



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 CRIMINAL WRIT PETITION NO.1083 OF 2024

Mukinda Rama Kamble,
Age 49 yrs., Occ. Nil – Convict No.298,
R/o At present in Chhatrapati
Sambhajinagar Open Prison,
Dist. Chhatrapati Sambhajinagar.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through Under Secretary,
Home Department, Mantralaya,
Mumbai.
- 2 The Inspector General of Prisons,
Maharashtra State, Pune.
- 3 The Superintendent,
Chhatrapati Sambhajinagar Open Prison,
Dist. Chhatrapati Sambhajinagar.

... Respondents

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Mrs. Bharati B. Gunjal, Advocate for petitioner
Mrs. Priya R. Bharaswadkar, APP for respondent Nos.1 to 3

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CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.

DATE : 09th AUGUST, 2024

ORDER :

1 Present petition has been filed to challenge the order passed by respondent No.1 on 03.11.2021 to quash and set aside, whereby the petitioner has been considered under category 4(b) of Resolution dated 15.03.2010, thereby holding that the petitioner would be released after actual 22 years of imprisonment.

2 Heard learned Advocate Mrs. Bharati B. Gunjal for petitioner and learned APP Mrs. Priya R. Bharaswadkar for respondent Nos.1 to 3.

3 Learned Advocate for the petitioner vehemently submits that the petitioner came to be held guilty of committing offence punishable under Section 302 of the Indian Penal Code, 1860 in Sessions Case No.50/2004 dated 09.02.2005 by learned Ad-hoc Additional Sessions Judge, Latur. He was sentenced to suffer imprisonment for life for the said offence and also to pay fine. He was also convicted for the offence punishable under Section 452 of the Indian Penal Code and sentenced to suffer five years of imprisonment with fine. The Government as well as the learned Ad-hoc Additional Sessions Judge, Latur, who gave the opinion dated 02.01.2018 in view of the decision in **State of Haryana vs. Jagdish** [(2010) 4 SCC 216], had wrongly considered that the murder was with premeditated mind. In fact, the petitioner ought to

have been considered under category 3(a), wherein he had committed the said offence in his individual capacity and without premeditation. She prayed that the said order be set aside and the petitioner be considered under category 3(a) as per the said Resolution.

4 Learned APP relies on the affidavit-in-reply of Dr. Jalindar Supekar, Special Inspector General of Police (Prisons), Central Region, Chhatrapati Sambhajnagar on behalf of respondent No.1 and submits that petitioner's 14 years premature release proposal has been forwarded to the Home Department, Mantralaya, Mumbai along with the opinion given by learned Ad-hoc District Judge-2 and Additional Sessions Judge, Latur dated 02.01.2018. The said communication to the Home Department was made on 17.11.2020. In his opinion, the concerned Judge has categorized the petitioner in 2(b), for which the period to be undergone is 22 years including remission. However, the Government has considered him under category 4(b), which is also prescribing the same period. The facts of the case would certainly show that the same murder was committed with premeditation and the death of a minor child has been committed. The petitioner has undergone 12 years 10 months and 25 days actual imprisonment as on 31.10.2018. As on today, definitely, it is increased, but it is certainly not completing 22 years as required under category 4(b). Therefore, the petition

deserves to be dismissed.

5 The first and the foremost fact that is required to be adjudicated is, as to in which category the petitioner can be fit in as per the Government Resolution dated 15.03.2010. As per the said Government Resolution, in case of life convicts covered under the guidelines, the process of review should commence after the completion of 12 years of actual imprisonment for review under “14 Year Rule” to which provision of Section 433-A of the Code of Criminal Procedure is applicable. The categorization of crimes has been done in Annexure-I to the Government Resolution. As per the petitioner, he should be considered under category 3(a), which deals with the murder arising out of land dispute, family feuds, family prestige and superstition and if the offence is committed in individual capacity and without premeditation, the period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off is 20 years; whereas category 4(b) prescribes that for Murders for Other Reasons – murder committed with premeditation or a person having criminal history, the period is 22 years. The learned Ad-hoc Additional Sessions Judge has categorized the petitioner in category 2(b) i.e. Offences Relating to Crime against Women and Minors, where for crime as mentioned above committed with premeditation, the period is 22 years. For

this categorization, therefore, we are required to consider the facts in the case. It appears that the dispute started between the petitioner and four co-accused with one Dashrath Maruti Kamble and the family members, wherein the accused persons were holding knife and sticks in their hands with an intention to commit murder of the mother of the informant. Blow was given by co-accused and another co-accused had assaulted the mother of the informant by stick. The informant's brother's son Vicky was assaulted by people and he succumbed to the injuries. In his opinion, the learned Ad-hoc Additional Sessions Judge-2, Latur has given further details depending on the story in the judgment. The petitioner had committed murder of said Vicky, who was then aged three months only, by giving blow on his head by entering into the house of the informant with preparation, that is, by taking stick and by committing house trespass. It appears that the learned Ad-hoc Additional Sessions Judge has correctly categorized the petitioner in category No.2(b), which was for the offence relating to crime against minors and with premeditation. Category 4(b) is general in nature, that means, not specifically to the minor, but it is for murder committed with premeditation. Anyway, the period, that is, prescribed for undergoing including remission is 22 years in both categories. Therefore, taking into consideration the facts of the case, when categorization is correct, we do not find this to be a fit case where we should exercise our constitutional powers. Certainly, the facts of

the case do not attract category 3(a) i.e. without premeditation. Hence, the writ petition stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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