

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

2 CRIMINAL WRIT PETITION NO. 2004 OF 2024

KHAWAKASH @ KHAWACHYA GOPINATH KALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Mr. Bhadge Sopan Paruba
APP for Respondent/State : Mr. A. D. Wange
...

**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATED : 20th FEBRUARY 2025

PER COURT :-

1. Present Writ Petition has been filed challenging the order dated 31.07.2024 passed by respondent No.2 placing the petitioner in category 4(e) of the Government Resolution No.RLP No.1006/CR621/PRS-3 dated 15.03.2010. It is the contention of the petitioner that he ought to have been placed in the category 4(a) or 4(b) of the said guidelines.

2. Heard learned Advocate Mr.Paruba for the petitioner and perused the affidavit in reply of Dr.Jalindar Supekar, the Special Inspector General of Police (Prisons), Central Region, Chhatrapati Sambhajinagar, heard learned APP and also perused the opinion given by the convicting Court i.e. District Judge-1 and Additional Sessions Judge, Shrirampur District Ahmednagar dated 30.03.2021.

3. Learned Advocate for the petitioner submits that the petitioner who was the sole accused faced trial in Sessions Case No.33 of 2008 before Additional Sessions Judge, Shrirampur, District Ahmednagar for the offences punishable under Sections 302 and 394 of the Indian Penal Code. By judgment and order dated 22.12.2010, the petitioner was held guilty of committing both the offences and was sentenced to suffer imprisonment for life till death and to pay fine of Rs.500/- in default to suffer further simple imprisonment for a period of one month for the offences punishable under Section 302 of the IPC. He was also convicted and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.500/, in default, to suffer further simple imprisonment for a period of one month for the offence punishable under Section 394 of the IPC. Both the substantive sentences of imprisonment were directed to run concurrently and the set off was granted to him since he was in jail since 21.04.2008. The petitioner had then challenged the said conviction before this Court in Criminal Appeal No.15 of 2011. By judgment and order dated 10.04.2012 the appeal was dismissed. The petitioner had then again approached this Court in Criminal Writ Petition No.312 of 2023 and by order dated 10.08.2023 the Petition came to be allowed and words “till death” appearing in the order of sentence passed by the Trial Court were withdrawn. Thereafter, the matter was taken up for the premature release of the petitioner after he had undergone the 14 years of imprisonment. Opinion from the convicting Court and the

other authorities were called. Taking into consideration the opinions, the impugned order dated 31.07.2024 came to be passed by respondent No.2 placing the petitioner in category 4(e) as per G.R. dated 15th March 2010, thereby specifying period of imprisonment to be undergone remissions subject to a minimum of 14 years of actual imprisonment including set off period was stated to be 26 years. Respondent No. 2 erred in not considering the facts of the case, it was not a brutal murder or with exceptional violence. The deceased had received two external injuries and two internal injuries. It was then stated as per the prosecution story that the father of the informant was found murdered by informant's mother around 6 a.m. and it was then found that amount of Rs.1,150/- were stolen from a neighbouring person. From another neighbouring person the Motor Cycle which was parked in front of his house was also found to be stolen. The case was based on circumstantial evidence and therefore, respondent No.2 ought to have considered the petitioner's case under category 4(a) i.e. where the murder is committed without premeditation in an individual capacity and the person has no previous criminal history giving period as 20 years or under 4(b) providing period of imprisonment to be undergone as 22 years in the category of murder committed with premeditation or a person having criminal history.

4. Learned APP after taking us through the affidavit in reply and

the documents annexed to and also the opinion of the convicting Court who had stated that the case of the petitioner would fall in the category of 4(e) as per the said guidelines. As per the chart appended to the affidavit in reply by giving concession of the remissions and Corona remission he has undergone the imprisonment for 11 years 11 months 25 days and with the remission period it is 20 years 6 months and 5 days. Thus, when the facts of the case are very clear that in the course of committing robbery the murder has been committed by the petitioner then he would fall under category 4(e) which also provides the period of 26 years of imprisonment for murder committed by dacoits and robbers in the act of committing dacoits and robberies.

5. We fully agree with the respondents for putting the petitioner in the category of 4 (e). We will have to consider the facts of the case which have been now held to have been proved by the Trial Court as well as this Court in appeal. It has been held that the prosecution has proved it beyond reasonable doubt that in the intervening night between 29.03.2008 and 30.03.2008 at village Sonai in Bargal Vasti the petitioner had committed murder of Bhaskar Bargal by means of earth dragger (Kudal). It was further held that the prosecution has proved it beyond reasonable doubt that the accused had caused hurt to deceased Bhaskar Bargal and prosecution witnesses Pradip Ghate, Subhash Bide and Dattatray Bhide while committing robbery. In Writ Petition No.312 of 2023 what was allowed was the deletion of the

words “till death” appearing in the operative order / sentence imposed on the petitioner. Therefore when these decisions have achieved finality the case of the petitioner would certainly fall under the category of 4 (e) which prescribes the period for imprisonment to be undergone of minimum 14 years when the murder is committed by robber in the act of committing robbery. The decision by respondent No.2 is absolutely not illegal and therefore need not be set aside or modified. There is no merit in the present Writ Petition.

6. Writ Petition stands dismissed.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

Narwade/