



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

CRIMINAL WRIT PETITION NO.652 OF 2022

- 1) Sunil Ramesh Warthe,
Aged about 40 years, R/o Punoti
Khurd, P.S. Barshitakli, District Akola.
Presently confined in Amravati
Central Jail, Dist. Amravati
Convict No. C-2999

.... Petitioner(s)

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- 1) The State of Maharashtra,
Through Its Secretary, Home
Department, Mantaralaya, Mumbai.
- 2) The Superintendent of Prison, Central
Prison, Amravati Dist. Amravati,
Maharashtra

.... Respondent(s)

Mr. Raju Kadu, Advocate for the Petitioner/s

Mr. M.K. Pathan, APP for the Respondent Nos.1 and 2/State

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

RESERVED ON : 11.07.2024.

PRONOUNCED ON : 30.07.2024.

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J)

1. Heard Mr. Raju Kadu, Advocate for the petitioner and the
learned APP for the State.

2. Rule. Rule is made returnable forthwith. Heard finally by consent of the learned Advocate for the parties.

3. By invoking constitutional powers of this court, the petitioner prays for quashing and setting aside the order dated 10.06.2021 passed by the respondent No.1, who is the competent authority, and to direct the said authority to categorize the petitioner in category No.8(b) of the Government Resolution (GR) dated 15.03.2010 issued by the Home Department, Maharashtra and direct the petitioner to be released after he completes 20 years of actual imprisonment.

4. The learned Advocate for the petitioner submits that the petitioner is undergoing life sentence in Amravati Central Prison as he has been convicted for the offence punishable under Section 376(f) of the IPC by 4th Additional Sessions Judge, Akola on 07.03.2005 in Sessions Trial No.143 of 2004. He has undergone more than 18 years of imprisonment without remission and 22 years including remission.

5. A proposal was moved for his premature release. Even the Additional Sessions Judge, Akola gave opinion that the petitioner can be released after completing 20 years of imprisonment including remission, by communication dated 10.07.021. However, it has been now informed that by order dated 10.06.2021, the respondent No.1 has rejected the proposal of releasing the petitioner prematurely.

6. The learned Advocate for the petitioner submits that the petitioner has right for his case being considered for premature release in terms of the guidelines. The remission relates to liberty and in view of *State of Haryana and Ors. Vs. Jagdish*, AIR 2010 SC 1690, all the circumstances are required to be considered for which categorization is necessary. The respondents have not categorized the petitioner properly. As per the reply, the petitioner has been categorized under GR dated 15.03.2010, Annexure 2. The category 8(c) is for release after 22 years of imprisonment. However, in reply, the State says that since the petitioner has committed heinous offence, the State Government had rejected

premature release of the petitioner by order dated 10.06.2021. The learned Advocate for the petitioner further submits that the said decision is illegal and deserves to be set aside. The learned Advocate for the petitioner relies on the decision in ***Raju s/o Pandurang Bandebuche Vs. State of Maharashtra and another*** (Criminal Writ Petition No.307 of 2020), decided on 13.12.2021 and ***Sudharshan @ Babu Sadashiv Vighne Vs. State of Maharashtra and others*** (Criminal Writ Petition No.629 of 2022), decided on 22.12.2023.

7. The learned APP strongly opposed the petition and relies on the reply of Dr. Jalindar Supekar, Special Inspector General of Police (Prisons) Region, Nagpur. It has been stated that the petitioner has committed one of the heinous crimes and therefore, the proposal has been rejected.

8. At the cost of repetition, we would say that the petitioner stood prosecuted for the offences punishable under Section 376(f) of the IPC and 377 of the IPC, however, it appears that he was convicted for the offence under Section 376 of the IPC and

sentenced to suffer imprisonment for life. However, for Section 377 of the IPC, he has been awarded imprisonment of 10 years. It has been tried to be stated that as the Hon'ble Supreme Court in view of order in Criminal Writ Petition No. 48 of 2014 the convicted prisoners, for committing offence for rape, are excluded for benefit of premature release and therefore, the petitioner was not recommended for being released though as per the GR dated 15.03.2010 he was put in the category 8(c), wherein punishment that has to be undergone is 22 years. In communication dated 30.03.2017 by Research Officer, Additional I.G. (Prisoners) to Principal Home Secretary, he has stated that the Hon'ble Supreme Court has given stay to premature release of the convicts, convicted for offence of rape. No such order has been placed on record that there is such stay. If we consider the impugned order dated 10.06.2021 it states that it is one of the heinous crimes those have been committed, as the rape was on a mentally challenged girl and there was also unnatural sex; however, we find this stand taken by the State is contrary to their own GR dated 15.03.2010. The category 8(c) from Annexure-(II) describes the nature of offence as

“Rape on physically handicapped or mentally retarded girl, pregnant woman, gang rape or custodial rape and the last column for period of imprisonment to be undergone including remission subject to take minimum of 10 years of actual imprisonment including set off period is said to be 22 years”. We are enable to get Section 377 of the IPC in the said Annexure-II. Therefore, when the said category is available for consideration of remission, then the proposal cannot be rejected on the ground that it is one of the heinous crimes. When the said GR also makes provision for convicts who have been convicted for murder, rape with murder, exceptional violence and brutality, kidnapping and murder, and separate category for murder for serious offences, convict awarded more than one life sentence, prisoners whose death sentence has been commuted to life imprisonment and also includes punishments under Special Act, such as TADA, MCOCA AND POTA for murder, then for the offence punishable under Section 376(f) and Section 377 of IPC cannot be said to be the crime which dis-entitle the petitioner for remission, as the case would be covered under the category 8(c) as aforesaid. In fact there is no dispute to

the fact that even the trial Court has recommended in favour of the petitioner, considering him in the category of 8(c), then the State Government ought to have considered the opinion of the trial Court. Time and again we are saying that the State Government only refers to the decision in *State of Haryana and Ors. Vs. Jagdish* (supra) but the opinion sought under the said decision is not considered and no reasons are assigned as to why said opinion is not considered.

9. The petitioner has produced Imprisonment Certificate issued by Kirti Chintamani, Superintendent, Central Prison, Amravati dated 18.04.2024, stating that as on that date the petitioner has undergone 22 years 8 months and 17 days, total sentence with remission. However, on the day when we heard the matter i.e. 11.07.2024, the same officer has given the calculation as 24 years 9 months and 10 days which is excluding 167 days for remission, which is termed as “बाह्य कालावधी”. There cannot be so much of difference in the calculation. It appears that the concerned prison

authority is not paying proper attention when calculations are given before the Court. Accordingly, we pass following order:

(i) The impugned order dated 10.06.2021 is hereby quashed and set aside and we direct the respondent/competent authority to consider the petitioner's case as covered under the category 8(c) of the GR dated 15.03.2010 and issue necessary orders for his premature release within a period of 4 weeks from the date of receipt of the order.

(ii) The respondent/competent authority shall verify the details of the actual imprisonment and remission before making the order.

The writ petition is allowed in the above terms. Rule accordingly. No costs.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]