

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 198 OF 2024.

Anilkumar @ Lapetu Ramshakal Sharma
Occupation : Tailoring, Age : 38 years,
R/o. Vishwas Saloon, Tin Dongri,
Yeshwant Nagar, Opp. Hanuman Mandir,
Goregaon (W), Mumbai – 400 062.
vs.

.... Petitioner

- 1) The State of Maharashtra
through it's Chief Secretary, Mantralaya,
(at the instance of Goregaon Police
Station in C.R.187/2005)
- 2) Additional Director of Police and
Inspector General of Prison Correction and
Rehabilitation, Maharashtra State, Pune – 01
- 3) Superintendent Jail, Yerwada Central
Prison, Pune – 06.

.... Respondents

Mr. Prosper D'souza for the Petitioner.
Mr.J.P. Yagnik, APP for the Respondent-State.

**CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 1st FEBRUARY, 2024

Oral Judgment (Per : A.S. Gadkari, J.) :-

- 1) Rule. Rule made returnable forthwith and by the consent of
learned Advocates, taken up for final hearing.
- 2) Heard Mr. D'souza, learned Advocate for the Petitioner and Mr.
Yagnik, learned APP for the State. Perused record produced before us.

3) By the present Petition under Article 226 of Constitution of India, the Petitioner has impugned Order dated 17th May, 2023 passed by the Additional Secretary, Home Department, Government of Maharashtra under Section 432 of Criminal Procedure Code, thereby placing the Petitioner in category 4(d) of Guidelines dated 15th March, 2010 and in category 3(b) of Guidelines dated 11-5-1992 issued by the said Department. By the said Order, the Petitioner has been directed to undergo 24 years of imprisonment including remission.

4) Record reveals that, the Petitioner is convicted by the learned Additional Sessions Judge, Greater Mumbai, in Sessions Case No.511 of 2005 by its Judgment and Order dated 26th June, 2007 under Sections 302 and 307 of the IPC. He is sentenced to suffer imprisonment for life under Section 302 of the IPC and to suffer rigorous imprisonment for seven years under Section 307 of the IPC.

4.1) The allegation against Petitioner is that, deceased Sanjay was having love affair with the sister of the Petitioner namely Miss Sunita and due to the said fact, there were quarrels between the Petitioner and Sanjay on earlier two occasions. Petitioner was harbouring a belief that, Sanjay was spoiling the life of his sister. On the date of incident i.e. on 28th March, 2005 at about 09:30 p.m., Bablu (PW-1), Sanjay (deceased) and Jiledar (PW-2)

had been to the dispensary of Mr. Sarfaraj, an Ayurvedic Doctor for treatment of the injury sustained by Jiledar. As Mr. Sarfaraj was not available at the said place, all of them were waiting outside of his dispensary. At that time, the Petitioner and Accused No.2 told Bablu (PW-1) that, his brother Sanjay was spoiling the life of the sister of Petitioner and therefore they would cut him. Petitioner and Accused No.2 were carrying swords with them. Petitioner immediately assaulted Sanjay and co-accused Shabir assaulted Jiledar (PW-2). Bablu (PW-1) tried to intervene, however the Petitioner gave threats to him and other persons, who were present at the scene of offence not to come forward to save them. Due to the injuries suffered by Sanjay, he fell on the ground and thereafter the Petitioner and co-accused ran away from the scene of offence.

4.2) As the prosecution was successful in proving the charges framed against the Petitioner, the trial Court by its Judgment and Order dated 26th June, 2007, was pleased to convict and sentenced the Petitioner as noted above.

4.3) The Criminal Appeal No. 720 of 2007 preferred by the Petitioner has been turned down by this Court by its Judgment and Order dated 19th August, 2015. The Special Leave Petition (Criminal) Diary No(s). 34099/2018 against the Judgment and Order passed by this Court dated

19th August, 2015 has also been dismissed by the Hon'ble Supreme Court, by its Order dated 08/10/2018.

5) In the backdrop of these admitted facts, as per the procedure, the Jail Administration sought opinion of the Learned Judge of the trial Court, before placing him in a suitable category for undergoing sentence as contemplated under Section 432 of Cr.P.C. The learned Judge of the trial Court opined that, the act committed by the Petitioner falls within the purview of Category 4(d) of 2010 Guidelines issued by the Government of Maharashtra. The Respondent No.1 before passing the impugned Order dated 17th May, 2023, has also taken into consideration, not only the facts of the present case, but also the ratio laid down by the Hon'ble Supreme Court in the case of *State of Haryana and Ors. Vs. Jagdish [AIR 2010 Supreme Court, 1690]* and has given suitable benefit to the Petitioner while categorizing and placing him in Category 4(d) of the 2010 Guidelines.

6) Mr. D'souza, learned Advocate for the Petitioner contended that, in view of the above facts of this case instead of the Petitioner being placed in Category 4(d), he ought to have been placed in Category 3(b). He further submitted that, if this Court is not inclined to place the Petitioner in Category 3(b), he may be given benefit of Category 4(b) of 2010 Guidelines, so that the Petitioner will have to undergo lesser period in incarceration.

7) Category 3(b) of Government Resolution No. RLP No. 1006/CR621/PRS-3 dated 15th March, 2010 reads as under :-

Category no.	Categorisation of Crime	Period of Imprisonment to be undergone remissions subjected to a minimum of 14 years of actual Imprisonment including Set-off period
3.	Murder arising out of land dispute, family fueds, family prestige and superstition	
	b Crime committed as above with premeditation, either individually or by gang	22

8) According to us Category 4(b) of 2010 Guidelines is not at all applicable to the Petitioner and therefore accepting and considering the said submission does not arise at all.

9) A plain reading of Category 3 of 2010 Guidelines indicates that, it postulates murder arising out of land disputes, family feuds, family prestige and superstition. Category 4 of said Guidelines speaks for murder for other reasons and sub-category (d) deals with murder committed by more than one person / group of persons.

10) In the present case, there is no finding recorded by all the three Courts that, the Petitioner committed murder of Sanjay out of family prestige or family fued. As noted earlier, the Petitioner was harbouring a belief that, deceased Sanjay was having an affair with his sister and he was

trying to spoil her life. Therefore he along with co-accused committed murder of Sanjay and assaulted Jiledar (PW-2) on the date and time of incident.

11) As noted earlier, in the present case, the Petitioner along with co-accused has committed murder of Sanjay and therefore, the Respondent has rightly and correctly placed him in Category 4(d) of the 2010 Guidelines.

11.1) After perusing record and taking into consideration the facts of present case, we find no legal infirmity in the impugned Order.

12) Petition is *dehors* of merits and is accordingly dismissed.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)

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