



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

CRIMINAL WRIT PETITION NO.252 OF 2024

Abhisekh Virendra Dube Convict No.C/87 Vs. State of Maharashtra Through The Secretary Home
Department and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms Shweta Chavhan, Advocate for the applicant/s
Ms N.R. Tripathi, A.P.P. for the non-applicant Nos.1 and 2/State

**CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.**
DATE : 19.07.2024.

1. The applicant-convict seeks direction for premature release after 26 years with remission.
2. Heard the learned Advocate for the applicant and learned APP for the State.
3. In order to cut short, it can be submitted that both the Advocates have argued in support of their respective contention. The learned APP is relying on the affidavit-in-reply filed on behalf of the non-applicant No.1.
4. The applicant is undergoing imprisonment for life for the offence punishable under Sections 302 and 364A of the IPC. He was arrested on 03.02.2007 and since then he is in custody. He was tried in Sessions Case No.144 of 2007 by judgment and order dated 03.09.2011. He has been convicted for both the offences to suffer imprisonment for life. It is contended by the learned Advocate for the applicant that taking into consideration

the Government Resolution (GR) dated 15.03.2010 which was applicable to the applicant when the Superintendent of Open Prison, Gadchiroli forwarded the proposal of premature release of the applicant for the opinion of the learned trial Court. The opinion was taken by the learned District Judge-I and Additional Sessions Judge, Thane, stating that since the applicant was not previously convicted, he would fall in category 4(e) of GR dated 15.03.2010. However, by order dated 23.11.2023, the non-applicant No.1 categorized him in 6(c) of the G.R. dated 15.03.2010. The actual imprisonment of the applicant is more than 17 years and including remission, he has completed more than 25 years in prison. Whenever, he was released on parole or furlough leave, he has reported back to the prison in time. The learned Advocate for the applicant therefore, says that the State has wrongly categorized him in category 6(c). He would fall in category 4(e), which says that convict would be entitled to get released after 26 years with remission.

5. As per the affidavit-in-reply by the non-applicant No.1, it is stated that the appeal preferred by the applicant bearing No.1339 of 2011 was dismissed by the Principal Seat of this Court on 17.01.2017. A proposal of the applicant was placed before the Advisory Board constituted as per the provisions of the Maharashtra Prison (Review of Sentences) Rules 1972) after the applicant had undergone 14 years of actual imprisonment.

6. The applicant has been convicted for murder of a minor boy aged six years after kidnapping him. When two life imprisonment sentences are awarded, then category 6(c) would

be applicable. As per the chart given in paragraph 11 of the affidavit-in-reply, the applicant has already undergone the term of actual imprisonment as on 30.06.2024 would be 26 years 5 months and 28 days. As per the order passed on 23.11.2023 by the Home Department, the applicant would be released after completion of 30 years with remission.

7. At the outset, we would like to say that when the opinion of the trial Court was taken by the State Government, which was in response to the direction given by the Three Judge Bench of the Hon'ble Supreme Court in *State of Haryana and Ors. Vs. Jagdish*, AIR 2010 SC 1690, then the said opinion ought to have been considered in the order dated 23.11.2023 by the non-applicant No.1. That opinion is not taken as a formality and if the Government is not agreeing to the said opinion, then the reasons will have to be assigned for not accepting the said opinion. We do not find any such reason in the impugned order dated 23.11.2023. Category 4(e) as per the GR dated 15.03.2010 is for categorization of crime "Murder committed with exceptional violence brutality/kidnapping -- (other two categories are not relevant for us) and the period of imprisonment to be undergone including remission subject to minimum of 14 years of actual imprisonment including set off period is said to be 26. Category 6(c) categorizes crime "Convict awarded more than one life sentence and sentences running concurrently" for which the period of imprisonment to be undergone including remission subject to minimum of 14 years of actual imprisonment including the set off period is prescribed

as 30 years. Now the question is how the state has interpreted these tow categories. The category 4(e) as aforesaid contemplates murder with kidnapping. Here in this case, a minor boy was kidnapped and murdered was the prosecution story and therefore, conviction is for the offence punishable under Sections 302 as well as 364A of the IPC. Then, why the category 4(e) cannot be considered when the conviction for both the offences has been awarded as life sentence. The question again would be then, what has to be a difference between category 4(e) as aforesaid and 6(c). If both interpretations are possible in the present case, in other words, if the case of the applicant is falling under 4(e) category and category 6(c), then why we should not interpret it beneficial to the applicant, is the question. This aspect has not been answered in the impugned order dated 23.11.2023 and accordingly, we pass following order:

- (i) The writ petition is **partly allowed**.
- (ii) The impugned order dated 23.11.2023 passed by the non-applicant No.1, is hereby quashed and set aside.
- (iii) We relegate the matter to the non-applicant No.1, who should consider the opinion given by the trial Court dated 10.01.2019 and pass reasoned order, within a period of four weeks from today.

The writ petition is disposed of accordingly. No order as to costs.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]