



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 CRIMINAL WRIT PETITION NO.523 OF 2025

Rajesh @ Faijan Vijaykumar
Gupta @ Samaydin Chaudhari (C-6774),
Age 40 yrs., Occ. Nil,
R/o at present Paithan Open Prison,
Dist. Chhatrapati Sambhajinagar.

... Petitioner

... Versus ...

- 1 The Under Secretary,
Home Department,
State Government of Maharashtra.
- 2 The Superintendent,
Open Prison, Paithan,
Dist. Chhatrapati Sambhajinagar.

... Respondents

...

Mrs. Sharda P. Chate, Advocate for petitioner

Mrs. Priya R. Bharaswadkar, APP for respondent Nos.1 and 2

...

CORAM : SMT. VIBHA KANKANWADI &
SUSHIL M. GHODESWAR, JJ.

DATE : 20th AUGUST, 2025

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

1 Present petitioner challenges the order dated 28th April 2023 passed by respondent No.1, whereby the petitioner has been placed in Category No.6(a) as per the “Guidelines for Premature Release Under the ‘14 year Rule of Prisoners serving life sentence”, dated 15th March, 2010 (Guidelines of 15th March, 2010), issued by the Home Department, Government of Maharashtra, prescribing the petitioner to undergo the imprisonment for 28 years including remissions subject to minimum of 14 years of actual imprisonment including set off period. The petitioner prays that he be put under the Category No.4(d) as per the Guidelines of 15th March, 2010 and 11th April, 2008.

2 Heard learned Advocate Mrs. Sharda P Chate for petitioner and learned APP Mrs. Priya R. Bharaswadkar for respondent Nos.1 and 2. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 The petitioner came to be convicted by learned Additional Sessions Judge for Greater Bombay at Sewree in Sessions Case No.670/2007, by Judgment and order dated 30th July, 2009, whereby the petitioner was convicted for the offence punishable under Section 302 read with Section 34

of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay fine. Set off was granted taking into consideration the custody of petitioner since 3rd February, 2007 till the pronouncement of Judgment. The present petitioner had challenged his conviction by filing Criminal Appeal No.997 of 2009, before the Principal Seat at Bombay, which was heard along with the appeals filed by the co-accused and by order dated 20th November, 2015, all the appeals came to be dismissed. After the petitioner had undergone the actual imprisonment of 14 years, his proposal was taken up for the premature release and after getting the opinion from the convicting Court and from other authorities as per the procedure, the petitioner has been placed under Category No.6(a) of the Guidelines of 15th March, 2010, in view of the impugned order dated 28th April, 2023.

4 Learned Advocate appearing for petitioner is relying on the decision in Criminal Writ Petition No.827 of 2023 dated 13th February, 2024, which is in respect of the co-accused Irfan babu Shaikh, wherein the co-accused was also placed under Category No.6(a), however, taking into consideration all the aspects, the petition came to be partly allowed. The matter was remitted back to the convicting Court for submission of fresh report and then respondent No.1 was directed to take fresh decision.

5 The State is relying on the affidavit by Mr. Vaibhav

Sudhakarrao Agey, Deputy Inspector General of Prisons, Nashik Region, Nashik, wherein he has tried to support the impugned order by saying that the petitioner was under-trial prisoner in another case when he committed murder, for which he was then tried in Sessions Case No.670 of 2007. The murder was committed in Arthur Road Jail, Mumbai and it was the prosecution case that it was a contract killing and therefore, Category No.6(a) of the Guidelines of 15th March, 2010, has been applied.

6 The first and foremost fact is that similar order which was passed against co-accused Irfan Babu Shaikh, in Criminal Writ Petition No.827 of 2023, by order dated 13th February, 2024, the same was set aside by this Court. Of course, the matter was then relegated for seeking fresh opinion by the convicting Court and fresh order, which has been passed as against co-accused Irfan, has not been placed by the respondents. In the affidavit, therefore, we were expecting that clarification ought to have been given in view of the observations by this Court in the matter of Irfan. We are also considering the major difference in the fact in Criminal Writ Petition filed by co-accused Irfan and the present petitioner, which is that, in that case the report appears to have been given on 12.10.2021, by the convicting Court, whereas in the present matter the opinion has been given on 24th July 2018 and it is different. The convicting Court has clearly stated that the

petitioner's case would fall under Category No.4(d) of the Guidelines of 2008 and 2010, which prescribes the period of 24 years imprisonment.

7 If we consider the impugned order dated 28th April 2023, then it refers to the opinion of the convicting Court in Para No.3 i.e. the observations which are not forming part of the opinion given in respect of the present petitioner on 12th October, 2021. Common order in respect of present petitioner, co-accused Irfan and one more co-accused Mohammad Hasan Salim Shaikh has been passed. But it appears that respondent No.1 has considered the opinion given in respect of co-accused Irfan only. Therefore, there is absolutely no application of mind while passing the impugned order dated 28th April 2023, in respect of the present petitioner. In the impugned order, only references have been taken as to what was the conviction awarded, however, respondent No.1 failed to consider that the trial Court as well as this Court in Appeal had not considered that it was the contract killing or there was no finding that the accused persons acted as a gang. If we consider the Judgment in Sessions Case No.670 of 2007, only the first point i.e., "Whether prosecution has proved that the deceased Ali Ajgar Bakar Mehendi met with a homicidal death ?", has been answered 'in the affirmative'. Rest all the points have been answered 'in the negative'. When the prosecution had failed to prove that the murder was committed by the

gangsters/contract killers, racketeers, then the case will not fall under Category No.6(a) of the Guidelines of 2010. At the cost of repetition, we would say that in the impugned order, there is absolutely no reference to the opinion dated 12th October, 2021, given by the convicting Court and therefore, obviously there are no reasons as to why the State is not considering the opinion of the convicting Court in respect of the petitioner. Obtaining the opinion of the convicting Court is not an empty formality. It is the outcome of the decision given in **Union of India vs. Sriharan @ Murugan and others** [(2014) 11 SCC 1], and the Full Bench decision of this Court in **Yovehel Vijaykumar Gouri vs. State of Maharashtra and others** [2020 (6) Mh.L.J. 571]. The Government should not brush aside the opinion of the convicting Court for its own reasons.

8 Category No.4(d) of the Guidelines dated 15th March 2010 or even 11th April, 2008, would prescribe the murder committed by more than one person or group of persons, which would be applicable here. Therefore, the case is made out for exercise of powers of this Court under Article 226 of the Constitution of India. Hence, following order.

ORDER

i) The Writ Petition stands allowed in terms of prayer Clause “b”

and “c”.

ii) Respondent Nos.1 and 2 are directed to modify the order and place the petitioner in Category No.4(d) of the Guidelines of 15th March, 2010, and such order be passed within a period of one month from today.

(SUSHIL M. GHODESWAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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