



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.212 OF 2024

Gurucharan s/o Jagdambaprasad Yadav and Gayadin s/o Jagdambaprasad Yadav, Central
Prison, Nagpur

-vs-

State of Maharashtra, Thr. Secretary, Home Dept. Mantralaya, Mumbai and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and the Registrar's orders.

Court's or Judge's Orders.

Shri Raju Kadu, Advocate for petitioners.

Shri A. B. Badar, Additional Public Prosecutor for respondent Nos.1 to 4.

CORAM : NITIN W. SAMBRE AND MRS VRUSHALI V. JOSHI, JJ.

DATE : January 02, 2025

P. C.

1. Heard.

2. The petitioners who are real brothers were convicted in Sessions Case No.529/2009 for an offence punishable under Section 376 of the Indian Penal Code and vide judgment and order dated 18/12/2010 were sentenced to life imprisonment.

3. Considering the nature of the offence which was proved against the petitioners who are real brothers, pursuant to the resolution dated 15/03/2010 passed by the State Government in exercise of powers under Section 432 of the Criminal Procedure Code, it is claimed by the petitioners that they having completed 20 years of their imprisonment, are entitled to be released by their categorisation under Clause 8(b) of Annexure-II of the said resolution.

4. The aforesaid contentions are sought to be substantiated by the judgments of this Court in Criminal Writ Petition No.307/2020 (*Raju Pandurang Bandabuche vs. State of Maharashtra and anr.*) delivered on

13/12/2021 and Criminal Writ Petition No.629/2022 (*Sudarshan @ Babu Sadashiv Vighne vs. State of Maharashtra and ors.*) delivered on 22/12/2023. It is claimed that the petitioners can be categorised under Clause 8(b) or 8(c) and the categorisation which is beneficial to the petitioners/convicts is required to be adopted having regard to the law laid down by the Honourable Apex Court in the matter of *State of Haryana and ors. vs. Jagdish* reported in **AIR 2010 SC 1690**.

5. As against above, Mr Badar, learned Additional Public Prosecutor would submit that the petitioners ought to be categorised under Clause 8(c) of the aforesaid resolution as according to him, the petitioners who are real brothers were convicted for committing an offence of rape while the minor was in the custody of the petitioners. According to him the Court is equally required to respect the opinion/views expressed by the learned Sessions Judge who had presided over the conviction and that being so it is claimed that the petitioners' petition be dismissed with categorising the petitioners to undergo life imprisonment for 22 years.

6. Having considered the rival claims, it is an admitted fact borne out of the record that the petitioners were convicted for committing an offence punishable under Section 376 of the IPC vide judgment and order dated 18/12/2010 delivered in Sessions Case No.529/2009.

7. The petitioners were handed over punishment of life imprisonment.

The claim for categorisation is based on the policy adopted by the Government which is in operation pursuant to the provisions of Section 432 of the Criminal Procedure Code.

8. The settled position of law as can be borne from the judgment of the Apex Court in the matter of *State of Haryana vs. Jagdish* (supra), is the interpretation of the Prison Rules which goes to the benefit of a convict is required to be adopted. Based on the aforesaid view expressed by the Apex Court, this court has already delivered two orders which are referred above in the matter of *Raju P. Bandhabuche* and *Sudarshan @ Babu Sadashiv Vighne* (supra).

9. In this backdrop, we are of the view that the petitioners can be categorised under Clause 8(b) of Annexure-II of the Government Resolution dated 15/03/2010.

10. That being so, the petition stands allowed with a direction that the petitioners' categorisation shall be carried out under Clause 8(b), being convicted for an offence punishable under Section 376 of the IPC.

(Mrs Vrushali V. Joshi, J.)

(Nitin W. Sambre, J.)