



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

CRIMINAL WRIT PETITION NO. 1346 OF 2024

Mahesh S/o Dhanaji Shinde (Convict),
Age-44 years, Occu:Convict,
R/o-At present Confined in Open Prison,
Paithan, District-Aurangabad.

...PETITIONER

VERSUS

- 1) State of Maharashtra,
Through Secretary,
Home Department (Prison),
Mumbai-400005,
- 2) Superintendent of Jail,
Open Prison, Paithan,
District-Aurangabad.

...RESPONDENTS

...
Mr. Rupesh A. Jaiswal Advocate for Petitioner.
Ms. P.R. Bharaswadkar, A.P.P. for Respondents.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE OF RESERVING JUDGMENT : 26th SEPTEMBER 2024

DATE OF PRONOUNCING JUDGMENT : 23rd OCTOBER 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned

counsel appearing for the respective parties finally, by consent.

2. By invoking constitutional powers under Article 226 and 227 of the Constitution of India, the petitioner convict challenges the order passed by respondent No.1 on 28th February 2022 thereby refusing to grant premature release of the petitioner under Section 432 of the Code of Criminal Procedure.

3. Heard learned Advocate Mr. Jaiswal appearing for the petitioner and learned APP Ms. Bharaswadkar appearing for the respondents.

4. The petitioner came to be arrested on 26th December 2003 and was prosecuted in Session Case Nos. 3 of 2005 and 5 of 2005 before the learned Sessions Judge, Sindhudurg for the offence punishable under Section 302, 394 of the Indian Penal Code. It was the prosecution story that the petitioner, with co-accused persons, had caused murders of eight persons in three different incidences. Three separate charge-sheets were filed in respect of those murders, separate charge were framed, but evidence was led in respect of all the cases, in Sessions Case No.3 of 2005. The petitioner and three co-accused persons were

sentenced to death by the learned Sessions Judge, Sindhudurg and the said conviction was confirmed by this Court. The petitioner has preferred criminal appeal and the co-accused persons have also preferred appeals before the Hon'ble Supreme Court of India bearing Criminal Appeal Nos.1210-1213 of 2012. The Hon'ble Supreme Court commuted the death sentence to life imprisonment, by Judgment and order dated 27th February 2014. Thus, the imprisonment undergone on the date of the petition by the petitioner was 20 years and 2 months actual imprisonment and including remission, it is 27 years. By the impugned order dated 28th February 2022 respondent No.1 has refused to grant any benefit of premature release under Section 432 of the Code of Criminal Procedure to the petitioner, which is under challenge in this Petition.

5. Learned Advocate appearing for the petitioner submits that the Hon'ble Supreme Court while commuting the sentence has also observed that:-

"30. Balancing the two sets of circumstances i.e. one favouring commutation and the other favouring upholding the death penalty, we are of the view that in the present case the option of life sentence is not "unquestionably

foreclosed". Therefore, the sentence of death awarded to the accused should be commuted to life imprisonment. We order, accordingly, and direct that each of the accused-appellants, namely Santosh Manohar Chavan, Amit Ashok Shinde, Yogesh Madhukar Chavan and Mahesh Dhanaji Shinde shall undergo imprisonment for life for commission of the offence under Section 302/120B IPC. The sentences awarded to the accused-appellants by the High Court for commission of all other offences under the IPC and the Arms Act are affirmed to run concurrently. We also make it clear that the custody of the appellants for the rest of their lives will be subject to remissions if any, which will be strictly subject to the provisions of the Sections 432 and 433-A of the Cr.P.C."

6. Learned Advocate for the petitioner submits that respondent No.1 was duty bound to consider all the aspects which normally should have been considered in respect of the proposal under Section 432 of the Code of Criminal Procedure. The impugned order does not show that achievements of the petitioner during incarceration in jail, his good conduct in jail, reporting back to the jail in time in nine incidences when parole or furlough leave was granted to him, were considered. When petitioner has undergone substantial sentence, then respondent No.1 ought to have considered the decision of the Hon'ble Apex

Court in *Shor vs. State of Uttar Pradesh and another, 2020 SCC OnLine SC 626*, wherein after taking note of Section 2 of the United Provinces Prisoners Release on Probation Act, 1938, it was observed that, the State Government has to see (i) antecedents (ii) conduct in the prison and (iii) the person, if released, is likely to abstain from crime and lead a peaceable life. Learned Advocate for the petitioner further submits that the proposal for premature release cannot be rejected on the ground that the State Government will decide individual cases on merits as per the guidelines of Government Resolution dated 15th March 2010. It cannot be also rejected on flimsy grounds that too without any basis that the release of the petitioner would endanger people at large. He also relies on the decision in *Life Convict Laxman Naskar vs. State of West Bengal and another, 2000 ALL MR (Cri) 1526*, wherein it has been observed by the Hon'ble Supreme Court that :-

" The reasons given by the Government are palpably irrelevant or devoid of substance. Firstly, the views of the witnesses who had been examined in the case or the persons in the locality cannot determine whether the petitioner would be a danger if prematurely released because the persons in the locality and the witnesses may still live in the past and their memories are being relied upon without

reference to the present and the report of the jail authorities to the effect that the petitioner has reformed himself to a large extent. Secondly, by reason of one's age one cannot say whether the convict has still potentiality of committing the crime or not, but it depends on his attitude to matters, which is not being taken note of by the Government. Lastly, the suggestion on that the incident is not an individual act of crime but a sequel of the political feud affecting society at large, whether his political views have been changed or still carries the same so as to commit crime has not been examined by the Government. On the basis of the grounds stated above the Government could not have rejected the claim made by the petitioner"

7. Leaned Advocate for the petitioner also relies on the recent decision of this Court in *Criminal Writ Petition No.950 of 2022 (Bharat s/o Fakira Dhivar vs the State of Maharashtra and another)* with companion matter, decided on 22nd November 2022, to which one of the Member of this Division Bench (**SMT. VIBHA KANKANWADI, J.**) was party, wherein the decisions of this Court as well as the Hon'ble Supreme Court were considered.

8. Learned Advocate for the petitioner submits that the petitioner would fall in category 3(b) of the Guidelines of 1992 as it was the guideline that is required to be mainly considered

as was in operation when the learned Sessions Judge, Sindhudurg had convicted the petitioner and therefore, respondent No.1 needs to be directed to release the petitioner forthwith.

9. Learned APP has relied on the affidavit filed by Yogesh Dattatray Desi, the Deputy Inspector General of Prison, Central Region, Chhatrapati Sambhajanagar. He has given in detail as to what order was exactly passed by the learned Additional Sessions Judge, Sindhudurg in Sessions Trial No.5 of 2005 on 26th May 2009. It appears that the death sentence was given in respect of murder of each of the deceased which were four in numbers. Then separate sentence for the offence under Section 394, 397 read with Section 120-B of the Indian Penal Code, Section 404 read with Section 120-B of the Indian Penal Code, 201 read with 120-B of the Indian Penal Code and Sections 3, 5, 6 read with Section 25 of the Arms Act was given. Then all the sentences were directed to run concurrently excluding the death sentence. There was separate sentence in respect of Sessions Trial No.3 of 2005 decided on the same day and in that matter death sentence for committing murder and kidnapping/abduction for ransom with conspiracy was awarded separately in respect of four other deceased persons. Further, separate sentences have

been awarded for the similar Sections and all the sentences were directed to run concurrently excluding death sentence. Thereafter the petitioner had filed two separate appeals challenging the conviction in two cases. There were two separate confirmation cases before this Court. All those were decided together by this Court on 17th October 2021. The sentences awarded by the learned Additional Sessions Judge, Sindhudurg were upheld in respect of murders except the sentence for offence under Section 364-A read with Section 120-B of the Indian Penal Code, which was then quashed and set aside. The petitioner had then filed in all four appeals before the Hon'ble Apex Court challenging the dismissal of his two appeals and challenging two confirmation cases. Thereupon the Hon'ble Supreme Court, by the said order, passed the above sentence, as aforesaid. The affiant further informs that the petitioner's 14 years premature release proposal was submitted to the State Government through the Additional Director General of Police and Inspector General of Prisons, State of Maharashtra by letter dated 28th December 2021 along with the opinion of the of the learned District Judge-2 and Additional Sessions Judge, Sindhudurg at Oros, dated 6th April 2015. Thereafter based on the said opinion as well as the observations of the Hon'ble

Supreme Court while deciding the appeals filed by the petitioner and also taking into consideration the guidelines in ***State of Haryana and others vs. Jagdish, AIR 2010 SC 1690*** and other cases, the decision has been taken by the State Government. The learned convicting Court has categorized the petitioner under Category 8 of the Government Resolution dated 11th April 2008 i.e. release after 30 years as well as under Category 6 D of the Government Resolution dated 15th March 2010 i.e. release after 30 years. The offence that has been committed by the petitioner is of very exceptional and heinous in nature. The facts also depict that it was in the other form of organized crime and the motive for the murders is then required to be considered. The serial killings have been committed in a beastly, extremely brutal and barbaric manner. It has resulted in intense and extreme indignation of the community and shocked the collective conscience of the society. Therefore, the State Government has decided independently, taking into consideration all the aspects, that the petitioner cannot be released by giving benefit under Section 432 of the Code of Criminal Procedure.

10. The learned APP, by repeating those contents in the affidavit, has also placed reliance on the report of the local police and he relies on the decision in ***Sunil B. Pingale vs. State of***

Maharashtra (Criminal Writ Petition No.4428 of 2017, decided on 5th April 2018), wherein this Court had taken the note of the murder committed with extreme brutality and refused to consider the premature release of the petitioner therein.

11. Here, we must take note of the facts and circumstances in which the offence was committed because those facts would lead us to consider whether to categorize the petitioner in a particular category. Further, we should take into consideration the various decisions of this Court as well as the Hon'ble Apex Court which gives guidelines as to which Government Resolution should be followed and whether the case is worth giving benefit of remission. In the present case what has been proved by the prosecution is that the present petitioner was held guilty of committing murder of in all eight persons. The conviction has been separately awarded. The prosecution story was that an anonymous letter was received by the Superintendent of Police, Sindhudurg on 20th December 2003 as well as he received phone call to the effect that some unidentified dead bodies were lying dumped on hillocks of village Nandos, Taluka-Malwan, District-Sindhudurg. A search operation was organized on the very day and in that course seven dead bodies were recovered. Two more

dead bodies were recovered on next day and one more dead body was recovered after about eight days. Along with the dead bodies, articles like clothes, trouser, broken brief case etc. were recovered. The dead bodies were highly decomposed. The dead bodies were sent for medical examination at Medical college, Miraj and the team of doctors was constituted who performed forensic chemical tests. Some of the organs from the dead bodies were sent to the Center for DNA Fingerprinting and Diagnostics, Hyderabad for DNA Test. Skulls were sent to the Forensic Laboratory, Kalina, Mumbai for super-imposition tests. The identity of the dead persons appears to have been established and ultimately the investigating officer had come to the conclusion that all the murders have been committed by the accused persons. All the accused used to spread and circulate amongst innocent and unsuspecting persons that there is magical power with accused No.1 to multiply money by creating "money showers". The victims were asked to come to Malwan with currency notes of higher denominations along with empty gunny sacks. Those victims were put in lodges and hotels in Malwan and they used to be taken to Nandos plateau by auto rickshaw and by taking their money, it has been proved that those victims were murdered.

12. Certainly, when all these facts have been proved by the prosecution, we can consider the brutality and that all the accused persons had committed the said offence in an organized manner. This is in fact one fact that is required to be considered. We are also required to consider the decision in *Life Convict Laxman Naskar vs. State of West Bengal and another*, 2000 ALL MR (Cri) 1526 . Further in *Ram Chander vs. The State of Chattisgarh and Another*, [2022 LiveLaw (SC) 401], which factors are required to be considered while considering remission under Section 432(2) of the Code of Criminal Procedure have been enumerated. It has been observed in that case that, it cannot be said that the opinion of the presiding Judge is only a relevant factor, which does not have any determinative effect on the application for remission. The decision in *Shor vs. State of Uttar Pradesh and another*, (supra) is also then required to be considered and the other factors which have been given in *Ram Chander vs. The State of Chattisgarh and Another*, (supra). In the said decision, the Hon'ble Supreme Court had reiterated the decision in *Union of India vs. Sriharan @ Murgan*, [(2014) 4 SCC 242]. Further, in *Sharafat Ali Vs. State of Uttar Pradesh and Another*, [2022 LiveLaw (SC) 179], which is the Full Bench

decision of the Hon'ble Supreme Court, it reiterates that prior criminal history, conduct and behaviour in jail, possible danger to society etc. are relevant considerations for premature release of a convict.

13. Here in the present case, it appears, as per the affidavit filed on behalf of respondent No.1, that the opinion of the convicting Court was taken on 6th April 2015 and the impugned order has been passed on 28th February 2022 i.e. after about seven years after collecting the said opinion. Respondent No.1 had not even taken care to see that fresh opinion would then be obtained if they had kept the said proposal pending for years together.

14. The impugned order does not comply with the requirements laid down in *Shor vs. State of Uttar Pradesh and another*, (supra) and in *Ram Chander vs. The State of Chattisgarh and Another*, (supra). In *Ram Chander vs. The State of Chattisgarh and Another*, (supra) the Hon'ble Supreme Court had observed the relevant factors to be considered to include while assessing the point of remission (i) whether the offence affects the society at large; (ii) the probability of the crime being repeated; (iii) the potential of the convict to commit

crimes in future; (iv) if any fruitful purpose is being served by keeping the convict in prison; and (v) the socio-economic condition of the convict's family. It was held that all these factors should be considered by the presiding Judge also. Then it has been opined that if the opinion of the presiding officer does not comply with the requirements of Section 432(2) of the Code of Criminal Procedure or if the Judge does not consider the relevant factors for grant of remission that have been laid down in *Life Convict Laxman Naskar (Supra)*, the government may request the presiding Judge to consider the matter afresh. Therefore, when in this case the State had taken the opinion of the Presiding Judge / convicting Court way back in the year 2015 and the State had taken the decision after seven years then the behaviour of the petitioner for those seven years in jail was not before the convicting Court when it gave the opinion. It can be seen from the details those have been given about the achievements of the petitioner during incarceration of jail that he had secured good marks in B.A. and also passed M.A. Petitioner returned to the jail in time whenever he was released on furlough or parole leave. The State Government has also given him special remission on account of his good conduct. All the said data ought to have been before the convicting Court and

then it ought to have also been considered by respondent No.1. Under the said circumstance, we are of the opinion that the matter needs to be remanded for fresh decision by respondent No.1 by completing all the requirements as aforesaid.

15. Hence, we pass following order:-

ORDER

(I) The Writ Petition is partly allowed.

(II) The order passed by respondent No.1 dated 28th February 2022 is hereby quashed and set aside.

(III) The respondents are directed to get fresh opinion from the Convicting Court in view of the guidelines in ***Life Convict Laxman Naskar vs. State of West Bengal*** (supra) and ***Ram Chander vs. The State of Chattisgarh and Another***, (supra) within a period of one month. While making communication with the Convicting Court, respondents should forward the details regarding the various achievements of the petitioner during incarceration in jail, report in respect of his good conduct together with special remissions those have been awarded to the petitioner and also the chart regarding leave granted to the petitioner and his reporting back to the jail whether in time or not, any offence committed when he was granted parole or furlough leave.

(IV) Respondents to collect the information in respect of the points laid down in *Ram Chander vs. The State of Chattisgarh and Another*, (supra).

(V) After these reports are received, which should be collected preferably within a period of two months from today, respondent No.1 should proceed to decide the proposal for remission under Section 432 of the Code of Criminal Procedure on the basis of those reports, on its merits, as well as taking into consideration all the decisions of the Hon'ble Apex Court as well as this Court.

(VI) This entire exercise should be done within a period of FOUR MONTHS from today.

(VII) Rule is made absolute in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE