed apprehension of threat to their lives, that while on leave, the Petitioner had absconded and that there is possibility of serious offence being committed by the Petitioner if released.

12. As indicated above, while considering the Application for

premature release, there are number of factors to be taken into consideration. By applying the relevant factors as held in the case of *State of Haryana vs. Jagdish* (supra) in paragraph No. 38, the material on record does not indicate that, there is ? possibility of recurrences of the crime if the Petitioner is released prematurely. Except the adverse opinion of Additional Superintendent of Police, we find that, the other authorities have categorised the Petitioner under the guidelines for premature release. The adverse police opinion is not supported by cogent material to demonstrate the apprehension expressed by the complainant. It needs to be noted that, the Petitioner was convicted and is now undergoing sentence. As such, the threat to the complainant and the witnesses no longer survives. The crime has been committed in the year 2006 by the Petitioner who then was about 21 years of age and he has now undergone a sentence of almost 15 years 5 months and 4 days.

13. The State Government has refused to consider the Petitioner for premature release by taking into consideration the gravity of the offence as observed by the Judgment of the Sessions Court and this Court. There is no doubt that, a serious offence has been committed by the Petitioner. As held by the Apex Court the ultimate aim and goal of imprisonment is reformatory. The power to grant remission under

Section 432 of Cr.P.C. is the prerogative of the State Government, however, the power is to be exercised fairly and reasonably. We do not find any material to demonstrate that the Petitioner is beyond reformation or that his conduct does not entitle him to be considered for premature release. If that were to be so, the various authorities tasked with the duty of forwarding their opinion would have recommended rejection of his proposal for premature release. The emphasis is required to be on reformation and rehabilitation.

14. Having regard to the above discussion, in our opinion, the impugned order dated 14th May, 2021 declining to consider the case of the Petitioner for premature release is liable to be quashed and set aside. Consequently, the case of the Petitioner will have to be categorised. We find considerable force in the contention of the learned Advocate for Petitioner that, there is no composite categorisation for offences under Section 307 and Section 376 of IPC and as such, Category 8(a) of the guidelines of the year 2010 is applicable. For sake of brevity, Category 8(a) of Annexure-II of guidelines dated 15th March, 2010 is reproduced herein below :

Annexure-II

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.
8(a)	376	Where victim is minor.	18

15. We therefore direct that, the Petitioner be placed in Category 8(a) of Annexure-II of the guidelines dated 15th March, 2010 for which the 18 years of period of imprisonment is prescribed and he be released in accordance with the said guidelines by following the appropriate legal procedure.

Petition succeeds and Rule is made absolute in the above terms.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)