



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

913 CRIMINAL WRIT PETITION NO. 1491 OF 2023

Bhairu Mahadeo Ballal (convict No. C/340)
age 55 years, Occ. Nil, R/o Wangi Khurd,
Post Wangi Budruk, Tq. Paranda, Dist. Osmanabad.
Presently at Visapur Open District Prison,
District Ahmednagar. Petitioner.

VERSUS

1. The State Of Maharashtra
through it's Secretary,
Home Department, Mantralaya,
Mumbai 400 032.
2. The Superintendent
Visapur Open District prison,
Vill Visapur, Dist. Ahmednagar. Respondents.

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Advocate for the Petitioner : Mrs. S P Chate
APP for Respondents : Mrs R P Gour

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

Dated : September 13, 2024

ORDER:-

1. Present petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of India for issuing appropriate writ to quash and set aside the order dated 30.11.2022 passed by the respondent no.1, thereby categorizing the petitioner in category 2 as per the guidelines dated 15.3.2010 prescribing the period of imprisonment to be undergone including remission subject to minimum of 14 years of actual imprisonment including set-off

period of 22 years. The petitioner prays that he be placed in category 2B of the said guidelines.

2. Heard Mrs. Chate, learned advocate for the petitioner and Mrs. Gour, learned APP for respondent State.

3. The learned advocate for the petitioner submits that petitioner came to be convicted by judgment and order dated 29.11.2007 by learned Adhoc Additional Sessions Judge, Osmanabad in Sessions Case No.33 of 2007 for the offence punishable under sections 302, 498-A of the Indian Penal Code. The petitioner had preferred criminal appeal no.502 of 2007 before this Court challenging his conviction. This Court, by order dated 9.11.2009 uphold the sentence imposed by the learned Trial Court. Thereafter, as per directions of the State Government, proposal for premature release of the petitioner was forwarded to the competent authority after completion of 12 years of actual imprisonment. Whereupon, the petitioner has been placed in category 2 (c) of guidelines dated 15.3.2010. It is submitted on behalf of the petitioner that if we consider the prosecution story, then, the petitioner came to be convicted for committing murder of his wife due to domestic issues. As per the prosecution story, deceased had received 76% burns. The cause of death that was stated was septicemic shock due to 76% burns. Defence was taken by the petitioner that wife was cooking food. He had no intention to commit murder of his wife, but incident had occurred on the spur of moment out of sudden provocation. Under such circumstance, he ought to have been placed in the category 2(b) wherein 22

years of imprisonment has been provided where the crime has been committed against women with premeditation. The liberal approach ought to have been taken by the Government considering the decision in **State of Haryana Vs. Jagdish** reported in **AIR 2010 SC 1690**.

4. Per contra, the learned APP submits that a specific category has been carved out in category 2 (c) under the guidelines of 15th March 2010 which prescribes period of 26 years when the crime is committed with exceptional violence and/or with brutality or death of victim due to burns and therefore specific category would be applicable and not general category. The learned Sessions Judge as well as this Court in appeal accepted the prosecution story that petitioner was under the influence of liquor and he committed murder of his wife by raising question over her chastity and by picking up the quarrel with her, poured kerosene on her person and ablazed with the help of kerosene lamp (chimney). As a result of which, she had sustained burn injuries. Dying declaration was recorded and it was held to be proved by the prosecution. The Government had taken opinion of the convicting Court, who had also opined that the petitioner should be placed in category 2 (b) as per the guidelines dated 15.3.2010. In fact, when conviction was awarded by the trial court on 29.11.2007 at that time, guidelines of 1978 and 1992 were only in existence. If that would have been strictly applied, then, the petitioner ought to have been put in category 1 (d) that is where the crime is committed against the aggrieved person with premeditation. Of course, it would be 26 years and if he

would have been placed in category 2 (c) of guidelines 11.4.2008 “where the crime is committed with exceptional violence or with brutality or death of victim due to burn and or murder with rape” then, said period is of 28 years.

5. We are taking into consideration the decision in case of State of Haryana Vs. Jagdish. Liberal interpretation has been given and petitioner has been put in category 2 (c). There is no illegality in the impugned order.

6. At the outset, it is to be mentioned that even the respondent says that though conviction in this matter was awarded by the trial court on 29.11.2007 and this court confirmed the same on 9.11.2009, yet the respondent is placing the petitioner as per the guidelines dated 15.3.2010 and this is in view of the decision in State of Haryana Vs. Jagdish.

7. It appears that as per the guidelines in the said decision by the Apex Court, opinion of the convicting Court was sought and the convicting court had recommended for placing the petitioner in category 2 (c) of 2010 guidelines that is for 26 years. Now, for appreciating claim of the petitioner to put him in category 2 (b) we will have to consider the facts of the case. We cannot consider the defence, but we will have to go by the judgment of the trial court as well as this Court. The story that was held to be proved on the basis of proof of dying declaration, a victim/wife was preparing food. When the petitioner was under the influence of liquor, picked up quarrel

with her by suspecting her character. Yet when she was serving food to the petitioner, petitioner poured kerosene on her person and ablazed her with the help of kerosene lamp. Medical report that has been proved states that the burns were to the extent of 74% and she has succumbed to those burn injuries. When this specific category has been stated in guidelines of 2008 as well as 2010, then we will have to consider the specific category and taking into consideration the beneficial guidelines to the petitioner that is in 2010, the period that is required to be undergone is 26 years as compared to 28 years. In 2008 guidelines, we do not find any illegality in placing the petitioner in category 2 (c) as per the guidelines of 2010. The Chart that has been given on 5.11.2023 shows that total punishment undergone is 21 years 6 months and 26 days, which is inclusive of remissions.

8. In view of the said reasons, we do not find this to be a fit case where we can exercise our constitutional powers under Article 226 of the Constitution of India. Writ Petition stands **dismissed**.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

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