



IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 127/2024.

Mangesh Madhaorao Kapate,
Convict No.,C/8253, Aged 30 Years,
Occupation – Nil, Resident of
Hanuman Nagar, Near Soot Girni,
Nagpur.
[Presently confined at Central Jail,
Nagpur]

... PETITIONER.

VERSUS

1.State of Maharashtra,
through the Secretary, Home
Department, Mantralaya,
Mumbai.

2.The Superintendent,
Central Prison, Nagpur.

... RESPONDENTS.

Ms S.P. Chavhan, Advocate for the Petitioner.
Mr. M.K. Pathan, A.P.P. for Respondents.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : AUGUST 21, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule made returnable forthwith and with the consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. The petitioner, a convict is undergoing life imprisonment in Central Prison, Nagpur by virtue of conviction recorded in Special Session Case No.28/2008 by the Additional Sessions Judge, Nagpur for the offence punishable under Sections 363, 376[g], 302 and 201 of the Indian Penal Code, vide judgment and order dated 03.08.2011. The convict has filed this petition under Article 226 of the Constitution of India, challenging the order dated 12.04.2023 passed by the Home Department of the State of Maharashtra, by which it has been directed that the petitioner will be released from jail after

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completion of 30 years of imprisonment, including remission.

3. The case of petitioner was considered for premature release after completion of 14 years of actual imprisonment, and by the impugned order the petitioner was categorized in Category No.6[c] of the guidelines dated 15.03.2010. The said category provides for period of imprisonment would be 30 years to be undergone, including remission. The petitioner has challenged the said order by contending that though the guidelines dated 15.03.2010 would apply, however, his case would fall in Category No.2[d], which provides for 28 years of imprisonment. It is petitioner's contention that he has been convicted for the offence of murder and rape, and therefore, Category 2[d] of the 2010 Guidelines would be the appropriate category.

4. In response, the learned A.P.P. has supported the categorization made by the Home Department. It is submitted that conjoint reading of Category 2[d] with Category 6[b], coupled with the case in hand, the appropriate Category would be Category 6[c]. He would submit that in case at hand, the petitioner was sentenced to

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undergo imprisonment for life for the offence punishable under Section 376[g] of the Indian Penal Code, as well as he was also sentenced to undergo imprisonment for life for the offence punishable under Section 302 of the Code. In substance, the trial Court has awarded two life imprisonment to the petitioner. He would submit that as per Category 6[c], if conviction was awarded for more than one life sentence, the said sub-category would apply. According to him, since in case at hand, two life imprisonment i.e. more than one life sentence has been awarded, therefore, Category 6[c] would be an appropriate Category.

5. The learned A.P.P. has tried to distinguish the applicability of Category 2[d], by submitting that the said Category would apply in cases where offence is of murder with rape, but, the sentence for the offence of raps would not be life imprisonment, but, less than that.

6. So far as the factual aspect is concerned, there is no dispute that the petitioner was convicted for murder and rape, and was,

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sentence to undergo life imprisonment in both offences. The question which falls for consideration is - under which category petitioner's case would fall. For said purpose, we are reproducing Category No.2 and Category No.6 as under.

Category No.	Sub Category.	Categorization of Crime.	Period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off period.
2		OFFENCE RELATING TO CRIME AGAINST WOMEN AND MINORS.	
	[a]	Where the convict has no previous criminal history and committed the murder in an individual capacity in a moment of anger and without premeditation.	20
	[b]	Where the crime as mentioned above committed with premeditation.	22
	[c]	Where the crime is committed with exceptional violence and or with brutality of death of victim due to burns.	25
	[d]	Murder with rape	28

Category No.	Sub Category.	Categorization of Crime.	Period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off period.
6		MURDER FOR SERIOUS OFFENCES.	
	[a]	Murder committed by Gangsters, Contract killers, Racketeers etc.	28
	[b]	Persons already convicted for life and is convicted again for murder.	30
	[c]	Convict awarded more than one life sentence and sentences running concurrently.	30
	[d]	Prisoners whose death sentence has been commuted to life imprisonment.	30

The caption for Category No.2 is “Offence relating to crime against women and minors”. On the other hand, Category 6 is captioned as “Murder for serious offences”, in which Sub-category [c]

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is carved out that as convict awarded more than one life sentence and sentences running concurrently.

7. True as per Category 6[c], the petitioner is a convict awarded more than one life sentence, but, one cannot forget that the framers have carved out a separate category for the very offence of murder with rape. We could have accepted the interpretation made by the learned A.P.P., if both categories were placed under one caption. However, we find that a specific Category No.2 is created to deal with the convicts particularly who are relating to crime against women and minors. Herein admittedly the petitioner has been convicted for the crime against women and minor under which a sub-category of murder with rape has been made out. On the other hand, Category No.6 is for the convict who have been sentenced for the offence of murder for serious offences. We have gone through Sub-categories [a] and [d] of Category No.6, which conveys that serious offence of murder have been categorized therein. The placement of offence of murder with rape is separately placed in another category,

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which according to us cannot be put in Category No.6, which is meant for serious offences only. Merely, the petitioner has been convicted for more than one life sentence, he cannot be placed in the category as claimed. For dealing with the convicts of murder with rape, the separate category has been specified in Category No. 2 and according to us, the petitioner would fall in Category No.2[d] of the guidelines dated 15.03.2010. In view of that, Writ Petition is allowed and disposed of. The impugned order dated 12.04.2023 is quashed and set aside. We direct the respondent Authority to hold that the petitioner's case falls in Category 2[d] of the guidelines dated 15.03.2010, and take appropriate action in the matter.

8. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE

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