

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2312 OF 2024**

Sachin Manohar Khambe .. Petitioner

Versus

The State of Maharashtra .. Respondent

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Dr.Yug Mohit Chaudhry with Mr.Anush Shetty for the
Petitioner.

Ms.Sharmila S. Kaushik, A.P.P. for the State/Respondent.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 08th AUGUST, 2024**

JUDGMENT (PER BHARATI DANGRE, J.) :-

1. The Petitioner/Convict, who has undergone 22 years and 1 month of actual imprisonment and over 28 years and 8 months of imprisonment, including remission, has filed the present Petition praying for quashing and setting aside the order dated 19/01/2024, passed by the State Government, thereby categorising him in clause 6(c) of the 2010 Guidelines and seeking a direction that instead, he deserve categorisation under clause 3(d) of the 1992 Guidelines, in regard to the punishment of life imprisonment imposed upon him on being found guilty of offence under Section 302 read with Section 34 and/or read with Section 120-B of IPC in MCOC Special Case No.13 of 2000.

2. We heard Dr.Yug Mohit Chaudhry for the Petitioner, who has invited our attention to the factual background in which the relief in the Petition is sought by the Petitioner. Ms.Kaushik, the learned A.P.P. represent the State.

3. By consent of the above counsel, we issue 'Rule' and have taken the Writ Petition for final hearing.

On assimilating the facts, it has become evident to us that the Petitioner is convicted in two MCOC cases i.e. MCOC Spl.Case No.13 of 2000 and MCOC Spl.Case No.01 of 2010.

In MCOC Spl.Case No.13 of 2000, he faced the trial as accused No.2 and by Judgment dated 30th/31st December, 2002, he stood convicted alongwith the co-accused, for committing the offence punishable under Section 302 read with Section 34 of IPC and/or read with Section 120-B of IPC and is sentenced to suffer imprisonment for life and pay a fine of Rs.10,000/-. In addition, he also stand convicted under the Arms Act and is sentenced accordingly.

The above judgment is upheld by the High Court on 25/01/2007 in Criminal Appeal No.216 of 2003, when the Court arrived at the conclusion that the Trial Court was justified in finding the Appellant guilty of committing the murder of Ziauddin, by using the firearm and finding no merit in the Appeal, the same was dismissed.

4. While in custody, in the first MCOC Special Case, he came to be arrested and faced MCOC Special Case No.1 of 2010, being charged as Accused No.3 alongwith three other accused persons.

He faced the charge under Sections 307, 387, 120(B), 379, 465, 471 read with Sections 34, 109 of IPC alongwith the provisions of the Arms Act as well as the Bombay Police Act and Sections 3(1)(ii), 3(2), 3(4) of the MCOC Act.

The Special Judge, by Judgment dated 26th & 27th August, 2014 found him guilty for committing the offence punishable under Section 120-B of IPC and he was sentenced to suffer life imprisonment with a fine of Rs.50,000/- alongwith accused Nos.1 and 2. In addition, he was also convicted for committing the offence punishable under Section 307 read with Section 109 of IPC and sentenced to suffer life imprisonment with fine of Rs.50,000/-, in default to suffer rigorous imprisonment for four years.

The Special Judge, who tried him in the second case, being conscious of his first conviction, specifically directed as under :-

“14. The sentence of accused No.3 shall run concurrently with his previous conviction in terms of Section 427(2) of Cr.P.C. from the date of his arrest in this case i.e. from 23/12/2009.”

5. The Petitioner filed writ petition before this Court, which was numbered as Writ Petition No.894 of 2021, wherein he prayed for his categorisation, as the State Government had refused to categorise him and grant the benefit of remission and it was contended that merely because the case was filed in the Special Court under MCOCA, that by itself do not permit the State Government to refuse remission or his categorisation, as there is no embargo on the rights of the Petitioner to claim remission pursuant to the judgment dated 15/11/2022.

The prayer being strongly contested by the Government, considering that in MCOC Special Case No.1 of 2010, the Petitioner had already undergone imprisonment of 16 years 6 months and 20 days, including the remission of 2 years 11 months and 11 days, the Petition was partly allowed, with direction being issued to the Respondent/State to call for report of the concerned Judge, pursuant to the provisions of Section 432 of the Code of Criminal Procedure, 1973 and directed the procedure to be completed within four weeks.

Pursuant to this direction, the State Government has passed an order dt.19/01/2024, by taking note of the sentences imposed upon him in two different cases i.e. MCOC Special Case No.13 of 2000 and MCOC Special Case No.1 of 2010.

The observation made by the learned Judge in the second case to which we have made reference, was specifically relied upon while taking a decision upon the categorisation of the case of the Petitioner in terms of the directions issued by this Court in Writ Petition No.894 of 2021.

The remarks from the concerned Special Judge under MCOCA were invited, who opined as below :-

“This accused has attempted to commit murder while he was undergoing life imprisonment for the offence punishable under section 302 in MCOC Special Case No.13 of 2000 therefore, he comes under Clause 6(C) of Annexure I of Government Resolution of Government of Maharashtra dated 15/03/2010. As per said clause, remission cannot be given until completion of 30 years and set off.”

6. By the said order, it is declared that on completion of 14 years of actual imprisonment and 30 years of imprisonment,

including remission, he shall be entitled for his release subject to the following stipulations:-

- (a) his conduct;
- (b) no sentence shall be pending against him;
- (c) he must undergo minimum 14 years of imprisonment;
- (d) he shall be medically fit for his release upon undergoing the aforesaid period.

7. We have taken note of the two Judgments, which have imposed the sentence of life imprisonment upon him on both counts, his first date of arrest being 29/03/2000.

While he was in custody, he was arrested in second case, where he is convicted for the offence punishable under Section 307 read with Section 120-B of IPC and sentenced to undergo life imprisonment.

8. Dr.Chaudhry has urged before us that he shall be placed in category 3(d) of the 1992 Guidelines or either under clause 3(e), which prescribe the punishment of 26 years, where the crime is committed, without premeditation or where the crime is committed with exceptional violence or with perversity. According to Dr.Chaudhry, categorisation of the Petitioner under clause 6(c) of the 2010 Guidelines is highly erroneous and it is his submission that clause (c) of category 6 of the 2010 Guidelines applies to convict awarded more than one life sentence and the sentences running concurrently and this would apply when in one trial, for different offences, he is awarded more than one life sentence and sentences are directed to run concurrently

According to him, it is only in this category, the period of imprisonment of 30 years would be required to be undergone.

It is the submission of Dr.Chaudhry that treating the two life sentences in two distinct cases separately and categorising him under 6(c) is highly erroneous, as in each case he has to be categorised separately and as far as the first conviction is concerned, it being dated 31/12/2002, he was governed by the 1992 Guidelines, whereas the second conviction being awarded to him on 27/08/2014, he is governed by the 2010 Guidelines and amongst these two, the most beneficial policy should be made applicable to him, which is the policy of 1992.

9. We do not find substance in the argument of Dr.Chaudhry in the wake of the specific provisions contained in the Code of Criminal Procedure, 1973 dealing with such a scenario.

Section 427 of the Code prescribe for imposition of sentence on an offender already sentenced for another offence and the provision reads thus :-

“427. Sentence on offender already sentenced for another offence.-

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.”

10. The reading of the aforesaid provision and in particular sub-clause (2) would make it clear that when a person already undergoing the sentence for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with the previous sentence imposed.

In normal scenario, when a person already undergoing sentence of imprisonment, is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with the previous sentence.

The case of the Petitioner clearly fall within sub-section (2) of Section 427 and being conscious of this provision, the Special Judge in MCOC Special Case No.1 of 2010 has categorically directed that the sentence of life imprisonment imposed upon him, on being convicted under Section 120-B of IPC and Section 307 read with Section 109 of IPC shall run concurrently, with his previous conviction from the date of his arrest i.e. 23/12/2009.

In light of this specific observation, we find no legal infirmity in the impugned order, which has categorised the case of the Petitioner in clause 6(C), which now warrant that he shall undergo imprisonment of 30 years, including

remission, subject to minimum of 14 years of actual imprisonment.

By applying this parameter, the Petitioner must complete 30 years of imprisonment, with remission.

Upholding the impugned order and declaring that the mode adopted by the State Government, by no stretch of imagination, would attract the principle of double jeopardy, as sought to be canvassed by Dr.Chaudhry before us, the Writ Petition is dismissed. Rule discharged.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)