



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 286 OF 2025

Balu Dattu Pavde
Age 52 years, Occ. Nil,
R/o. Darodi, Pavde Vasti
Tq. Parner, District Ahmednagar
Now in Yerwada Central Prison
Pune, Prisoner No.14154

...Petitioner

Versus

1. The State of Maharashtra
Through Secretary, Home
Department, Mantralaya
Mumbi
2. Inspector General of Prison
Maharashtra State, Pune
3. The Jail Superintendent
Yerwada Centra Prison,
Pune

...Respondents

.....
Mr. Anil M. Gaikwad, advocate for the petitioner
Mr. A. M. Phule, A.P.P. for the respondents
.....

**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.
DATED : 07th APRIL, 2025**

JUDGMENT (PER SANJAY A. DESHMUKH, J.) :-

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at admission stage.
2. This writ petition is directed against the order dated

12.3.2021 passed by respondent No.1 refusing to grant benefit of premature release to the petitioner as per the category 2(c) of the Guidelines of 2010 issued by the State of Maharashtra, as contemplated by Section 432. The petitioner has prayed for direction to the respondents to process and grant remission immediately and release him from the prison as he has completed 24 years of imprisonment with remission.

3. The petitioner contended that in sessions case No. 137 of 2003, he has been convicted by the judgment and order dated 29.11.2004 delivered by the learned Additional Sessions Judge, Ahmednagar. He was sentenced to suffer rigorous imprisonment for life for the offences punishable under sections 302 and 201 of Indian Penal Code, 1960 (for short "I.P.C.").

4. Learned advocate for the petitioner pointed out the grounds of objection raised in the petition particularly the guidelines issued by the state Government in the year 2010 vide Circular dated 15.3.2010 are not properly construed and followed by respondent No.1. The procedure was not followed as laid down in section 432 of the Cr.P.C. The impugned order is passed mechanically, without application of mind and without considering the scheme of remission for granting premature benefits to the petitioner. The respondents directed to

complete 26 years of imprisonment by passing the impugned order.

5. Learned advocate for the petitioner further submitted that the respondents failed to consider the category 2(b) of the Guidelines of State Government of 2010, which are applicable and wrongly held that the petitioner's case comes within the purview of category 2(c) of the Guidelines of 2010. Learned advocate for the petitioner also places reliance on the order of this Court in the case of **Uday Dhaku Sutar vs. State of Maharashtra and another** (writ petition No. 4544 of 2021) decided on 8.9.2022), in which it is held as under:-

“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.”
(Emphasis added)

6. Learned A.P.P. for the respondents strongly opposed the writ petition and submitted that a reasoned order is passed

considering the serious nature of the crime committed by the petitioner. The opinion of the Additional Sessions Judge, Ahmednagar is considered in para 3 of the impugned order. The reasons and findings in the impugned order are legal and correct and no interference is warranted. Therefore, there is no substance in the grounds of objections raised in the writ petition by the petitioner. It is lastly prayed to dismiss the writ petition.

7. Perused the contents of the writ petition and the affidavit in reply filed by the learned A.P.P. on behalf of the respondents.

8. It would be relevant to refer to the para 43 of the judgment of Hon'ble Supreme Court in the case of **State of Haryana vs. Jagdish, reported in (2010) 4 SCC 216**, in which it is observed as under:

"43. The right of the respondent prisoner, therefore, to get his case considered at par with such of his inmates, who were entitled to the benefit of the said policy, cannot be taken away by the policy dated 13.08.2008. 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. 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 pre-mature 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 pre-mature release, he should be given benefit thereof."

9. Category 2 of the Guidelines 2010, reads as under:-

"Category No.	Sub category	Categorization of Crime	Period of imprisonment to be undergone including remission subject to minimum of 14 years of actual imprisonment including set off period.
2		OFFENCES RELATING TO CRIME AGAINST WOMEN AND MINOR	
	a	Where the convict has no previous criminal history and has committed the murder in an individual capacity in moment of anger and without premeditation.	20 years

	<i>b</i>	Where the crime as mentioned above committed with premeditation	22 years
	<i>c</i>	Where the crime is committed with Exceptional violence and or with brutality or death victim due to burns.	26 years
	<i>d</i>	Murder with Rape	28 years

10. We have perused the contents of writ petition, impugned order, the opinion of the learned Additional Sessions Judge, Ahmednagar and the Guidelines of State Government of 2010. It is not in dispute that the petitioner has completed 24 years of imprisonment. It is not in dispute that the delay of 166 days was caused to him to surrender in the jail when he went on leave in the year 2010, as he was absent to undergo the imprisonment.

11. The facts of the case are that the petitioner herein has committed murder of his paramour, the sister of his wife, who was pregnant from him. The petitioner took the victim in the farm and due to the fear of his defamation in the society he throttled her and committed her murder. He took away her clothes and concealed the same. Thereafter, he tied her dead body with a stone and then thrown it in a well.

12. The learned Additional Sessions Judge, Ahmednagar opined that it is brutal murder. The respondent relied upon the said opinion. The said murder is committed with premeditation. But it is not an exceptional violence or committed with brutality to apply category 2(c) of the Guidelines of 2010. We have considered all the facts and circumstances of the case and law applicable to the case with the Guidelines of 2010. The opinion of the Additional Sessions Judge, Ahmednagar is not acceptable. We are of the view that the case of the petitioner does not fall under the category 2(c) i.e. where the crime is committed with exceptional violence and or with brutality or death of the victim due to burns. However, the case of the petitioner falls under the category of 2(b) i.e. where the convict has no previous criminal history and has committed the murder in an individual capacity with premeditation, for which 22 years of imprisonment is to be undergone. The reasons and decision given by respondent No.1 while passing the impugned order, particularly para 5 are not legal and correct and it is certainly not coming under the category of 2(c) of the Guidelines of 2010. The respondent No.1 has erred in passing the impugned order and failed to apply category 2(b) of the Guidelines of 2010. However, it is clarified that respondent No.1 shall verify the details of the actual imprisonment and exclude 166 days which the petitioner delayed when he went on leave and caused delay to surrender in the jail for undergoing the

imprisonment.

13. In view of above, we hold that the impugned order deserves to be quashed and set aside. It is necessary to give directions to the respondent No.1 to decide the application of the petitioner afresh. The writ petition deserves to be allowed. Hence, the following order:-

O R D E R

- I. Criminal writ petition stands allowed and impugned order is quashed and set aside.
- II. The respondents are directed to comply the process of premature release of the petitioner as early as possible and in any case within two weeks from the date of receipt of copy of this judgment.
- III. Rule is made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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