



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

CRIMINAL WRIT PETITION NO. 837 OF 2024

Aslam s/o Jamadar Ansari (C-4919)
Age : 44 years, Occu. Convict,
At present confined in Open Jail Paithan,
Dist. Aurangabad.

...Petitioner

Versus

1. State of Maharashtra,
Through Superintendent of Jail,
Open Jail Paithan,
Dist. Aurangabad.
2. State of Maharashtra,
Through Secretary,
Home Department (Prison),
Mumbai.

...Respondents

.....
Mr. Rupesh A. Jaiswal – Advocate for the Petitioner
Mr. S. S. Dande – APP for respondent/State
.....

**CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.**

RESERVED FOR JUDGMENT ON : 27.06.2024
JUDGMENT PRONOUNCED ON : 01.07.2024

JUDGMENT [Per : Neeraj P. Dhote, J.] : -

1. Rule. Rule made returnable forthwith. Learned APP waives service for the respondents. With the consent of the parties, the petition is heard finally.

2. The petitioner is convicted in Sessions Case No. 239 of 2008 decided vide Judgment and Order dated 20.09.2011 by the learned

Additional Sessions Judge, Thane, for the offence punishable under Sections 364, 302 and 201 of the Indian Penal Code and has been accordingly sentenced. The conviction and sentence is upheld by the Bombay High Court in Criminal Appeal No. 185 of 2012 vide Judgment and Order dated 31.10.2018. The Sessions Case arises out of Crime No.I-76/2008 registered with Bhiwandi Police Station.

3. The Petitioner applied for pre-mature release to the Competent Authority. The matter was processed at various levels and his representation for pre-mature release came to be rejected by holding that the Petitioner falls in category 4(e) of the Government Resolution dated 15.03.2010, which prescribes the period of imprisonment to be undergone, including remissions, subject to a minimum of 14 years of actual imprisonment including the set off period, as 26 years vide order dated 22.04.2024.

4. It is submitted by the learned advocate for the Petitioner that the Competent Authority failed to consider the Petitioner's matter for pre-mature release in the correct perspective. He submitted that it is settled position under the law that the category which is beneficial to the Convict has to be taken into consideration while deciding such proposal. He submits that, considering the nature of offence for which the petitioner has been convicted, he should have been placed in category 2(b) of the above referred Government Resolution which provides for the period of imprisonment as 22 years. He further submitted that the Petitioner's

conduct in the prison is good and impugned order is unsustainable and be set aside by granting the prayers made in the Petition. The judgments relied upon by him will be considered in the later part of this Judgment.

5. It is submitted by the learned APP that, respondent no. 2 has filed affidavit-in-reply. He submitted that considering recommendations of various authorities, nature of crime proved against the Petitioner, the category 4(e) of the said Government Resolution providing for 26 years of imprisonment has been rightly applied to the case of Petitioner. He submitted that, no interference is warranted in the impugned order.

6. The papers on record show that, previously the Government passed the order in respect of Petitioner's pre-mature release on 24.08.2023, which was the subject matter in Criminal Writ Petition No.1546 of 2023 before this Court. This Court vide order dated 20.02.2024 set aside the said order and remitted the matter to the stage of report under Section 432(2) of the Cr.P.C. and directed the convicting court to forward a fresh report in the light of the observations made in the said order within time bound period and directed the State to pass a fresh order within time bound period on receipt of report from the convicting court. The impugned order shows that after receipt of the report from the convicting court opining that the Petitioner was not entitled for benefit of remission, the impugned order came to be passed placing the Petitioner in the category as referred to in paragraph no. 3 above.

7. The Government has framed the guidelines for pre-mature release of the prisoners undergoing life sentences. The said guidelines came to be revised from time to time as seen from the papers on record and which is not in dispute. The guidelines/GR dated 15.03.2010 are placed on record. Perusal of the introductory part of the said guidelines / GR states that they are applicable to the prisoners who are convicted on or after issuance of that guidelines/GR. As the petitioner is convicted by Judgment and Order dated 20.09.2011, the said guidelines/GR dated 15.03.2010 would be applicable to the case in hand. Moreover, there is no dispute on the applicability of these guidelines/GR to the Petitioner's case.

8. The guidelines/GR dated 15.03.2010 provides for categories of Crimes and period of imprisonment to be undergone under each category. The category and sub-category under which the case of the Petitioner is considered by the State is reproduced below.

Category no.	Sub category	Categorisation of Crimes	Period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off period.
4		MURDERS FOR OTHER REASON	
	a	Where murder is committed without premeditation in an individual capacity and the person has no criminal history.	20 years
	b	Where murder is committed with premeditation or a person having criminal history.	22 years
	c	Murder resulting from trade union activities and business rivalry	22 years
	d	Murder committed by more than one person / group of persons.	24 years
	e	Where the crime is committed with Exceptional violence/with brutality/kidnapping. Murder committed by dacoits and Robbers in the act of committing dacoities and robberies. Murder committed by bootleggers, gamblers, flesh traders etc.	26 years

9. The petitioner has come with a case that his case would fall in sub-category (b) of either of the following categories.

Category no.	Sub category	Categorisation of Crimes	Period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off period.
2		OFFENCES RELATING TO CRIME AGAINST WOMEN AND MINOR	
	a	Where the Convict has no previous criminal history and has committed the murder in an individual capacity in moment of anger and without premeditation.	20 years
	b	Where the crime as mentioned above committed with premeditation.	22 years
	c	Where the crime is committed with Exceptional violence and or with brutality or death victim due to burns.	26 years.
	d	Murder with Rape	28 years
3		MURDERS ARISING OUT OF LAND DISPUTE, FAMILY FEUDS, FAMILY PRESTIGE AND SUPERSTITION.	
	a	If the offence is committed in individual capacity and without premeditation.	20 years
	b	Crime committed as above with premeditation either individually or by a gang.	22 years

10. In the case of **State of Haryana & Ors. Vs. Jagdish**, 2010 ALL SCR 943 relied upon by the learned advocate for the Petitioner, the question involved was, whether the policy which makes a provision for remission of sentence, should be that which was existing on the date of the conviction of the accused or it should be the policy that exists on the date of consideration of his case for pre-mature release by the appropriate authority? It was held in the said judgment that, “*The State has to excise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In*

case a liberal policy prevails on the date of consideration of the case of a "lifer" for pre-mature release, he should be given benefit thereof."

11. Reliance is also placed by learned advocate for the Petitioner on the order passed by this Court in **Criminal Writ Petition No. 4544 of 2021** [Uday s/o Dhaku Sutar Versus The State of Maharashtra & Anr., decided on 8th September, 2022], wherein the above referred Judgment of the Hon'ble Apex Court is considered wherein it is observed that, *"Thus Supreme Court has held that in case of convicts the policy which was prevalent when the conviction takes place will apply and if any other liberal policy prevails on the date of consideration of case for premature release then such policy will apply. The said principle of giving benefit to the convict of beneficial policy certainly applies to the two different policies/guidelines but the same will also apply to the categories in the same policy/guidelines, if case falls under both the categories."*

12. Coming to the case in hand, perusal of the Judgment of the Bombay High Court in the above referred Criminal Appeal by which the conviction of the Petitioner has been upheld show that, the case of the prosecution against the Petitioner was that, the minor daughter of the informant did not return home on 04.03.2008. Though searched, she was not traced. A missing report was lodged on 05.03.2008. On 08.03.2008, one dead body of a girl was found floating in the well at Kurhadchola Wada. The said incident was reported to the Bhiwandi Police Station.

The neck of the deceased was found tied with Odhani (Stole). The informant identified the body as that of his daughter. On registration of the crime, the petitioner came to be arrested and charge-sheeted. According to the prosecution, quarrel had taken place between the Petitioner and the father of the deceased girl, three years prior to the date of incident. Due to the said quarrel, the Petitioner had a grudge in his mind and so he kidnapped the informant's daughter, caused sexual harassment and committed her murder and threw her dead body in the well.

13. The Sessions Court convicted the Petitioner for the offence punishable under Sections 364 (kidnapping or abducting in order to murder), 302 (punishment for murder) and 201 (causing disappearance of evidence of offence) of the IPC. There is nothing to show that the acquittal of the Petitioner from the offence of rape was challenged. Thus, the conviction recorded for the above mentioned offences has attained finality.

14. True it is, that the conviction is also for the offence of kidnapping and murder which falls in sub-category [e] of category 4, which provides for 26 years imprisonment under which the Petitioner's case is considered by the Government. However, undoubtedly, the victim in the case in hand was the minor woman. There is acquittal of the Petitioner for the offence of rape. There is no observation or any material pointed out that the murder of victim was committed with exceptional

violence / brutality though there was kidnapping. The motive behind the crime as seen from the Judgment of this Court in the above referred Criminal Appeal preferred by the Petitioner, as per the prosecution, was that the quarrel had taken place between the Petitioner and the father of the victim prior to three years of the incident and due to grudge in mind, the Petitioner therein had committed the crime. This cannot by any stretch of imagination would fall under the category of family feuds as there is nothing to show that the quarrel continued for all those years or it was the long standing dispute. As seen above, there is separate category for the offences relating to crime against women and minors. The crime was committed in individual capacity and with premeditation. Therefore, the case of the Petitioner would also fall in sub-category (b) of category no. 2, which provides for 22 years of imprisonment. Under such circumstances, applying the principle or ratio laid down in the above referred judgment of Hon'ble Apex Court (supra), the Petitioner would be entitled to the beneficial category and sub-category. Thus, the Petitioner would be entitled for being considered in category 2(b) of the said guidelines/Government Resolution dated 15.03.2010.

15. In view of the above discussion, we proceed to pass the following order : -

ORDER

[i] The impugned order dated 22.04.2024 passed by the respondent/State is quashed and set aside.

[ii] The Respondents are directed to place the Petitioner's case under sub-category (b) of category 2 of the guidelines/ Government Resolution dated 15.03.2010.

[iii] The Writ Petition stands disposed of accordingly.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde