



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

24 CRIMINAL WRIT PETITION NO.1993 OF 2024

Bapu Santosh Rajput (Patil),
Age 45 yrs., Occ. Nil – Convict No.12822,
R/o At Present in Central Prison,
Nashik, Dist. Nashik.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through Under Secretary,
Home Department,
Mantralaya, Mumbai.
- 2 The Inspector General of Prisons,
Maharashtra State, Pune.
- 3 The Superintendent,
Central Prison, Nashik,
Dist. Nashik.

... Respondents

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Mrs. Bharati B. Gunjal, Advocate for petitioner

Mr. A.M. Phule, APP for respondent Nos.1 to 3

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CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 28th JANUARY, 2025

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

1 Present petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of India and under Section 482 read with Section 433-A of the Code of Criminal Procedure, 1973. The petitioner, who is a convict, challenges the order dated 01.06.2018 passed by respondent No.1, thereby putting him in category 4(d) as per the guidelines/Government Resolution dated 15.03.2010 issued by respondent No.1. According to petitioner, he ought to have been considered under category 3(b) of the said guidelines.

2 The fact which is not in dispute is that petitioner faced the trial in Sessions Case No.121/2002 before 2nd Adhoc Additional Sessions Judge, Jalgaon, for the offence punishable under Sections 147, 148, 302, 324, 325 read with Section 34 of the Indian Penal Code, 1860 and under Section 4 of the Arms Act. He came to be convicted by Judgment and order dated 04.08.2004 along with two more accused, for the offence punishable under Sections 147, 148, 149 read with Section 302 of the Indian Penal Code. The maximum sentence that was awarded was to suffer imprisonment for life and pay fine of Rs.5,000/- (Rupees Five Thousand only), in default of the same to undergo rigorous imprisonment for six months. He was under trial prisoner

and, therefore, set off was granted under Section 428 of the Code of Criminal Procedure. They were acquitted for the offence under Section 4 punishable under Section 25 of the Arms Act. Present petitioner was arrested on 21.05.2002 and since then he was in jail.

3 Learned Advocate for petitioner vehemently submits that the category that has been applied by respondent No.1 for the premature release of petitioner is wrong. The guidelines/Government Resolution dated 15.03.2010 was considered by respondent No.1, though the conviction in the matter was on 04.08.2004. Respondent No.1 ought to have applied category 3 of the said guidelines, which is meant for offences (murders arising out of land dispute, family feuds, family prestige and superstition) and sub category (b) prescribes crime committed as above with premeditation, either individually or by a gang and then the period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off period is given as 22 years. From the perusal of prosecution story, it can be seen that the crime is alleged to have been committed by a gang and with premeditation. The State Government has wrongly applied 4(d) of the said guidelines, which prescribes period 24 years. Therefore, the impugned order deserves to be set aside.

4 Learned APP is relying on the affidavit-in-reply of Dr. Jalindar Dattatraya Supekar, the Special Inspector General of Police (Prison), Nashik Region, Nashik, wherein the details have been given, in which additionally he states that petitioner was released on Covid-19 parole leave but the petitioner has committed another offence under Section 302, 303 read with Section 34 of the Indian Penal Code, which is registered with Jalgaon Taluka Police Station bearing Crime No.20/2021. The case is subjudice before learned Additional Sessions Judge, Jalgaon in Sessions Case No.112/2022. He has given details as to how many times the petitioner has surrendered late. The account that has been given states that he has surrendered late by 527, 59, 359, 1, 4 days than the date of his scheduled surrender. This aspect is also required to be considered by the State. In his affidavit respondent No.2 has stated that proposal in respect of petitioner's premature release was processed. Opinion of the Superintendent of Police, Jalgaon was sought on 13.10.2016, then the opinion of District Magistrate, Jalgaon was sought on 21.10.2016, opinion of learned Additional Sessions Judge, Jalgaon was sought on 17.11.2017, which is as per the guidelines of Hon'ble Supreme Court. Thereafter, the Government has taken decision to place him in category 4(d) of the said guidelines dated 15.03.2010 as that category is for 'MURDERS FOR OTHER REASONS' and the murder is committed by more than one person/group of persons. Category 3(b) of the said guidelines will

not be applicable as the said category is for 'MURDERS ARISING OUT OF LAND DISPUTE, FAMILY FEUDS, FAMILY PRESTIGE AND SUPERSTITION'.

Learned APP, therefore, submits that case is not made out for interference.

5 We agree to the opinion of the State. We are required firstly to consider the prosecution case and how the offence was stated to have been committed and what was exactly held by trial Court. In the present case the prosecution had come with a case that the informant used to run a Pan Stall in village Pimprala. He closed his Pan Stall as usual around 10.30 p.m. on 15.05.2002. His friends were along with him at that time including Sachin Patil, who is deceased. They all decided to go for dinner in Hotel Bansi in village Paladhi. When they were returning after dinner, they had stopped near the Pan Stall near Hotel Jaibhole around 11.30 p.m. One auto rickshaw came there and from auto rickshaw accused Santosh, Sanjay and 3-4 persons got down. They were armed and they charged deceased Sachin. Blows were inflicted. When others tried to intervene, they were also assaulted. Deceased Sachin sustained multiple bleeding injuries. At that time, one police on duty at petrol pump arrived along with another policeman and all the injured were taken to Civil Hospital, Jalgaon, where the Medical Officer declared Sachin dead. Prosecution story further reveals that all the accused came to be arrested, seizure was effected, statements of witnesses were recorded and

after completion of investigation charge sheet was filed. In all 16 witnesses have been examined and it is held by the trial Court that the accused persons (charge sheet was against six persons) had formed unlawful assembly and being armed with dangerous weapons accused Nos.1, 3 and 4 had caused murder of Sachin and injuries to other witnesses. The *mens rea* that is stated to have been proved before the trial Court as per the Judgment and order is that on the day of Akshay tritiya cards were played and at that time deceased Sachin had slapped present petitioner. In anger by preparing him to kill the murder has taken place. Definitely, there appears to be premeditation, but the said murder cannot be said to be arising out of land dispute, family feuds for family prestige or superstition. Only for category No.3 has been carved. But then for 'murders for other reasons' category 4 is mentioned and in the said sub category (d) provides for categorization of crime "Murder committed by more than one person/group of persons" and the period that is prescribed is 24 years. Thus, the impugned order cannot be said to be illegal or erroneous. There is no merit in the present writ petition. Therefore, the writ petition stands dismissed.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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