



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1304 OF 2023

Sanotsh s/o Sadashiv Sonawane (C-5106)  
Age 43 years, Occ. Convict  
At present confined in Open jail Paithan  
district Aurangabad

...Petitioner

versus

1. The State of Maharashtra  
Through the Superintendent of Jail  
Open Jail Paithan,  
District Aurangabad

2. The State of Maharashtra  
Through the Secretary  
Home department (prison)  
Mumbai 400 005.

...Respondents

.....

Mr. Rupesh A. Jaiswal, advocate for the petitioner  
Mr. V.K. Kotecha, A.P.P. for the respondents

.....

**CORAM : R. G. AVACHAT AND  
SANJAY A. DESHMUKH, JJ.**

**Date of Reserving : 11.12.2023  
the Judgment  
Date of pronouncing : 08.03.2024  
the Judgment**

**JUDGMENT (PER SANJAY A. DESHMUKH, J.):**

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at admission stage.

2. This writ petition is directed against the order passed by

respondent No.2 refusing to give benefit of premature release to the petitioner as per the category 3(b) of the 2010 guidelines. The petitioner has prayed for quashing the said order.

3. The petitioner was convicted by the judgment and order dated 07.01.2013 delivered by the learned Sessions Judge, Pune in Sessions Case No. 233 of 2008. He was sentenced to suffer life imprisonment. The petitioner further contended that he had undergone approximately 22 years of imprisonment. Therefore, he is entitled for benefit of premature release facility. However, respondent No.2 did not consider this aspect and directed to undergo 26 years of imprisonment by passing an impugned order dated 18.8.2023 at Exhibit "B".

4. Perused an affidavit filed by Umaji T. Pawar, the Inspector General of Prison, Central Region.

5. Learned advocate for the petitioner submitted that the respondent No.2 did not follow the guidelines and the directions of the Hon'ble Supreme Court in the case of ***State of Haryana vs. Jagdish, reported in (2010) 4 SCC 216***. He submitted that the respondents failed to consider the category 3 (b) of the guidelines of 2010, which are applicable and wrongly held that the petitioner's case comes within the purview of category 4(e) of the guidelines of 2010.

6. Learned advocate places reliance on the order of this Court in the case of **Uday Dhaku Sutar vs. State of Maharashtra and another** (writ petition No. 4544 of 2021, decided on 8.9.2022), in which it is held as under:-

*“54. The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise 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 premature release, he should be given benefit thereof.”*

*(Emphasis added)*

*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.”*

7. Learned A.P.P. strongly opposed the writ petition by contending that the impugned order passed by the authorities is legal and correct. No interference is warranted in it. He pointed out the

affidavit of Umaji Tolaram Pawar, the Deputy Inspector General of Prisons, Central Region, Chhatrapati Sambhajnagar (Aurangabad), in which he has submitted that directions in the case of ***State of Harayana vs. Jagdish (supra)*** are followed. Guidelines of 2010 are not applicable. It is lastly prayed to dismiss the writ petition. Categories 3 and 4 of the Guidelines 2010, read as under:-

| "Category No. | Sub category | Categorization of Crime                                                                                                        | Period of imprisonment to be undergone including remission subject to minimum of 14 years of actual imprisonment including set off period. |
|---------------|--------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <b>3</b>      |              | <b>MURDERS ARISING OUT OF LAND DISPUTE, FAMILY FEUDS, FAMILY PRESTIGE AND SUPERSTITION</b>                                     |                                                                                                                                            |
|               | (a)          | If the offence is committed in individual capacity and without premeditation.                                                  | 20                                                                                                                                         |
|               | (b)          | Crime committed as above with premeditation, either individually or by a gang.                                                 | 22                                                                                                                                         |
| <b>4</b>      |              | <b>MURDERS FOR OTHER REASONS</b>                                                                                               |                                                                                                                                            |
|               | (a)          | Where the murder is committed without premeditation in an individual capacity and the person has no previous criminal history. | 20                                                                                                                                         |
|               | (b)          | Murder committed with                                                                                                          | 22                                                                                                                                         |

|  |     |                                                                                                                                                                                                                           |    |
|--|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
|  |     | premeditation, or a person having criminal history.                                                                                                                                                                       |    |
|  | (c) | Murder resulting from trade union activities and business rivalries.                                                                                                                                                      | 22 |
|  | (d) | Murder committed by more than one person/group of persons.                                                                                                                                                                | 24 |
|  | (e) | Murder committed with exceptional violence/ brutality/ kidnapping. Murder committed by dacoits and robbers in the act of committing dacoity and robberies; Murder committed by bootleggers, gamblers, flesh traders etc.” | 26 |

8. Perused the opinion of Principal District and Sessions Judge, Pune dated 29.4.2022 and the guidelines of 2010. The guidelines of 2010 are applicable to the case of the petitioner as held by this Court in Criminal writ petition No. 4544 of 2021 and connected writ petition decided on 8.9.2022. Though the incident of alleged murder took place prior to issuance of those guidelines of 2010, it is also held in the writ petition No. 4544 of 2021 that principle of giving benefit to the convict under beneficial policy certainly applies to the case which occurred before 2010. As per guidelines of 2010, the respondent No.2 held that the petitioner's case falls under category 4(e). Hence, he has to undergo 26 years imprisonment. As per category 4(e) if 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. as per category 3(b) the crime alleged to have been committed with premeditation either individually or by a gang. As per category 3(b), the petitioner committed murder with premeditation with gang. In the case in hand, the petitioner was a member of the gang and he committed murder with premeditation as held by the learned Sessions Court in its judgment dated 7.1.2013, in Sessions Case No. 233 of 2008 which was confirmed by this Court. This aspect was not considered by respondent No.2 in view of the guidelines of the Hon'ble Supreme Court in the case of ***State of Haryana vs. Jagdish (cited supra)***. Therefore, the petitioner was deprived from the benefit of the Guidelines of 2010. Thus, right of the petitioner for premature release was seriously affected by the impugned order. Therefore, we hold that the impugned order, deserves to be quashed and set aside. The writ petition deserves to be allowed.

9. In view of the above, the writ petition is allowed in terms of prayer clause "A".

10. The respondents are directed to comply the process of premature release of this petitioner as early as possible and in any case within 15 days.

11. Rule is made absolute in the above terms.

**(SANJAY A. DESHMUKH, J.)**

**(R. G. AVACHAT, J.)**