



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.437 OF 2025

Kamlakar s/o Tanaji Shinde
Age: 48 years, Occu.: Convict,
At present Confined in Open Jail,
Paithan, Dist. Chh. 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. S. A. Gaikwad, APP for respondents/State.

...

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

DATE : 16 JUNE 2025

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

1. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

2. Present petition has been filed to challenge the order passed by respondent No.2 dated 18.03.2025 of placing the petitioner in category 6(d) of the Guidelines of Government Resolution dated 15.03.2010 (hereinafter referred to as the "Guidelines dated 15.03.2010") and to

direct respondent No.2 to place the petitioner in category 2(b) of the Guidelines of Government Resolution dated 11.04.2008 (hereinafter referred to as the "Guidelines dated 11.04.2008") as well as Guidelines dated 15.03.2010.

3. Learned Advocate for the petitioner submits that the State Government has wrongly placed the applicant in category 6(d) of the Guidelines dated 15.03.2010. Category 6(d) of Guidelines dated 15.03.2010 is in respect of murders of serious offences i.e. prisoners whose death sentence has been commuted to life imprisonment and the period of imprisonment to be undergone remissions subjected to a minimum of 14 years of actual imprisonment including set-off period is stated to be 30 years. Word commuted has been used in the order passed by this Court at Principal Seat while deciding the Confirmation Case No.04 of 2009, which was with the appeal filed by the present petitioner i.e. Criminal Appeal No.1078 of 2009, but the said decision is the judicial decision and not the commutation of the sentence by the State under Section 433 of the Code of Criminal Procedure. This Court in ***Raosaheb Ramchandra Thombare v. The State of Maharashtra and another, (Criminal Writ Petition No.673 of 2017 decided on 04.07.2017)*** has held that :-

"7. As has been recorded above, the decision taken by the State Government is erroneous since

petitioner has not been extended benefits within contemplation of Section 433 of the Code of Criminal Procedure and no order of commutation has been issued. The sentence imposed against petitioner has been altered in appeal presented by him and he has been sentenced to imprisonment for life. The opinion expressed by the learned Additional Sessions Judge appears to be on erroneous interpretation of the concerned Government Resolution.”

Similarly, in ***Santosh Kumar Satishbhushan Bariyar Vs. State of Maharashtra and another, [Criminal Writ Petition No.1328 of 2018 decided on 27.02.2019]***, it was observed that since the petitioner has not been extended benefits in view of Section 433 of the Code of Criminal Procedure and no order of commutation has been issued, only the sentence imposed against the petitioner has been modified in appeal presented by him before the Supreme Court. There is misinterpretation of the category and, therefore, the petitioner needs to be put in proper category taking into consideration the facts involved.

4. Per contra, learned APP relies on the affidavit-in-reply filed on behalf of respondent No.1 Dr. Jalinder Supekar, wherein he supports the action and the category in which the petitioner has been placed. Learned APP has also taken us to the judgment in Confirmation Case No.04 of 2019 and submits that this Court has specifically used the word

that the sentence of death is commuted to life imprisonment and, therefore, even the convicting Court has also put the petitioner in category 6(d) of the Guidelines dated 15.03.2010. Seriousness of the offence was then considered. In the alternative, the learned APP submits that the case of the petitioner will not fall in category 2(b) of the Guidelines dated 15.03.2010 i.e. where the crime was committed with premeditation against the women and minors, but it would fall within category 2(c) i.e. where the crime is committed with exceptional violence and or with brutality or death of victim due to burns, which prescribes the period of 26 years.

5. Here, it is to be noted that in Sessions Case No.251 of 2007, learned Ad-hoc Additional Sessions Judge, Solapur had sentenced the present petitioner on 06.10.2009 to capital punishment of death for the offence punishable under Section 302 of Indian Penal Code with fine and for the offence under Section 364 of Indian Penal Code, he was sentenced to suffer rigorous imprisonment for ten years with fine. The reference under Section 366 of the Code of Criminal Procedure was filed for confirmation of death sentence and then the present petitioner had also filed Criminal Appeal No.1078 of 2009 challenging the said judgment and order. The said appeal can be said to be under Section 374(2) of the Code of Criminal Procedure. In the common judgment dated 07.09.2010, the Division Bench of this Court at Principal Seat

passed the following order :-

ORDER

- “1. The conviction of the accused under Sections 302 and 364 of IPC is maintained.
2. The sentence of imprisonment and fine and in default sentence under Section 364 is maintained.
3. The sentence of death is commuted to life imprisonment, in addition thereto, fine of Rs.5000/- as imposed by the learned Sessions Judge in default simple imprisonment for three months.
4. The sentence of imprisonment under Section 364 of IPC shall run after serving the life sentence under Section 302 IPC.

Thus, the reference is answered accordingly and appeal is partly allowed.”

6. Now, here, though the word “commuted” is used, it is in fact the modification of the order passed by the trial Court. This Court in ***Raosaheb Ramchandra Thombare (Supra)*** and ***Santosh Kumar Satishbhushan Bariyar (Supra)***, has already, in similar circumstances, held that such order of converting the death penalty into imprisonment for life cannot be considered as commutation, but the Government Resolution when it uses the word “commuted”, it is in respect of the State Government’s power under Section 433 of the Code of Criminal Procedure. Section 433 of the Code of Criminal Procedure relates to the

power to commute the sentence and in that case what should be the period of imprisonment that would be required to be undergone has been prescribed in the guidelines. Certainly, in the present case also, the State Government has not used its powers under Section 433 of the Code of Criminal Procedure, thereby commuting the sentence. Therefore, the opinion given by the learned trial Court is based on erroneous interpretation. Respondent No.1 ought not to have taken the said opinion as it is. When in the order itself, it was stated by the Government that it was passing the order in view of powers under Section 432 of the Code of Criminal Procedure, the petitioner could not have been put under category 6(d) of the Guidelines dated 15.03.2010. We apprehend that such mistakes will be committed by the convicting Courts in future, as the word “commutation” can be used while deciding the confirmation case and/or the criminal appeals in future also and, therefore, we direct learned Registrar (Judicial) to circulate this judgment as guidance in future.

7. We would like to categorically observe that in spite of making the said legal position clear firstly on 04.07.2017 and reiterating the same on 27.02.2019 by this Court, still the State Government has committed the same mistake. Therefore, the impugned order dated 18.03.2025 deserves to be quashed and set aside.

8. Now, the question would be under which category the petitioner would fall. For that purpose, we are required to consider the facts, which can be gathered from the judgment in the confirmation case. It was the prosecution story that one Draupadi Shinde was residing at Babhalgaon with her husband. Draupadi had three sons, who were residing separately at Barshi. Accused was Draupadi's nephew and resident of Babhalgaon. Draupadi had gone to Barshi on 26.07.2007 for taking darshan of Lord Bhagvant and to meet her children. After meeting her one son, she had gone to meet her second son where accused was also present. Draupadi told that she would return to Babhalgaon. Accused told daughter-in-law of Draupadi that he would go with Draupadi and asked the daughter-in-law to return. On the next day, P.W.3 Netake, who was resident of Babhalgaon and had a shop at Barshi, received a phone call as to whether Draupadi had arrived at the house of Draupadi's son Vijay. Then the missing report was lodged. On the basis of substantial evidence, it appears that the accused was prosecuted. During the investigation, it was revealed that he had committed murder of Draupadi by strangulating her. He took her ornaments and threw her dead body in jungle. The Division Bench while deciding the confirmation case and appeal has observed that "there can be no doubt that the offence committed by the appellant deserves severe condemnation and is a heinous crime, but on looking to the cumulative facts and circumstances

of the case, we do not think that the case falls in the category of rarest of the rare cases.” Thus, the offence has been categorized as heinous crime and of exceptional violence. The judgment also shows that upon the discovery statement, pieces of bones and other articles of Draupadi were found at the place in Ramling forest. That means, body was cut into pieces and the spot was near the stream in Ramling forest. Therefore, we agree with the learned APP i.e. the submission made in the alternative, that the case of the petitioner would fall under the category 2(c) of the Guidelines dated 15.03.2010 and not under category 2(b) of the Guidelines dated 15.03.2010. Hence, we proceed to pass the following order :-

ORDER

- I) Criminal Writ Petition stands partly allowed.
- II) The order passed by respondent No.2 on 18.03.2025 to place the petitioner in category 6(d) of the Guidelines dated 15.03.2010 stands quashed and set aside.
- III) We direct respondent No.2 to place the petitioner in category 2(c) of the Guidelines dated 15.03.2010.
- IV) The order to that effect be passed by respondent No.2 within a period of one month from today.

V) Registrar (Judicial) to circulate this judgment to all the Judges of the cadre of Sessions Judge and Additional Sessions Judge in the District Judiciary.

VI) Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm