



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1210 OF 2025

Vivek S/o. Buddhinath Mishra
(C-5779)

Age : 39 years, Occ. : Convict,

At present Confined in Open Jail

Paithan, Dist. Chhatrapati Sambhajnagar. **... PETITIONER**

...VERSUS...

1. State of Maharashtra
Trough Superintendent of Jail,
Open Jail Paithan,
Dist. Chhatrapati Sambhajnagar.

2. Secretary,
Home Department (Prison),
Mumbai.

... RESPONDENTS

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- Mr. Rupesh Anil Jaiswal, Advocate for the Petitioner
 - Mr. A. S. Shinde, APP for Respondent/s - State
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**CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL-JADHAV, JJ.**

DATE : OCTOBER 01, 2025

J U D G M E N T [Per Nitin B. Suryawanshi, J.] :

. Rule. Rule made returnable forthwith. Heard finally at the admission stage.

2. The petitioner challenges the order dated 23.05.2025 passed by respondent no. 2 thereby placing the petitioner under category 4(e) of the Government Resolution dated 15.03.2010.

3. The Additional Sessions Judge-3, Nashik convicted the petitioner under Sections 302 and 307 of Indian Penal Code (for short, "**IPC**") in Sessions Case No. 104 of 2010 and sentenced him to suffer life imprisonment under Section 302 and ten years imprisonment under Section 307 of IPC. Till date, the petitioner has completed 15 years and 3 months of imprisonment. Since the petitioner is categorized under clause 4(e) of the Government Resolution dated 15.03.2010, he has to undergo 26 years of actual imprisonment.

4. Heard learned advocate for the petitioner and learned APP for State.

5. Learned advocate for the petitioner, by relying upon the citations **(i) Rajaram Patil Vs. State of Maharashtra¹ (ii) Vitthal Pundalik Zendge Vs. State of Maharashtra² (iii) Bilal Bashid Shaikh Vs. State of Maharashtra And Another³ (iv) Bashiruddin @ Munna S/o. Nasiruddin Kazi Vs. State of Maharashtra And Another⁴** submits that taking into consideration the injuries suffered by the deceased, it cannot be said that the petitioner had resorted to exceptional violence while committing the murder. According to him, the petitioner ought to have been categorized under clause 4(b) of the said Government Resolution. He, therefore,

1 1997(99) Bom.L.R. 98

2 Mh.L.J.(Cri.) 264

3 Criminal Writ Petition No. 4721 of 2021

4 Criminal Writ Petition No. 174 of 2025

submits that the impugned order is liable to be quashed and set aside, and the petitioner be directed to be categorized under clause 4(b) and released on completing 22 years of incarceration.

6. Learned APP strenuously opposed the petition by relying upon the order passed by the District and Sessions Judge and the report of the Advisory Committee, which recommended that the petitioner be categorized under clause 4(e). He submits that there is no merit in the petition and that the same is liable to be dismissed.

7. For ready reference the relevant clauses 4(b) and 4(e) of the Government Resolution dated 15.03.2010 are reproduced herein below :

“4(b) Murder committed with premeditation, or a person having criminal history

4(e) Murder committed with exceptional violence / brutality / kidnapping. Murder committed by dacoits and robbers in the act of committing dacoities and robberies. Murder Committed by bootleggers, gamblers, flesh traders, etc.”

8. Record indicates that petitioner assaulted deceased and his brother with iron rods. The deceased suffered fracture to the frontal bone and skull bone. There was laceration to the brain with intra-cerebral bleeding. Because of the said assault, deceased died on the spot. In the same incident petitioner also assaulted the

brother of the deceased, who has also suffered grievous injuries over head and nose, due to which his left side is paralysed and he has lost his memory. Therefore, his evidence could not be recorded in the Trial Court.

9. These facts are sufficient to indicate the brutality of attack made by the petitioner which resulted into murder and attempt to commit murder. One person has lost life and the life of the other has become miserable and he is in vegetative condition.

10. In the backdrop of the aforesaid facts, we are of the considered view that the petitioner has committed murder and attempt to commit murder with exceptional violence and brutality and hence he is rightly categorised under clause 4(e).

11. Considering the above facts we find no merit in the contention of the petitioner that his case does not fall in category 4(e) but falls under category 4(b).

12. Learned District and Additional Sessions Judge, Nashik has by assigning cogent reasons rightly categorised petitioner under clause 4(e). The Advisory Committee has also supported the categorisation of the petitioner under clause 4(e) by giving reasons. We do not find any illegality or perversity in the orders passed by them.

13. In **Rajaram Patil (Supra)**, this Court observed as under :

“4. Every murder is a result of some kind of violence. Use of weapon or blows on the vital part by itself cannot be termed to be an exceptional violence. Such a violence would be ordinary violence for committing murder. It appears that the State Government wanted to create a separate category of murders in which there is an exceptional violence or which show the perversity of mind. In a peace loving society, every murder is bound to shock the members of the society but the exceptional violence creates tremors of shock and indignation. We do not wish to give examples which amount to exceptional violence but suffice it to say that, the present case is not one which can be labelled as a case of exceptional violence. Though every offence of murder is creation of an ill-mind, perversity is something more than that. Perverse individuals may act in a fashion in committing the murder as would show that depravity of balance of mind. We do not see anything in the acts committed by the present petitioner which show any perversity in his mind. The question as to whether there is an exceptional violence or there is perversity in a particular case will have to be decided on the basis of the facts and circumstances of that case and no yardstick of universal application can be available for this purpose.”

14. Applying the aforesaid ratio to the facts of the present case, according to us, the brutal assault by the petitioner on the

deceased and Ajay shows perversity of mind and the manner of assault reflects depravity of balance of mind of the petitioner.

15. In all citations relied upon by the petitioner, it is observed that each case will have to be decided on its own facts and circumstances. Therefore, the citations are of no help to the petitioner.

16. For aforestated reasons, we find no merit in the challenge raised by the petitioner. The petition is, therefore, dismissed. Rule discharged.

[VAISHALI PATIL-JADHAV, J.] [NITIN B. SURYAWANSHI, J.]