

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2471 OF 2024

Arvind s/o Nathuram Vatkari .. Petitioner
Versus
State of Maharashtra & Anr. .. Respondents

Mr.Rupesh Jaiswal, for the Petitioner.

Mr.J.P. Yagnik, APP for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ
DATED : 24th JUNE, 2024

P.C:-

1] Rule. Rule made returnable forthwith.

Heard finally by consent of parties.

2] The present Petition is filed by the Petitioner/Convict, who has been sentenced to Life Imprisonment on two counts, i.e. on being convicted under Section 302 as well as under Section 307 of the Indian Penal Code by the Additional Sessions Judge and the said Judgment being upheld by the Division Bench in Criminal Appeal No.840/2005 on 14.08.2008.

3] It is the case of the prosecution that on 28.08.2003, at 1.30 a.m. the Petitioner assaulted his brother Sagar with a sickle and he also assaulted his step mother Mangal and he confronted the complaint by accusing her, that the family had come to know about his relationship with Sonali because of her

and he assaulted her with a sickle, who escaped with a serious injury on her neck and cheek. Even the father was also assaulted.

As per the prosecution, Sonali had extra marital relationship with the Petitioner and this fact was told by the complainant during the course of her visit to the village; and she returned to Mumbai to be followed by the Petitioner, who demanded money from his father Nathuram, who refused the same, which resulted into a quibble and he slapped him on the ground that he was carrying illicit relationship with Sonali.

The Petitioner, being anguished, left and returned well after midnight and caused the assault.

4] In this factual background, upon his Appeal being dismissed, his case came up for consideration before the State Government and by order dated 17.05.2022, by relying upon the observations of the Sessions Court in Sessions Case No.830/2003, and by referring to the decision of the Supreme Court in case of *State of Haryana vs. Jagdish, AIR 2010 SC 1690*, applying the guidelines of 15.03.2010, he came to be categorized in category 6(C) "Convict accorded more than one life sentence and sentences running concurrently.", where the period of imprisonment to be undergone including remission is fixed as 30 years, subject to a minimum 14 years of actual imprisonment including set off period.

It is this decision of the State Government which is challenged by the Petitioner and the learned counsel would strenuously rely upon the decision of the Apex Court in case of Jagdish (*supra*) to which the impugned order has referred to and we have perused the said decision.

5] The question arose was as to which policy containing provision for remission of sentence should be applicable and whether it was the one existing on the date of conviction of the accused or should it be the policy that exist on the date of consideration of his case for premature release by the appropriate Authority.

The question arose in the background that the Punjab and Haryana High Court, while considering the case of the Respondent for leniency as per the policy prevailing on the date of the conviction, convicted and sentenced him vide Judgment and Order dated 20.05.1999 and the policy which was in existence at that time was dated 04.02.1993. The Respondent having served more than 10 years imprisonment approached the High Court that inspite of having undergone the sentence as per the policy of 04.02.1993, his case for premature release was not being considered in view of new policy of short sentencing introduced on 13.08.2008.

Considering that the FIR registered against the Respondent had invoked Section 302, 148 and 149 of IPC, the High Court arrived at conclusion that the case of the Respondent for premature release was to be considered in light of the short sentencing policy existing on the date of his conviction and a direction was issued to the State Authorities to consider his case in view of policy of 04.02.1993, which existed on the date of his conviction i.e. 20.05.1999, within a period of one month.

Being aggrieved, the State of Haryana preferred an Appeal before the Apex Court.

6] On a detail comparison of the policy of 1993 and the 2008 policy and considering that the Respondent was convicted on 20.05.1999, the Apex Court specifically recorded as under :-

“52. We have already noticed that the earlier policies including the policy dated 4-2-1993 refer to the exercise of powers under Article 161 of the Constitution whereas the policy dated 13-8-2008 is in exercise of the powers under Section 432 read with Sections 433 and 433-A CrPC. The restriction under Section 433-A is only to the extent of the powers to be exercised in respect of offences as referred to under Section 432 CrPC. The Notification dated 13-8-2008 is, therefore, under a rule of procedure, which is subordinate to the Constitution. The power exercised under Article 161 of the Constitution is obviously a mandate of the Constitution and, therefore, the policy dated 13-8-2008 cannot override the policy dated 4-2-1993.

53. The right of the respondent prisoner, therefore, to get his case considered on a par with such of his inmates, who were entitled to the benefit of the said policy, cannot be taken away by the policy dated 13-8-2008. This is evident from a bare perusal of the recitals contained in the policies prior to the year 2008, which are referable to Article 161 of the Constitution. The High Court, therefore, in our opinion, was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction.

54. The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given benefit thereof.

55. As per the information furnished by the appellant State of Haryana, the respondent Jagdish has served more than 14 years (actual) on 12-2-2009 i.e. prior to the date of judgment impugned herein dated 17-2-2009. By now, the respondent has served (actual) for more than 15 years. The respondent falls in Category 3 of the prisoners as he did not indulge in any organised crime.”

7] In light of the authoritative pronouncement, the remission policy which exist on the date of conviction and imposition of sentence will be applied and not the policy

which prevail at the time of consideration of his premature release.

In para 54, what is expected by the Apex Court from the State, is to exercise its power of remission keeping in view any such benefit to be construed liberally in favour of the convict and in case a liberal policy prevails on the date of consideration for premature release, it is directed that the benefit should be extended to the convict.

8] In the present case, it is evident that the Appellant stood convicted by the Supreme Court in Sessions Case No.830/2003 on 18.02.2005.

Applying the principle in **Jagdish** (*supra*), the policy which is to be applied to him is the one which existed on the date of his conviction, being the policy of 11.05.1992 and not the policy under which the State Government has categorized him i.e. the policy of 15.03.2010.

Pertinent to note that in the 1992 policy, there is no categorization stipulated for a convict being awarded more than life sentence, and sentences having been directed to run concurrently, which deserved an imprisonment for 30 years.

In the 1992 policy, the categorization was limited and there is a specific category for “murders arising out of land dispute, Family fueds, family prestige and superstition, which is further bifurcated into two categories’ a] If the offence is committed in individual capacity and without pre-meditation and the prisoner has no previous criminal history and b] crime committed as above with pre-meditation or by a gang and for the former the punishment prescribed is 22 years,

whereas, for the latter it is 24 years.

Another category to which we must make a reference, is specified in Category 3 i.e. 'murder for other reasons' and amongst this is category (d) i.e. "murders committed with pre-meditation and exceptional violence or perversity", which has prescribed the punishment of 26 years.

However, when we have perused the facts of the case, and in light of the authoritative pronouncement by the Apex Court in case of **Jagdish** (*supra*), where it is directed that the categorization should be done in a manner which would be beneficial to a convict and the benefit must accrue to him on liberal construction of the guidelines, in his favour.

9] By applying the aforesaid principle, in the wake of the specific category in the 1992 guidelines, according to our opinion, his case should be covered in category 2(b) which contemplates the period of 24 years of imprisonment to be undergone including remission, subject to the minimum of 14 years of actual imprisonment including set off period.

10] The learned APP has placed before us the report of the Prisoner, which reveal that he has undergone 25 years 7 months and 14 days of imprisonment as on 30.04.2024 excluding the Covid parol leave, including remission of one year 3, months and other benefits.

In light of the actual statistics placed before us, since the Petitioner is now categorized in 2(b) of Government Resolution of 11.05.1992, he deserve his release and we confer his liberty upon him, unless he is required to be detained in some other crime/ offence committed by him.

Rule is made absolute, by quashing and setting aside the order dated 17.05.2022, by categorizing the Petitioner as above, on undergoing the entire prescribed sentence under the said category , he is directed to be released forthwith.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)