



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

**CRIMINAL WRIT PETITION NO.917 OF 2025**

Ganesh @ Deepak S/o Shahji Patil

**.. Petitioner**

***Versus***

1. State of Maharashtra,  
Through Superintendent of Jail,  
Open Jail Visapur ,  
Dist. Ahilyanagar.
2. Secretary,  
Home Department (Prison), Mumbai.

**.. Respondents**

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Mr. Rupesh A. Jaiswal, Advocate for the petitioner.

Mr. G. A. Kulkarni, APP for the respondents/State.

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**CORAM : SMT. VIBHA KANKANWADI &  
HITEN S. VENEGAVKAR, JJ.**

**DATE : 18 SEPTEMBER 2025**

**ORDER :**

. Present writ petition has been filed to challenge the order dated 08.04.2025 passed by respondent No.2, thereby placing the petitioner under category 1(d) of the Guidelines by Government Resolution dated 11.04.1992 and category 4(e) of the Guidelines dated 15.03.2010 (for short "Guidelines of 2010"), stating that the petitioner will have to undergo 26 years of imprisonment for premature release. The petitioner

also prays that he be placed in category 2(b) of Guidelines of 2010 in view of the decision in ***State of Haryana and Ors. vs. Jagdish and Harpal, [2010 AIR SC 1690]***.

2. Heard learned Advocate Mr. Rupesh A. Jaiswal for the petitioner and learned APP Mr. G. A. Kulkarni for respondents/State.

3. Learned Advocate for the petitioner has taken us through the documents, namely, the impugned order, the guidelines and the judgment of this Court in Criminal Appeal No.652 of 2004 with companion matters decided by this Court on 21.07.2011. He submits that when there is a specific category even as per the Guidelines dated 11.05.1992 regarding “murders relating to sexual matters or arising out of relations with women, dowry deaths and other form of bride killing etc.”, in fact, the facts of the case could not have been under category 1(d) of the Guidelines dated 11.05.1992. In the guidelines of 2010, there is a specific category “offences relating to crime against women and minor” and as the facts disclosed that this Court as well as the trial Court held that the crime has been committed i.e. murder has been committed with premeditation by accused Nos.1 to 3 and the present petitioner was accused No.3 before the trial Court. He also points out that along with the reply, the respondents have placed the judicial appraisal taken on 03.10.2023 from Additional Sessions Judge, Satara that he had placed

the petitioner in category 2(b), however, it was stated to be under Guidelines of 2008, which are similar to category 2(b) of Guidelines of 2010. There is no mention about as to why the judicial appraisal was not considered by the State in the impugned order dated 08.04.2025.

4. Learned APP strongly opposes the petition and submits that taking into consideration the facts of the case and also the fact that accused No.2 had completed his incarceration of 26 years as well as beneficial interpretation, the order dated 08.04.2025 places the petitioner in category 1(d) of Guidelines dated 11.04.1992 and 4(e) of Guidelines of 15.03.2010. Learned APP relies on the affidavit of Smt. Aruna Mugutrao, the Incharge Deputy Inspector General of Prison, Nashik Region, Nashik.

5. For placing a convict in the category as per the guidelines, the facts are required to be considered. In fact, those guidelines are given under the powers to the State under Section 432 of the Code of Criminal Procedure i.e. for remission of sentences. Certainly, the State is bound by the Guidelines those have been given in ***Jagdish and Harpal (Supra)***, but then at the same time the beneficial interpretation is required to be interpreted when there are two or more guidelines those would be issued in or around the journey of the case of a particular convict. Whatever is beneficial is then required to be given. Further, we

would state that merely because co-accused has undergone the incarceration of 26 years, it cannot be automatically applied to the petitioner. The order that is passed should be befitting under the provisions of law and various decisions of the Hon'ble Supreme Court as well as this Court.

6. The first and the foremost fact that is required to be noted is that taking the judicial appraisal from the convicting Court is mandatory and accordingly, it was taken from the convicting Court i.e. Additional Sessions Judge, Satara on 03.10.2023. After taking note of the facts of the matter, the concerned Court has opined that the case of the petitioner would fall under category 2(b) of Guidelines of 2008 framed by the State Government for premature release of the prisoner. It was expected from the State Government while passing the impugned order that they should refer to the judicial appraisal and give reasons as to why they are deviating themselves from the opinion expressed by the convicting Court. The learned Advocate for the petitioner relies on the observation of this Court in ***Bashiruddin @ Munna s/o Nsiruddin Kazi vs. State of maharashtra and another, [Criminal Writ Petition no.174 of 2025 decided on 16.04.2025]***, to which one of us i.e. [SMT. VIBHA KANKANWADI, J.] was party, wherein this court has observed that :-

“6. The first and the foremost fact to be noted is that while putting a convict under category as per the guidelines for premature release, all the authorities whose opinions have been called will have to go through the judgment of the Trial Court, Appellate Court (if any) or even of the Hon’ble Supreme Court, if any. The categories for the premature release as per Sections 432 and 433 of the Code of Criminal Procedure are made on the basis of the categorization of the crime. The opinion of the convicting Court is not an empty formality. In the impugned order only reference has been taken, but it is not stated as to why the Government is not considering the said opinion. We are aware of the fact that such opinion is not binding on the State Government, but still when such opinion is taken as per the directions in **State of Haryana and Ors. vs. Jagdish and Harpal, [2010 AIR SC 1690]**, then we reiterate that it is not an empty formality.”

7. Independently, we would take note of the facts of the case as they are appearing in the judgment of this Court in Criminal Appeal No.652 of 2004 with companion matters. The present petitioner was the appellant in Criminal Appeal No.627 of 2004. By judgment dated 21.07.2011, the Division Bench of this Court had partly allowed the appeals by setting aside the conviction for the offence punishable under Section 120-B of Indian Penal Code, but their conviction for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and Section 201 read with Section 34 of Indian Penal Code was maintained. The present petitioner who was the original accused No.3 was the friend of original accused No.1, who was the husband of the deceased. This indicates

that independently there may not be the motive, but then the common intention to eliminate the wife of the friend was there as against the petitioner. The murder was by strangulating, as there were two ligature marks. Therefore, taking into consideration the date of the decision in appeal, the beneficial provisions of Guidelines of 2010 ought to have been applied and accordingly, they were applied simultaneously in the impugned order also, but a wrong category has been mentioned. Category 4 of Guidelines of 2010 is for murders for other reason, but there is specific category 2 which deals with offences relating to crime against women and minors. For accused No.1 it cannot be stated that the category would be different and for the present petitioner i.e. the friend of the husband of the deceased, the category would be different and therefore, when there is a specific category i.e. category 2(b) of the Guidelines of 2010 where the crime as mentioned above committed with premeditation, the said category would be applicable. Under the said circumstance, the impugned order deserves to be set aside. We therefore proceed to pass the following order :-

### **ORDER**

- I) The Writ Petition stands allowed.
- II) The impugned order passed by respondent No.2 on 08.04.2025 stands quashed and set aside.

III) Respondent No.2 is directed to place the petitioner in category 2(b) of Guidelines dated 15.03.2010. Such order be passed within a period of 15 days from today.

**[ HITEN S. VENEGAVKAR ]**  
**JUDGE**

**[ SMT. VIBHA KANKANWADI ]**  
**JUDGE**

scm