

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

CRIMINAL WRIT PETITION NO. 4498 OF 2022

Baba Tukaram Gaikwad	...	Petitioner
Versus		
State of Maharashtra	...	Respondent

Ms. Janhavi Karnik, Appointed Advocate, for the Petitioner.
Mrs. S. D. Shinde, APP for the Respondent-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 2nd AUGUST, 2023

P.C. :-

. The challenge in the petition by a convict for an offence punishable under Section 302 and sentenced for life imprisonment, is to the order dated 14th May 2021 whereby the petitioner's prayer for remission is categorized under clause 4(d) of the Annexure I of the circular dated 15th March 2010.

2. The contention of the counsel for the petitioner is that the petitioner's conduct as reflected from the factual matrix narrated in the judgment of appeal delivered by this Court, primarily, speaks of pre-meditation on the part of the petitioner as it was a well planned murder. According to her, the Government Resolution dated 11th April 2008 provides the guidelines for deciding the claim for remission by categorizing the offence. Considering the aforesaid conduct reflected in

the judgment of the Appellate Court, the claim of the petitioner is categorized as under clause 4(c) to suffer 24 years of imprisonment. According to counsel for the petitioner, since the element of pre-meditation was already inferred by the respondent, it is not open for the authority to revisit the same while deciding the claim afresh in view of the guidelines dated 15th March 2010. In the light of aforesaid submission, the claim is the petitioner's remission should be considered in accordance with clause 4(b) – "murder committed with pre-meditation or a person having criminal history" and not under clause 4(d) – "murder committed by more than one person/group of persons" by categorizing the offence accordingly.

3. The learned APP submits that even if under the resolution of 2010, the claim of the petitioner is categorized as the commission of offence by pre-meditation, the revisit pursuant to 2010 circular gives scope and powers to the respondent-authorities to re-categorize and accordingly, the petitioner's claim for remission is rightly categorized under clause 4(d) as the petitioner along with the co-accused has committed the murder.

4. We have appreciated the said submissions.

5. We have also looked into the factual matrix *qua* the charge framed against the petitioner based on the motive attributed.

6. The petitioner along with the other three accused, armed with deadly weapon like sword has murdered the victim by pre planning.

7. In the aforesaid background, the respondent-authorities while dealing with the claim for remission under the earlier regime that is under the circular dated 11th April 2008, categorized the petitioner's offence to be one committed with pre-meditation and decided that the petitioner should undergo 24 years of rigorous imprisonment.

8. It appears that the State Government framed fresh guidelines vide resolution dated 15th March 2010 and clause 4(d) of Annexure I which provides for categorized of crime was taken shelter for passing the impugned order thereby categorizing the offence of the petitioner as murder committed by more than one person/group of persons.

9. The fact remains that though there were in all four accused prosecuted including the petitioner, two of them were already acquitted. In this background, the fact remains that there are two accused convicted in the offence in question. Even if there are more than one accused convicted in the offence in question, the fact remains that the element of pre-meditation can be inferred from the factual matrix narrated by the Division Bench of this Court while deciding the appeal of the petitioner against the conviction.

10. Apart from above, under the 2008 circular, the petitioner's offence was categorization as the one committed with pre-meditation. In the aforesaid background, it has to be inferred that the offence committed by the petitioner was with pre-meditation along with the co-accused. In that view, we direct the petitioner's case be categorized as

the crime committed with pre-meditation under clause 4(b) of Annexure I to the circular dated 15th March 2010. As such, the order impugned is quashed and set aside.

11. In the wake of aforesaid declaration ordered by this Court, the competent authority is directed to pass appropriate orders in favour of the petitioner.

12. The writ petition stands allowed in above terms.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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