



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

CRIMINAL WRIT PETITION NO.160 OF 2024

- 1) Vinod S/o Bapurao Sontakke (C-5379),
Age-42 years, Occu:Convict,
At present confined in Central Jail,
Chhatrapati Sambhajanagar,
- 2) Nagnath S/o Bapurao Sontakke,
Age-42 years, Occu:Convict,
At present confined in Open Jail, Paithan,
District-Chhatrapati Sambjinagar

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Superintendent of Jail,
Open Jail, Paithan,
District-Chhatrapati Sambhajanagar,
- 2) Secretary,
Home Department (Prison),
Mumbai,
- 3) Superintendent of Central Jail,
Chhatrapati Sambhajanagar.

...RESPONDENTS

...
Mr. R.A. Jaiswal Advocate for Petitioners.
Mr. G.A. Kulkarni, A.P.P. for Respondent Nos. 1 to 3.

...

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

DATE OF RESERVING JUDGMENT : 6th SEPTEMBER 2024

DATE OF PRONOUNCING JUDGMENT : 25th SEPTEMBER 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 the constitutional powers of this Court under Article 226 and 227 of the Constitution of India, the petitioners have prayed for quashing and setting aside the order passed by respondent No.2 on 1st November 2023 thereby categorizing the petitioners under category 3(b) as per the guidelines dated 11th May 1992 and category 4(d) as per guidelines dated 15th March 2010. They have also prayed that respondent No.2 be directed to consider the petitioners under category 3(b) as per the guidelines dated 15th March 2010.

3. Heard learned Advocate Mr. Jaiswal for the petitioners and learned APP Mr. Kulkarni for the respondents.

4. It has been submitted on behalf of the petitioners that the

petitioners came to be convicted by the learned Additional Sessions Judge, Basmathnagar, District-Hingoli on 8th April 2008 for the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code and were directed to undergo rigorous imprisonment for life and to pay fine of Rs.1000/- each, in default to suffer rigorous imprisonment for one year. They were acquitted from the offence punishable under Sections 147, 148, 149 of the Indian Penal Code. The said conviction was confirmed by this Court in Criminal Appeal No.125 of 2009 on 2nd December 2010. The petitioners were arrested on 2nd June 2006 and they were under trial till the date of conviction and thereafter even during the pendency of the appeal they were never released on bail. On the date of petition, they had undergone the actual imprisonment of 14 years and 11 months. If we consider the facts of the case, then as per the prosecution story, which was held to be proved, there was family dispute between the family of the deceased and the petitioners and out of the said family dispute, it is stated that the murder has been committed. Though on the date of conviction, the categories as per the Government Resolution dated 11th May 1992 were in operation, yet thereafter those categories were changed and the period of imprisonment to be undergone, remission also got

changed on 15th March 2010. Therefore, in view of the decision in *State of Haryana and others vs. Jagdish, (2010) 4 SCC 216*, the beneficial category should be applied. Therefore, the petitioners should be put in the Category 3(b) as per the Government Resolution dated 15th March 2010. Learned Advocate for the petitioners further relies on the decision in *Uday S/o Dhaku Sutar vs. the State of Maharashtra and another (Criminal Writ Petition No.4544 of 2021 with companion matter)*, decided on 8th September 2022, *Shrikant s/o Paragonda Basargi vs. State of Maharashtra and another (Writ Petition No.2355 of 2023)* decided on 9th October 2023, by the Co-ordinate Bench at the Principal Seat, *Aslam S/o Jamadar Ansari vs. State of Maharashtra and another (Criminal Writ Petition No.837 of 2024)* decided on 1st July 2024 by this Court, wherein relying upon *State of Haryana vs. Jagdish* (supra), it is held that the beneficial interpretation to the convict should be considered. In *State of Haryana vs. Jagdish* (supra), the Hon'ble Supreme Court held that the policy prevalent when the conviction is awarded would apply, however, if any other liberal policy is adopted at a later point of time, then the beneficial policy should be considered.

5. Per contra, the learned APP strongly opposed the Petition. He relies on the affidavit-in-reply filed by Umaji Tolaram Pawar, the Deputy Inspector General of Prisons, Central Region, Chhatrapati Sambhajnagar, wherein he has supported his decision taking into consideration the facts / prosecution story and the opinion of the advisory board. Learned APP submits that though the petitioners have been acquitted for the offence punishable under Sections 147, 148, 149 of the Indian Penal Code, yet taking into consideration their numbers, the category under which the case would fall is under 4(d) i.e. "murder committed by more than one person / group of persons", as per the guidelines dated 15th March 2010, for which the period of imprisonment is 24 years. Even if we consider that the offence was committed by a gang, then category 3(b) as per the guidelines of Government Resolution dated 11th May 1992 would be applicable i.e. "where a murder is committed in the course of quarrel but with premeditation or by a gang" and the period that would be required to be undergone is 24 years.

6. In view of clear law laid down in ***State of Haryana vs. Jagdish*** (supra), we will have to give the liberal interpretation and make the guidelines of the Government Resolution dated

15th March 2010 applicable to the present case though the conviction by the trial Court was on 8th April 2008. Even respondent No.2 is not disputing the said fact that those guidelines as per the Government Resolution dated 15th March 2010 are required to be considered, but then according to respondent No.2 the category 4(d) would be applicable, i.e. "murder committed by more than one person / group of persons". But the said category is for "murder for other reasons". In the same category i.e. "murder for other reasons", the guideline in Government Resolution dated 11th May 1992; respondent No.2 says that the case of the petitioners would fall under category 3(b), as aforesaid.

7. Now, we are required to consider the facts of the present case. The prosecution had come with the case that the informant was residing with his parents, three brothers, their wives and children. Prior to the incident there was a quarrel between the deceased and accused Nos.1 and 2 i.e. present petitioners. Since then the petitioners were frequently disputing with the deceased. Even on 7th November 2006 at about 4.00 p.m. when deceased was proceeding towards his house from his field, the present petitioners had raised a dispute with him and abused him and

then deceased went home running, whereupon original accused Nos.1 to 3 followed him holding the knives and long sickle (Katti) in their hands and they had inflicted several blows on the different limbs of the body of the deceased. The deceased has succumbed to those injuries.

8. If we consider the guidelines dated 15th March 2010, and the category 3(b) under which the petitioners prayed that they should be included, then Category 3 says that "murder arising out of land dispute, family feuds, family prestige and superstition" and sub-category 3(b) says that "crime committed as above with premeditation, either individually or by gang". Then the period of imprisonment to be undergone remissions subjected to a minimum of 14 years of actual imprisonment including set-off period, is 22 years. The petitioners want to categorize themselves in respect of murder arising out of family feuds. If we consider the dictionary meaning, then 'family feud' is a long standing fight or quarrel between families or clans, that can involve acts of violence and revenge. 'Feuds' can also be characterized as long-standing hostility and ethnic groups can sometimes be said to be feuding. In Cambridge Dictionary, meaning of 'family feud' is "an argument that has existed for a

long time between two people or groups, causing a lot of anger and sometimes violence". When a special category is made for the 'murder arising out of family feuds', then 'murder for other reasons' category cannot be invoked, which can be said to be general in nature and as aforesaid, the beneficial interpretation should be given to the said guidelines.

9. Therefore, we are of the opinion that the case of the petitioners would fall under the category 3(b) as per the guidelines in Government Resolution dated 15th March 2010, and would not fall under the category 4(d) as per the guidelines in Government Resolution dated 15th March 2010 or under category 3(b) as per the guidelines in Government Resolution dated 11th May 1992. The Petition, therefore, deserves to be allowed. Hence we pass following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) The impugned order dated 1st November 2023 passed by respondent No.2 is hereby quashed and set aside.

(III) The respondents are directed to place the petitioners' case under category 3(b) of the guidelines / Government Resolution dated 15th March 2010.

(IV) Rule is made absolute in above terms. The Writ Petition stands disposed of, accordingly.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/SEP24