



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.2005 OF 2024

Deepak S/o Dattatraya Jawale,
Age-42 years, Occu:Nil, Convict No.8153,
R/o-At present in Chh. Sambhajinagar
Central Prison, Dist-Chh. Sambhajinagar.

...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 of
Chh. Sambhajinagar Central Prison,
Chh. Sambhajinagar.

...RESPONDENTS

WITH

CRIMINAL WRIT PETITION NO.2006 OF 2024

Abhay @ Abhi @ Abhya Bhaskar Pore,
Age-45 years, Occu:Nil, Convict No.8154,
R/o-At present in Chh. Sambhajinagar
Central Prison, Dist-Chh. Sambhajinagar.

...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 of
Chh. Sambhajanagar Central Prison,
Chh. Sambhajanagar.

...RESPONDENTS

...

Ms. Bharati Gunjal Advocate for Petitioner in both the
Petitions.
Ms. P.R. Bharaswadkar, A.P.P. for Respondents in both the
Petitions.

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

DATE : 28th JANUARY, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Both the petitioners are the co-accused, who faced the trial in Special Case No.2 of 2010 for the offence punishable under Sections 392, 376(2)(g), 394, 366, 341, 354, 509, 216(a) read with Section 34 of the Indian Penal Code and under Sections 3(1) (ii), 3(2) and 3(3) of the Maharashtra Control of Organized Crime Act, 1999 (for short "MCOC Act"), before the learned Special Court (MCOC Act), Aurangabad. They were convicted by Judgment and order dated 22nd August 2016. The conviction of both the petitioners is for the offence punishable under Sections

392, 394, 366, 341, 376(2)(g) of the Indian Penal Code, and Sections 3(1)(ii), 3(2) of the MCOC Act.

2. The petitioners had preferred Criminal Appeals i.e. Criminal Appeal Nos.542 of 2016 and No.576 of 2016, respectively, before this Court. The said appeals came to be partly allowed by Judgment and order dated 4th December 2023. The conviction of the petitioners under Sections 392, 394, 366, 341, 376(2)(g) of the Indian Penal Code and Sections 3(1)(ii) and 3(2) of the MCOC Act was maintained, however, only the fine amount was reduced.

3. There was a proposal for premature release of both the petitioners with respondent No.1 and after undertaking the entire procedure, respondent No.1, by order dated 29th August 2024, in respect of both the petitioners, had put them under the Category - 21 of Annexure - II of the Government Guidelines dated 15th March 2010. However, both the petitioners claim that they should be placed in Category - 8(a) of Annexure - II of the Government Guidelines dated 15th March 2010.

4. Heard learned Advocate Ms. Gunjal appearing for the petitioners and learned APP Ms. Bharaswadkar for the

respondents, in both the Petitions.

5. Leaned Advocate for the petitioners submit that the petitioners have been convicted for the offence under MCOC Act which was for the period of seven years and for the offence under Section 394 and Section 376(2)(g) of the Indian Penal Code, they have been sentenced to suffer rigorous imprisonment for life. As all the sentences were to run concurrently, the petitioners have already undergone their sentence under MCOC Act and now they are serving the sentence i.e. the maximum sentence which was imposed upon them under Sections 394 and 376(2)(g) of the Indian Penal Code and therefore, they ought to have been put under Category - 8(a) of Annexure - II of the Government Guidelines dated 15th March 2010, which prescribes the years of imprisonment to be undergone including remission subject to the minimum of 10 years of actual imprisonment including set off period, for 18 years. But in view of the impugned orders the petitioners have been directed to be released only after undergoing 30 years of imprisonment in view of Category - 21 of Annexure - II of the Government Guidelines dated 15th March 2010, which stipulates that, the State

Government will decide individual cases on merits. Therefore, the impugned order is illegal and deserves to be quashed and set aside and the directions are required to be given to place the petitioners under Category - 8(a) of Annexure - II of the Government Guidelines dated 15th March 2010.

6. Per contra, the learned APP is relying on the affidavit of Dr. Jalinder Supekar, Special Inspector General of Police (Prisons), Central Region, Chhatrapati Sambhajinagar, wherein he has stated that Category - 8(a) would be applicable to the accused who are guilty in rape cases only. But here the petitioners have been convicted for all the offences. Learned APP submits that the petitioners cannot segregate punishment for each offence and interpret the rules as per their convenience. The State has not violated any direction given in *State of Haryana vs. Jagdish, 2010 AIR SC 1690*.

7. We fully agree with the submissions on behalf of the State. The conviction of the accused is required to be considered while putting him in specific category. How much period of imprisonment he has already undergone, cannot be taken into consideration while categorizing him. The categorization in the

Government Guidelines dated 15th March 2010 is based on crime and not on sentence. Here, if we consider the Government Guidelines of 2010, then Category - 7 of Annexure - I is for punishment under the special Acts such as TADA, MCOCA, POTA for murder. But here the petitioners have not been convicted for murder, but for the offence punishable under Sections 392, 394, 366, 341, 376(2)(g) of the Indian Penal Code, and Sections 3(1) (ii), 3(2) of the MCOC Act. In appeals before this Court, only the fine amount has been reduced but the conviction has been maintained. Category - 21 of Annexure - II of the Guidelines of 2010 is for 'any other such offences which are not specifically covered in above categories'. Here, the combination of the offences in which the petitioners have been held guilty, is not covered in any other category and therefore, Category - 21 would be applicable and the period of imprisonment to be undergone including remission subject to the minimum of 10 years of actual imprisonment including set off period that is prescribed is, 'the State Government will decide individual cases on merit'. Therefore, taking into consideration the manner in which the offence has been committed, the State Government has decided that the petitioners cannot be released prior to

actual imprisonment of 14 years and including remission 30 years.

8. We do not find that there is any legal defect left in these matters which can be interfered under the constitutional powers of this Court and therefore, both the Writ Petitions deserve to be rejected.

9. Accordingly, both the Writ Petitions stand rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/FEB25