

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 503 OF 2022

Champalal Faganlal Pardhi, convict
No.C/74, Aged 64years, Occ. Nil, R/o of
Chulhad, Police Station Sihora, Tah.
Tumsar & Dist. Bhandara – 441915
(Presently confined at Gadchiroli District
Open Prison Gadchiroli)

... PETITIONER

VERSUS

1. State of Maharashtra, through the
Secretary, Home Department,
Mantralaya, Mumbai – 32.
2. The Superintendent, Gadchiroli,
District Open Prison, Gadchiroli.

... RESPONDENTS

Ms. Shweta Wankhede, Advocate for the petitioner.
Mrs. Tripathi, A.P.P. for respondent nos. 1 and 2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 08.06.2023.

JUDGMENT : (Per : Vinay Joshi, J.)

RULE. Rule made returnable forthwith. By consent, the
petition is taken up for final disposal.

2. The petitioner is convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment along with fine with default clause vide judgment and order dated 17.05.2007. After completion of 14 years of imprisonment, the petitioner's case was referred for remission in terms of Section 432 of the Code of Criminal Procedure. The Authorities have considered the judgment and order of the Trial Court and held that the petitioner falls in the category no.2(c) of the Government Resolution (GR) dated 15.03.2010, which provided 26 years of imprisonment. Category No.2(c) of the said GR is applicable to the cases, where the crime is committed with exceptional violence, and or with brutality or death of victim due to burns. According to the petitioner, the Authorities have wrongly placed him in category No.2(c) instead of category no.2(a), which pertains to of less severity. Category no.2(a) would apply to the cases where the convict has no previous criminal history and committed the murder in an individual capacity in a moment of anger and without premeditation.

3. We have gone through the impugned order dated 11.11.2020. The adjudicating Authority has considered certain observations of the Convicting Court expressed in the judgment dated 17.05.2007 and made categorization as aforesaid mentioned. As a

matter of fact, in view of the decision of the Apex Court, the Authority is under obligation to obtain opinion of the Convicting Court on the point of categorization, which admittedly herein not obtained.

4. In the circumstance, the said exercise has to be completed by the Authority before deciding the appropriate category. In view of that we passed the following order :

- (a) We hereby quashed and set aside the impugned order dated 11.11.2020 placing the petitioner in the category No.2(c) of the GR dated 15.03.2010.
- (b) We hereby direct the concerned Authority to obtain the opinion of the Convicting Court on the point of categorization, and thereafter, pass the appropriate orders in accordance with law.
- (c) The entire exercise shall be completed within six months from the date of communication of this order.

5. The petition stands disposed of in above terms. No order as to costs.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)