

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 552/2022

(Shivaji S/o. Rama Nawlekar Vs. State of Maharashtra & anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.M. Balpande, Advocate (appointed) for petitioner.
Mr. M.J. Khan, APP for respondent Nos. 1 & 2.

CORAM: VINAY JOSHI AND
VALMIKI SA MENEZES JJ.

DATED : 14/02/2023.

Heard.

2. The petitioner is serving sentence for the offence punishable under Section 302 of the Indian Penal Code. His case was considered for remission after completion of 14 years of imprisonment. The opinion of Convicting Judge has been called for making proper categorization as per the Government Resolution which are beneficial to the petitioner. The learned Sessions Judge put the petitioner in the 2(b) category of the Government Resolution (Policy) dated 11.04.2008. It was followed by passing impugned order dated 08.02.2022, by which the category No. 2(c) of the Government Resolution dated 15.03.2010 has been applied. It is petitioner's case that the Authority erred in making proper categorization. The learned Sessions Judge has rightly made categorization, however it was not considered.

3. In view of decision of the Supreme Court in case of State of *Haryana and ors. Vs. Jagdish, AIR 2010 SC 1690*, the policy existing on the date of conviction or the policy prevailing on the date of consideration, out of that whichever is beneficial to the convict has to be applied. The petitioner was convicted on 07.03.2007 and his case for consideration came up in the year 2021. Thus, apparently, the policy dated 11.05.1992 or 15.03.2010 whichever is beneficial has to be invoked. The learned Sessions Judge has applied the policy of 11.04.2008 which is incorrect. Moreover, he has put the petitioner in the category No. 3(b) which is also improper.

4. The dispute is principally whether the petitioner would be placed in the category relating to crime against women which is committed with premeditation or the category relating to crime against women committed with exceptional violence or with brutality or death caused by burns. In order to put the petitioner in proper category, one has to turn to the facts of the case and consider related circumstances including cause of death. The said exercise has to be done after obtaining opinion of Convicting Judge.

5. In view of above, impugned order dated 08.02.2022 is hereby quashed and set aside. The State is directed to reconsider petitioner's proposal for remission and shall also call the report of Convicting Judge in this regard. The said exercise shall be completed within three months from today.

6. Petition stands disposed of in above terms.
7. Fess for the appointed counsel for the petitioner be paid as per Rules.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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