



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.174 OF 2025

Bashiruddin @ Munna s/o Nasiruddin Kazi
Age: 35 years, Occu.: Convict,
At present confined in Open Jail,
Paithan, District Chhatrapati Sambhajinagar

.. Petitioner

Versus

1. State of Maharashtra
Through Superintendent of Jail,
Open Jail Paithan,
District Chhatrapati Sambhajinagar.

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

.. Respondents

...

Mr. Rupesh A. Jaiswal, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP for respondents/State.

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**CORAM : SMT. VIBHA KANKANWADI &
MANJUSHA DESHPANDE, JJ.**

DATE : 16 APRIL 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

1. The petitioner/convict is challenging the order dated 21.01.2025 passed by respondent No.2 directing him to be placed in category No.4(e) of the Government Resolution dated 15.03.2010 (hereinafter referred to as the "Guidelines of 2010") (guidelines for premature release under "14 year rule" of prisoners serving life sentence) .

2. Heard learned Advocate Mr. Rupesh A. Jaiswal for the petitioner and learned APP Mr. G. A. Kulkarni for respondent No.1/State.

3. Learned Advocate for the petitioner submits that the petitioner was arrested on 27.12.2008 in connection with Sessions Case No.87 of 2009. He came to be convicted on 14.03.2017 for the offence punishable under Section 302 of Indian Penal Code and other Sections and the major punishment was imprisonment for life. He has undergone 14 years and 3 months of actual imprisonment and including remission, it is 21 years and 7 months. If we consider the facts of the case, then the said murder had taken place due to family feuds with premeditation by number of persons and, therefore, he ought to have been placed in category 3(b) which prescribes for period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off period as 22 years as per the guidelines of 2010.

4. Learned Advocate for the petitioner relies on the decision in ***Rajaram Patil Vs. State of Maharashtra, [1997 (99) Bom.L.R. 98]***, wherein it is observed almost in similar case that the case of the petitioner would fall under category 3(b) of the guidelines of 2010. It is observed that “Every murder is a result of some kind of violence. Use of weapons 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.” Further, reliance has been placed on the decision in ***Vitthal Pundalik Zendge Vs. State of Maharashtra, [2019 (2) Mh.L.J. (Cri.) 264]***, wherein based upon the facts, it was held that the petitioner was not guilty of committing murder on the exceptional violence/brutality. The petitioner’s case will be governed by Clause 4 sub clause (d) as in case murder was committed by more than one persons and by group of persons. Thereafter, reliance is placed on the decision in ***Bilal Bashid Shaikh Vs. The State of Maharashtra and another, [Criminal Writ Petition No.4721 of 2021 decided on 16.09.2022]***, wherein after taking into consideration the facts of the case, the said petitioner was put in category 4(d) of the guidelines of 2010 and in case of ***Shrikant s/o Paragonda Basargi Vs. State of Maharashtra and another, [Writ Petition No.2355 of 2023 decided on 09.10.2023]***, the petitioner therein has been placed in category 3(b) of the guidelines of 2010. Therefore, when the facts in the present matter disclose that the murder is stated to have been committed by the petitioner and others with premeditation, but due to family feuds, the State ought to have placed them under category 3(b) of the guidelines of 2010.

5. Learned APP relies on the affidavit filed by Dr. Jalinder Supekar, Special Inspector General of Police (Prisons), Central Region, Chhatrapati Sambhajinagar, wherein he has referred to the Trial Court's judgment as well as this Court's judgment and submits that the murder has been committed in exceptional violence. The petitioner with two co-accused committed murder of two persons, namely, Bhaguram and his nephew Balaji. The petitioner and co-accused had entered into quarrel with Bhaguram, as Bhaguram had asked accused Nasir as to why he sat in front of his house for nature's call. Bhaguram and his nephew lodged the non cognizable offence and were returning from Police Station when they were attacked by the accused persons with knife and sticks. They both sustained serious injuries and died instantaneously. Therefore, the said murder has to be categorized in exceptional violence and, therefore, the petitioner has been categorized in category 4(e) of the guidelines of 2010. Learned APP has therefore taken us through the relevant paragraphs from the judgment of this Court in Criminal Appeal No.151 of 2017 decided on 11.09.2019 and also the opinions sought. Learned Sessions Judge had categorized the petitioner in category 4(a) of the guidelines of 2010. The District Collector was of the opinion that the petitioner should not be released. Even similar opinion was given by the Police Department. Taking into consideration all these opinions, he has been put in category 4(e) of the guidelines of 2010.

6. The first and the foremost fact to be noted is that while putting a convict under category as per the guidelines for premature release, all the authorities whose opinions have been called will have to go through the judgment of the Trial Court, Appellate Court (if any) or even of the Hon'ble Supreme Court, if any. The categories for the premature release as per Sections 432 and 433 of the Code of Criminal Procedure are made on the basis of the categorization of the crime. The opinion of the convicting Court is not an empty formality. In the impugned order only reference has been taken, but it is not stated as to why the Government is not considering the said opinion. We are aware of the fact that such opinion is not binding on the State Government, but still when such opinion is taken as per the directions in ***State of Haryana and Ors. Vs. Jagdish and Harpal, [2010 AIR SC 1690]***, then we reiterate that it is not an empty formality. The facts or the circumstance in which the murders had taken place are already narrated and, therefore, we do not want to repeat. By no stretch of imagination it can be said that the murders took place due to family feuds. There was no evidence before the Court that the said quarrel had taken place due to the rivalry between the two families. Rather it is stated that accused Nasir has sat in front of the house of deceased Bhaguram for answering nature's call, which was then objected by deceased Bhaguram. The matter appears to have ended there in a sense that only threat was given by the accused at that

time, but then it was proved that while Bhaguram and his nephew were returning, all the accused i.e. three in numbers had assaulted Bhaguram and nephew with knife resulting in instantaneous death. Therefore, we do not agree that category 3 would be applicable in this case.

7. The judgment of this Court in appeal would show that P.W.6 Dr. Shelke was the medical officer, who had performed postmortem on Bhaguram as well as his nephew. Bhaguram had sustained six external injuries with one major internal injury. Further, said witness had noted seven external injuries, four internal injuries on the dead body of Balaji. Taking into consideration those injuries only, it cannot be stated that the crime was committed with exceptional violence or brutality. The case is not covered under category 4(e), but it is certainly covered under category 4(d) of the guidelines of 2010. Category 4(e) is for murders for other reason. Here, the reason or motive was the act of answering nature's call by accused Nasir in front of house of deceased Bhaguram. Category 4(d) prescribes categorization "murder committed by more than one person/group of persons and the period prescribes is 24 years." The ratio laid down in the decision relied by the learned Advocate for the petitioner cannot be disputed, but certainly the facts of the present matter would govern us to categorize the petitioner and, therefore, we are of the opinion that the State Government ought to have placed the petitioner in category 4(d) of the guidelines of 2010.

8. In view of the above discussion, the impugned order dated 21.01.2025 passed by respondent No.2 is hereby quashed and set aside.
9. Respondent No.2 is directed to place the petitioner in category 4(d) of the guidelines dated 15.03.2010.
10. Fresh orders to that effect be passed within a period of one month from today.
11. Accordingly, the writ petition stands disposed of.

[MANJUSHA DESHPANDE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm