



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 CRIMINAL WRIT PETITION NO.1192 OF 2025

Prakash Sakha Vasave,
Age 62 yrs., Occ. Convict,
R/o At present confined in Open Jail,
Harsul, Chhatrapati Sambhajnagar.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through Superintendent,
Open Jail, Harsul,
Tq. & Dist. Chhatrapati Sambhajnagar.
- 2 Secretary,
Home Department (Prison),
Mumbai.

... Respondents

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Mr. R.A. Jaiswal, Advocate for petitioner
Mr. N.R. Dayama, APP for respondent Nos.1 and 2

...

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

DATE : 25th SEPTEMBER, 2025

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

1 Present petitioner challenges the order passed by respondent

No.2 dated 09.07.2025, whereby he was placed in Category – 7(a) of guidelines dated 11.05.1992 and Category – 6(d) as per guidelines dated 15.03.2010, which prescribes period of 30 years for release. The petitioner also prays that he should be put in Category 2(b) as per the guidelines dated 11.05.1992 and Category 2(b) of guidelines dated 15.03.2010.

2 Heard learned Advocate Mr. R.A. Jaiswal for petitioner and learned APP Mr. N.R. Dayama for respondent Nos.1 and 2.

3 Learned Advocate appearing for petitioner submits that if we consider Category – 7 related to death sentence commuted to life imprisonment and Category – 6(d) is also prescribing the period of release for prisoner whose death sentence has been commuted to life imprisonment. However, in this case, the facts are that petitioner was awarded death sentence by learned Sessions Court, Nandurbar on 30.04.2002 for the offence punishable under Section 302 of the Indian Penal Code. The said Judgment was challenged before this Court in Criminal Appeal No.371/2002, which should have been also along with confirmation case, but this Court allowed the appeal and petitioner and two co-accused all of them were acquitted by Judgment and order dated 11.10.2002. Thereafter, the State had preferred the appeal challenging the acquittal of present petitioner before Hon'ble

Supreme Court vide Criminal Appeal No.654 of 2004. By Judgment and order dated 21.01.2009 the appeal was partly allowed and present petitioner was held to be guilty of the offence punishable under Section 302 of the Indian Penal Code and was sentenced to imprisonment for life. Therefore, there was no question of death sentence commuted to life imprisonment in this case. Further, reliance has been placed on the decision of this Court in **Raosaheb Ramchandra Thombare vs. The State of Maharashtra and another** in Criminal Writ Petition No.673 of 2017 dated 04.07.2017 and **Kamlakar Tanaji Shinde vs. The State of Maharashtra and another** in Criminal Writ Petition No.437 of 2025 dated 16.06.2025, wherein it was observed that the said category of commuting death sentence to life can be exercised only when the Government exercises its powers under Section 433 of the Code of Criminal Procedure. Here, the State has not exercised any such powers and, therefore, respondent has applied wrong category. The judicial appraisal herein taken cannot be said to have been given by applying mind when there is already law cleared on this point in **Raosaheb Thombare's** (supra) case. He prays that petitioner be placed in Category – 2(b) of the guidelines dated 11.05.1992 as well as 15.03.2010.

4 Learned APP supports the order and submits that no interference is required. In alternative, he submits that Category – 2(b) will not be

applicable taking into consideration role played by petitioner and the decision that has been rendered by Hon'ble Supreme Court. He submits that at the most, the case would fall under Category – 4(e) of the guidelines dated 15.03.2010 i.e. for murder for other reasons when the crime is committed with brutality.

5 Taking into consideration the fact that trial Court had passed death sentence and then this Court acquitted petitioner, but then Hon'ble Supreme Court reversed the acquittal by holding present petitioner guilty of committing offence under Section 302 of the Indian Penal Code and sentencing him to imprisonment for life cannot be said to be an act of committing death sentence into life sentence. The position of law in this circumstance has been already clarified in **Raosaheb Thombare** (supra) and then it was elaborated in this Court in **Kamlakar Shinde** (supra). The difference between powers under Section 432 and 433 of the Code of Criminal Procedure have not been considered properly by respondent No.2 while passing the impugned order dated 09.07.2025 and, therefore, the said order deserves to be quashed and set aside to the extent of placement of petitioner in Category – 7(a) and 6 (d) of the two respective guidelines.

6 Now, the further question would be, under which category the

petitioner would fall ? The facts of the case are that one Jaitubai was sister of present petitioner and niece of original accused No.3. Jaitubai was married to one Madhukar, who was murdered. PW 6 Alpesh was the son of Jaitubai and Madhukar and PW 5 Hema was their daughter. It is stated that Madhukar had brought one Ramabai, a married woman and had kept in his house. The first husband of Ramabai came along with 15 – 20 persons to Madhukar on 15.07.2001 and as per the custom prevailing in their community known as “Zagda System” Madhukar paid amount of Rs.5,051/- i.e. the compensation to the first husband, then Madhukar was allowed to marry Ramabai. Because of Ramabai the married life of Jaitubai was disturbed and, therefore, present petitioner and co-accused were not happy. Further facts of the case are that around 6.30 p.m. on 16.07.2001 Madhukar gave alarm to save him, thereupon the neighbouring relatives gathered. Accused Prakash went inside the house and brought two axes, kept one with him and gave another to present petitioner. Accused No.3 caught hold of legs of Madhukar by means of rope. Accused No.1 cut the left hand and right foot. Present petitioner inflicted axe blows on right eyebrow and also near the left ear of Madhukar. The blow was with such a force that the blade of the axe stuck into the head of Madhukar and handle of the axe was broken, then the present petitioner had brought knife from the house and inflicted blows on the back of Madhukar. In presence of relatives Madhukar was

brutally assaulted. His arms were severed by means of axe i.e. how the murder appears to have been committed and it was so held by Hon'ble Supreme Court also and, therefore, learned APP is rightly pointing out that the case would fall in Category – 4(e) i.e. murders for other reasons where the crime is committed with brutality and the period is 26 years. The matter will not come under the category for murders arising out of land dispute, family feuds, family prestige and superstition, because the brutality is not getting covered in Category – 3. We, therefore, partly allow the writ petition. Hence, following order.

ORDER

- i) The Writ Petition stands partly allowed.
- ii) Order passed by respondent No.2 dated 09.07.2025 placing the petitioner under Category – 7(a) of guidelines dated 11.05.1992 and Category – 6(d) as per guidelines dated 15.03.2010 is quashed and set aside.
- iii) We direct respondent No.2 to place the petitioner in Category – 4(e) of the guidelines of 15.03.2010.
- iv) Such order be passed within a period of 15 days from today and further consequences will follow.

(HITEN S. VENEGAVKAR, J.)
agd

(SMT. VIBHA KANKANWADI, J.)