

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.199 OF 2024

Papa Chhagan Rathod .. Petitioner
Versus
The State of Maharashtra .. Respondent

Mr.Nitin Gaware Patil for the Petitioner.

Ms.M.M. Deshmukh, A.P.P. for the State/Respondent.

Mr.Dhananjay Anant Jugdhane, Section Officer, Home Department (Prison) Mantralaya, present.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 02nd JULY, 2024

P.C:-

1] On the earlier occasion, we directed the learned APP to seek instruction from the Secretary, Home Department , in order to ascertain as to in exercise of what power the State Government has taken it upto itself to determine that the person convicted is not entitled for being categorized, because he is found guilty of committing rape on a minor girl.

The learned APP, on oral instructions from the Deputy Secretary make a statement that they have not categorized him considering the heinousness of the offense, however, she has instructions to make statement, henceforth the guidelines shall be followed.

2] We are rather at dismay, by the approach adopted by the State Government as we have noticed that right since the year

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1978, the State Government always have a policy in place, to be implemented providing guidelines for premature release under the '14 year rule of Prisoners serving life sentence' and this policy underwent amendment in the year 1992, 2008 and presently the Policy of 15.03.2010 is prevalent.

It is worth to note that the said guidelines are issued in exercise of the powers vested in the State Government under Section 432 of the Criminal Procedure Code but for the exceptions provided therein, any convict who is sentenced to life imprisonment deserve his categorization under the Policy.

In an earlier occasion, when we were dealing with the similar scenario where a convict was found guilty of committing rape upon his own minor daughter and the State Government had refused to categorize him, reliance was placed upon Clause 4 of the Policy of State Government dated 15.03.2010 by the learned Public Prosecutor and this was construed to be a source of power of the State Government, but we have clearly opined that this right can be exercised by the State Government only in a case where there is no specific guideline as mentioned in annexures enclosed to the Government Resolution and when a specific categorization for the offences of rape is provided even when the victim is minor in category 8(b), we fail to understand as to on what basis the State Government construe the heinousness of the offence.

When the preface of the Government Resolution is to be noted in all those cases where the State Government intended that the guidelines would not apply, it has specifically stipulated as under :-

“However, said guidelines does not cover grave offences

such as life imprisonment under stringent laws like TADA, MCOCA, POTA etc. “

The residuary category in Annexure I and Annexure II of the Government Resolution dated 15.03.2010, categorically provides for “any such other offences which are not specifically covered in the above categories”.

3] When we perused each entry in Annexure I and II, all the probabilities and possibilities, including the heinousness, brutality in different scenario, when the murder is committed for political reasons or the murder resulting into a serious offence, we find a categorization.

Time and again , the Highest Court of this country has pronounced upon the need of adherence to this policy and in the recent decision of the Apex Court in case of **Ram Chander vs. State of Chhatisgarh and Anr. (2022)12 SCC 52**, it is once again reiterated that the appropriate government is mandatorily required to adhere to its own policy decision and has emphasized on the mandatory nature of the procedure to be adopted as contemplated.

4] Further, in case of **Rajkumar vs. State of Uttar Pradesh, 2023 SCC OnLine SC 990**, the Apex Court has also pronounced upon the policy adopted by the State Government and in the said case by the Uttar Pradesh government for premature release, with a reminder as below :-

“15. The State having formulated rules and a Standing Policy for deciding cases of premature release, it is bound by its own formulations of law. Since there are legal provisions which hold the field, it is not open to the State Government to adopt an arbitrary yardstick for picking up cases for premature release. It must strictly abide by the terms of its policies bearing in mind the fundamental principle law that each case for premature release has to be decided on the basis of the legal position as it stands on the date of the conviction subject to a

more beneficial regime being provided in terms of a subsequent policy determination. The provisions of the law must be applied equally to all persons. Moreover, those provisions have to be applied efficiently and transparently so as to obviate the grievance that the Policy is being applied unevenly to similar circumstanced persons. An arbitrary method adopted by the State is liable to grave abuse and is liable to lead to a situation where persons lacking resources, education and awareness suffer the most.”

5] This Court in ***WP No.950/2022***, in the case of ***Bharat @ Bhauso Housiram Nigde vs. State of Maharashtra & Anr.*** once again reminded the State Government of adhering to the policy guidelines, in the light of the decision of the Apex Court that the guidelines came by the State Government shall bind all the authorities, but it is very evident that the Authorities are giving their opinions and not considering the guidelines.

6] We deem it appropriate that the State Government to consider to consider the authoritative pronouncements on the said point and come with a clear Affidavit before us as to what is the future course action to be undertaken by it, since we have already cautioned it in the order dated 20.06.2024, that if there is no positive approach on part of the State Government then this Court shall pass appropriate orders, but we must make it clear that this will be in the teeth of the directions issued by the Apex Court as well as this Court, from time to time.

Let the Additional Chief Secretary, Home Department, file Affidavit within a period of 3 weeks from today, offering a clarification on this aspect.

Re-notify to 23.07.2024.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)