



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.466 OF 2024

Satish Kondiba Gawali [C/ 275]
Age-44 years, OccU: Nill,
R/o- at present Visapur Open Prison,
District-Aurangabad

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai-400032
- 2) The Superintendent,
Visapur District Open Prison,
ViII Visapur, Dist-Aurangabad.

...RESPONDENTS

...
Ms. Sharda P. Chate Advocate for Petitioner.
Ms. R.P. Gour, A.P.P. for Respondents.
...

**CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATE : 11th MARCH, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed invoking the constitutional powers of this Court to challenge the order dated 1st November

2023 passed by respondent No.1 placing the petitioner in Category No.2(c) of the Guidelines dated 15th March 2010, which prescribes sentence to be undergone for 26 years. The petitioner prays for modification of the said order and to place him in Category 2(b) of the said Guidelines of 2010.

2. Heard learned Advocate Ms. Sharda Chate appearing for the petitioner and learned APP Ms. R.P. Gour for the respondents.

3. Learned Advocate for the petitioner has taken us through the Judgment passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.11 of 2007 decided on 15th October 2009, whereby the petitioner was held guilty of committing murder of his wife and thereby sentenced to suffer imprisonment for life under Section 302 of the Indian Penal Code. Further punishment has been awarded to suffer rigorous imprisonment for three years for the offence punishable under Section 498-A of the Indian Penal Code. Further sentence has also been awarded for the offence punishable under Section 201 of the Indian Penal Code and he has been directed to suffer rigorous imprisonment for three years. All the substantive

sentences are directed to run concurrently. When the proposal for premature release of the petitioner was moved after the completion of twelve years of actual imprisonment, then the opinion from the convicting Court was sought. By opinion dated 24th November 2020 the learned District Judge-3 and Additional Sessions Judge, Ahmednagar had placed the petitioner in Category No.2(b) as per the Guidelines of 15th March 2010. However, while passing the order, respondent No.1 on 1st November 2023, has placed the petitioner in Category No.2(c) of the said Guidelines of 2010. Therefore, the learned Advocate for the petitioner submits that respondent No.1 has not taken into consideration the opinion of the convicting Court and has not adhered to the decision in ***State of Haryana vs. Jagdish, AIR 2010 AIR (SC) 1690***, wherein it is observed that the State has to exercise its powers to remission keeping in views any such benefit to be construed liberally in favour of the convict. She also relies on the decision of the Co-ordinate Bench of this Court in ***Dagdu Janardhan Shinde vs. State of Maharashtra and another*** (Criminal Writ Petition No.979 of 2018, decided on 4th October 2018), whereby even where the death was due to burns, this Court had considered the case under Category No.2(b) of the Guidelines and it was considered that there was

no criminal history of the petitioner therein. Herein this case also there is no criminal history of the present petitioner. She further relies on ***Mangesh S/o Rajaram Sawant vs. the State of Maharashtra and others*** (Criminal Writ Petition No.432 of 2019, decided by this Court on 24th April 2019) wherein also the concerned petitioner was put under Category No.2(a) of the Guidelines and the order of putting him in Category No.3 was quashed and set aside. Further learned Advocate relies on ***Ravikiran Hanumant Shelke vs. State of Maharashtra and another*** (Criminal Writ Petition No.1583 of 2022, decided on 15th June 2023), to which one of the Member of this Division Bench, i.e. **SANJAY A. DESHMUKH, J.** was party, whereby the order of putting the petitioner therein in Category No. 2 (c) was quashed and set aside and the petitioner was put in Category No. 2 (b) of the Guidelines.

4. Learned APP strongly opposed the application and relies on the affidavit of Dr. Jalindar Supekar, Special Inspector General of Police (Prisons), Nashik Region, Nashik, whereby the reasons have been given as to how the State had come to the conclusion that Category No.2(c) of the Guidelines of 2010 would be applicable. Along with the affidavit, copy of the decision in the

criminal appeal filed by the present petitioner has been annexed i.e. Criminal Appeal No.14 of 2010, which was decided by this Court on 4th May 2011, wherein taking into consideration the entire evidence, this Court had dismissed the Appeal. From the Judgments passed by the trial Court as well as the Appellate Court, it is certain that the deceased wife of the petitioner had sustained in all six injuries and the cause of death is "asphyxia due to throttling". Taking into consideration the situs chosen wherein contusions were found, it was on the lateral region of the neck, it can be said that it is a brutal murder. The motive for committing the offence was that the wife was subjected to cruelty by unlawful demand of Rs.1,00,000/- for construction of house. Further the marriage between the present petitioner and his wife was on 20th May 2006 and the murder has taken place on 8th October 2006. That means within a period of five months the murder has been committed by the present petitioner and therefore, the petitioner has been rightly put in the Category No.2(c) of the Guidelines of 2010.

5. At the outset, it is to be noted that the ratio laid down in ***State of Haryana vs. Jagdish***, (supra) will have to be followed by everybody. The question of discretion or having a liberal

approach would come when the case falls in two categories and one of it is in favour of the convict. Everywhere liberal approach is not required to be taken. The State Government has exclusive jurisdiction for premature release, otherwise when the sentence is for imprisonment for life then certainly it has been interpreted by the Hon'ble Supreme Court that it is for the remainder of a convict's natural life. When the exercise of power vested in State under Section 432 of the Code of Criminal Procedure comes, then the State is guided by the guidelines. Those guidelines have been modified periodically. For petitioner who was convicted on 15th October 2009 and whose Appeal came to be decided on 4th May 2011, the guidelines those were applicable, were dated 15th March 2010 and to that effect there is no dispute. Only which category is to be applied, is a question.

6. The decisions by the Co-ordinate Benches of this Court were depending on the facts in each of its case and therefore, *per se* not binding. In ***Dagdu Janardhan Shinde vs. State of Maharashtra and another*** (supra), though the death was due to burns, why he was put under Category No.2(b) is explained in Paragraph No.9 of the Judgment. It is stated that "It was not the case of prosecution that the alleged act has been committed by

the petitioner with pre-meditation. There is no previous criminal history of the petitioner". Further the beneficial provision under the guidelines issued on 11th May 1992 were then made applicable and the period of imprisonment was prescribed as 22 years. The guidelines of 15th March 2010 were considered in Paragraph No.6, but as aforesaid, it was held that for conviction dated 15th July 2003, the guidelines of 11th May 1992 would be applicable. Therefore, the reliance on this decision by the petitioner is misconceived.

7. As regards the decision in ***Mangesh S/o Rajaram Sawant vs. the State of Maharashtra and others***, (supra) is concerned, the death was due to throttling and it is stated that there used to be frequent quarrels between deceased and the petitioner therein. It appears that it was held that the offence was committed without any pre-meditation. Further, in ***Ravikiran Hanumant Shelke vs. State of Maharashtra and another*** (supra), doubt has been raised as to whether a single kick would have proved fatal or the petitioner therein was required to give more than one kick to commit murder of his wife. The deceased had not suffered any external injury and therefore, it was held that it is difficult to observe that the petitioner has committed murder

of his wife with exceptional violence and brutality. Therefore, on the facts of that case, those observations have been made.

8. At the cost of repetition, we would say that within a period of five months of marriage the murder has been committed by subjecting the wife to cruelty. In all six injuries were on the person of the deceased. The sixth injury is fracture of right superior horn of thyroid cartilage. Injury No.1 to 3 are on the lateral region of the neck and injury nos. 4 and 5 are on the arms. Death was asphyxia due to throttling. Further the conviction is also under Section 201 of the Indian Penal Code, which presupposes that it was with pre-meditation. Certainly those acts would then show the brutality or exceptional violence. The learned convicting Judge in fact in the first paragraph, has stated that the offence has been committed in violence and with pre-meditation, still he went to put the petitioner in the Category No.2(b) of the Guidelines dated 15th March 2010, which itself is wrong. Only the offence committed with pre-meditation will not be attracted here taking into consideration the injuries suffered and also the throttling. We are also taking into consideration the fact that the murder is within five months of the marriage, that too for the purpose of dowry or illegal demand and therefore,

the State has rightly put the petitioner in Category No.2(c) of the Guidelines of 2010. We find no illegality or error requiring setting it aside. There is no merit in the present Petition and no case to exercise our constitutional powers.

9. The Writ Petition stands dismissed.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAR25