



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.505/2023

Yogesh Madhukar Chavhan,
aged 42 Yrs., C/7841,
Occ. Convict Officer/Warder,
R/o Room No.3, Mahendra Kini
Compound, Vaishali Nagar,
Dahisar, Mumbai.

... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary, Home
Department, having his office at
Mantralaya, Mumbai,
Maharashtra.
2. Inspector General of Prison,
having his office at Pune.
3. Central Prison, Nagpur,
through its Superintendent,
having his office at Wardha Road,
Nagpur.

... Respondents

Mr. N.B. Rathod, Advocate for the petitioner.
Ms. Kavita Bhondge, A.P.P. for respondent Nos.1 to 3/State.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 15.1.2025.

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of learned Advocates for the parties.

2. Post conviction for an offence punishable under Section 302 read with Section 120B of the Indian Penal Code in Criminal Appeal Nos.1210-1213/2012 preferred by the appellant and other co-accused namely Mahesh Dhanaji Shinde, Amit Ashok Shinde and Santosh Chavhan, the Apex Court vide judgment and order dated 27.2.2014 converted the sentence to life imprisonment.

3. Subsequent thereto, co-accused Mahesh has approached before the Aurangabad Bench with a prayer for premature release.

4. The Aurangabad Bench has delivered the judgment on 23.10.2024 in Criminal Writ Petition No.1346/2024 (Mahesh

S/o Dhanaji Shinde V/s. State of Maharashtra and another), the operative part of which reads thus:

“O R D E R

- (I) *The Writ Petition is partly allowed.*
- (II) *The order passed by respondent No.1 dated 28th February 2022 is hereby quashed and set aside.*
- (III) *The respondents are directed to get fresh opinion from the Convicting Court in view of the guidelines in Life Convict Laxman Naskar vs. State of West Bengal (supra) and Ram Chander vs. The State of Chattisgarh and Another, (supra) within a period of one month. While making communication with the Convicting Court, respondents should forward the details regarding the various achievements of the petitioner during incarceration in jail, report in respect of his good conduct together with special remissions those have been awarded to the petitioner and also the chart regarding leave granted to the petitioner and his reporting back to the jail whether in time or not, any offence committed when he was granted parole or furlough leave.*
- (IV) *Respondents to collect the information in respect of the points laid down in Ram Chander vs. The State of Chattisgarh and Another, (supra).*
- (V) *After these reports are received, which should be collected preferably within a period of two months from today, respondent No.1 should proceed to decide the proposal for remission under Section 432 of the Code of Criminal Procedure on the basis of those reports, on its merits, as well as taking into consideration all the decisions of the Hon'ble Apex Court as well as this Court.*

(VI) This entire exercise should be done within a period of FOUR MONTHS from today.

(VII) Rule is made absolute in above terms.”

5. In this background, the petitioner is claiming that he is entitled for the similar relief viz. quashing and setting aside the impugned order dated 28.2.2022 passed by respondent No.1 and consequently the release of the petitioner from the prison having already completed the punishment.

6. As against above, learned A.P.P. would urge that this Court must be sensitive to the nature and gravity of the offence committed by the petitioner and the conviction by the Apex Court. According to her, this Court is required to be sensitive to the role attributed to the petitioner in the matter of commission of offence and the conviction. That being so, it is urged that the order impugned in the aforesaid background, is sustainable and the petition is liable to be dismissed.

7. We have considered the rival submissions.

8. The petitioner is convicted for an offence punishable under Section 302 of the Indian Penal Code for murder of nine persons. The Sessions Court has imposed the death penalty which was confirmed by this Court. The Hon'ble Apex Court vide its order and judgment converted the death sentence into life

imprisonment. At the time of incident, the petitioner was 22 years of age. It was an organized crime and the four accused were convicted and the death penalty imposed was converted into life imprisonment with remission by the Hon'ble Apex Court.

9. The prosecution case is that on 20.12.2003 the Police Authority received anonymous letters and phone calls that the dead bodies of unknown persons were lying on the hillock of village Nandos as well in the adjoining agricultural fields. The Superintendent of Police, Sindhudurg, issued necessary directions to the Police Officers to take search of the fact. Accordingly, while taking search the Police Officers and villagers found seven dead bodies scattered here and there and after taking further search, they also recovered two more bodies on the next day. Subsequently a crime was registered. After the postmortem, the information of missing persons was collected from the State of Maharashtra. The relatives and friends identified the dead bodies on the basis of clothes and other reminiscence found on the dead body. Later on with the help of Miraj Medical College, Miraj some of the organs of the dead bodies were referred to C.D.F.D., Hyderabad for D.N.A. test. The skulls were referred to Forensic Laboratory, Kalina. During the course of investigation it transpired that a Mali Family of Washi, one Dudhe from Wai, Badalapur, Dada Chavan from District Pune were missing and

missing reports were registered with the Police Stations of Badlapur, Washi and Wai. During the course of Investigation, the Investigating Agency contacted the relatives of the deceased and it transpired that the accused Nos.1 to 3 had contacted them or their relatives. Hence accused No.1 was taken into custody for the purpose of enquiry and after making an enquiry the involvement of accused Nos.2 to 7 transpired and they also came to be arrested. The recovery was made at the instance of accused persons of mobile phones, iron rods, swords, cut parts of guns, one muzzle loader gun and other incriminating material used in the crime which came to be seized under seizure panchanama.

10. After considering the evidence on record the Sessions Court has passed the following order and convicted the accused in Sessions Trial No.5/2005 as follows:-

- I. Offence under section 302, 364-A, R/w 120-B of I.P.C., Death Sentence for committing murder of (Deceased Vinayak Dudhe).*
- II. Offence under section 302, 364-A, R/w 120-B of I.P.C., Death Sentence for committing murder of (Deceased Dada Chauhan).*
- III. Offence under section 302, 364-A, R/w 120-B of I.P.C., Death Sentence for committing murder of (Deceased Sanjay Gavare).*
- IV. Offence under section 302, 364-A, R/w 120-B of I.P.C., Death Sentence for committing murder of (Deceased Vinayak Pisad).*

V. *The sentence of imprisonment for 5 years with fine Rs.5000/- i/d 6 months imprisonment for the offence under sections 394, 397, R/w 120-B of I.P.C.*

VI. *The sentence of imprisonment for 1 years with fine Rs.5000/- i/d 6 months imprisonment for the offence under sections 404, R/w 120-B of I.P.C.*

VII. *The sentence of imprisonment for 5 years with fine Rs.5000/- i/d 6 months imprisonment for the offence under sections 201, R/w 120-B of I.P.C.*

VIII. *The sentence of imprisonment of 3 years for the offence under section 3, 5, 6 R/w 25 of Arms Act.*

(All Sentences to run concurrently excluding the death sentence)”

The Sessions Court has passed the following order and convicted the accused in Sessions Trial No.3/2005 as follows:-

“I. Offence under section 302, 364-A, R/w 120-B of I.P.C., Death Sentence for committing murder of (Deceased Sanjay Kerubhai Mali).

II. Offence under section 302, 364-A, R/w 120-B of I.P.C., Death Sentence for committing murder of (Deceased Rajesh Kerubhai Mali).

III. Offence under section 302, 364-A, R/w 120-B of I.P.C., Death Sentence for committing murder of (Deceased Sau. Anita Kerubhai Mali).

IV. Offence under section 302, 364-A, R/w 120-B of I.P.C., Death Sentence for committing murder of (Deceased Kerubhai Mali).

V. The sentence of imprisonment for 5 years with fine Rs.5000/- i/d 6 months imprisonment for the offence under sections 394, 397, R/w 120-B of I.P.C.

VI. The sentence of imprisonment for 1 years with fine Rs.5000/- i/d 6 months imprisonment for the offence under sections 404, R/w 120-B of I.P.C.

VII. The sentence of imprisonment for 5 years with fine Rs.5000/- i/d 6 months imprisonment for the offence under sections 201, R/w 120-B of I.P.C.

VIII. The sentence of imprisonment of 3 years for the offence under section 3, 5, 6 R/w 25 of Arms Act.

(All Sentences to run concurrently excluding the death sentence)”

11. In two cases the petitioner was convicted for murder of nine persons. This Court has confirmed the death sentence in Criminal Appeal No.617/2010 vide judgment and order dated 17.10.2011. The petitioner had moved an appeal against the order of conviction before the Supreme Court bearing Criminal Appeal No.1240-1241/2012. The Hon'ble Apex Court has passed the order dated 27.2.2014 as follows:-

“Balancing the two sets of circumstances i.e. one favoring commutation and the other favoring upholding the death penalty, we are of the view that in the present case the option of life sentence is not “unquestionably foreclosed” Therefore, the sentence of death awarded to the accused should be commuted to life imprisonment. We order,

accordingly and direct that each of the accused-appellants, namely, Santosh Manohar Chavan, Amit Ashok Shinde, Yogesh Madhukar Chavan, and Mahesh Dhanaji Shine shall undergo imprisonment for life for commission of the offence under section 302/120B IPC. The sentence awarded to the accused-appellants by the High Court for commission of all the other offences under the IPC and the Arms Act are affirmed to run concurrently. We also make it clear that the custody of the appellants for the rest of their life will be subject to remission if any which will be strictly subject to the provision of the section 432 & 433-A of the Cr.P.C.”

12. All the facts have been proved by the prosecution and we can consider the brutality and the fact that all the accused persons had committed the said offence in an organized manner.

13. This Court in Writ Petition No.1346/2024 in case of co-accused Mahesh Dhanaji Shinde has passed the order by relying on the judgment of Life Convict Laxman Naskar V/s. State of West Bengal and another reported in **2000 ALL MR (Cri) 1526** and Ram Chander Chandel V/s. The State of Chhatisgarh and another reported in **2022 LiveLaw (SC) 401** in which the

observations are about the factors which are required to be considered while considering remission under Section 432(2) of the Code of Criminal Procedure is enumerated in above judgments. It has been observed that it cannot be said that the opinion of the Presiding Judge is the only relevant factor, as it does not have any determinative effect on the application for remission. The decision in Shor V/s. State of Uttar Pradesh and another reported in **2020 SCC OnLine SC 626** is also then required to be considered and the factors which have been given in Ram Chander (supra). In the said decision, the Hon'ble Supreme Court reiterated the decision in Union of India V/s. Sriharan @ Murgan reported in **(2014) 4 SCC 242**. Further in Sharafat Ali V/s. State of Uttar Pradesh and another reported in **2022 LiveLaw (SC) 179** which is Full Bench decision of the Hon'ble Supreme Court, it reiterated that prior criminal history, conduct and behaviour in jail, possible danger to society etc. are relevant for considering premature release of a convict.

14. Respondent No.1 in its affidavit has relied on the judgment of the Hon'ble Apex Court in Criminal Appeal No.566/2010 State of Haryana and others V/s. Jagdish reported in AIR 2010 SC 1690. As per the judgment and order dated 22.3.2010 in para 43 it has been stated that the guidelines applicable on the date of conviction of the prisoner as well as the provisions existing at the time of consideration of early release of prisoner whichever shall be applicable to the prisoner will be benefited at the time of premature release. He has relied on para 38 of said judgment which reads as follows:-

“38.At the time of considering the case of premature release of a life convict, the authorities may require to consider his case mainly into consideration whether the offence was an individual act of crime without affecting the society at large: whether there was any chance of future recurrences of committing crime; whether the convict had lost his potential in committing the crime, whether there was any fruitful purpose of confining the convict any more the socio-economic condition of the convict's family and other similar circumstances.”

15. In Writ Petition No.321/2018 Rajan V/s. State of Tamilnadu in para 18 it has observed as under:-

“18.As a matter of fact, it is well settled by now that grant or non-grant of remission is the prerogative to be exercised by the competent authority and it is not for the court to supplant that procedure. Indeed, Grant of premature release is not a matter of privilege but is the power coupled with duty conferred on the appropriate Government in terms of Sections 432 and 433 CRPC, to be exercised by the competent authority after taking into account all the relevant factors, such as it would not undermine the nature of crime committed and the impact of the remission that may be the concern of the society as well as the concern of the State Government.”

16. In Criminal Writ Petition No.4428/2017 i.e. Sunil V. Pingale V/s. State of Maharashtra filed against the rejection of premature release issued by the State Government this Court had taken note of the murder committed with extreme brutality and refused to consider the premature release of the petitioner holding that no case is made out for interference vide judgment and order dated 5.4.2018.

17. In the present case, it appears that as per the affidavit filed by respondent No.1, the opinion of the Convicting Court was taken on 6.4.2015 and the impugned order has been passed on 28.2.2022 after about seven years after collecting the said

opinion. Respondent No.1 did not even take care to see that a fresh opinion would be obtained having kept the said proposal pending for years together.

18. The impugned order does not comply with the requirements laid down in *Shor* (supra) and in *Ram Chander* (supra). In *Ram Chander* (supra) the Hon'ble Apex Court has referred to the following points to be relevant factors for deciding the claim of remission:-

- (i) whether the offence affects the society at large;
- (ii) the probability of the crime being repeated;
- (iii) the potential of the convict to commit crimes in future;
- (iv) if any, fruitful purpose is being served by keeping the convict in prison; and
- (v) the socio-economic condition of the convict's family.

19. It was held that all these factors should be considered by the Presiding Judge also. It has been further held that if the opinion of the Presiding Judge does not comply with the requirements of Section 432(2) of the Code of Criminal Procedure or if the Judge does not consider the relevant factors for grant of remission that have been laid down in *Life Convict Laxman Naskar* (supra), the Government may request the Presiding Judge to consider the matter afresh. Therefore, when

in this case the State had taken opinion of the Presiding Judge i.e. convicting Court in year 2015 and the State had taken decision after seven years, then it is apparent that the behaviour of the petitioner for those seven years in jail was not before the convicting Court when it gave its opinion.

20. It can be seen from the details given about the achievements of the petitioner during his incarceration in the Central Prison, Nagpur, he utilized his time in completing his academic pursuits. The petitioner appeared and secured certificate of participation in an examination held by Sahyog Trust, Sarvodaya Ashram which is based on curriculum of thoughts, life and teachings of Mahatma Gandhi. He has qualified his distance education in Bachelor of Preparatory Programme (BPP). The petitioner has secured admission in B.A. and he intends to pursue law after completing his graduation. The petitioner's co-convict and childhood friend Amit wrote 15 Marathi fictional stories which came to be published with the assent of Prison Administration. The Book "*Reshim Gaath*" received fair response from the readers. The petitioner has translated those stories in English and the translated version of the book is due for publication. After the judgment of the Supreme Court the petitioner came to be appointed on the post of Night Watchman by respondent No.3. Thereafter he came to be appointed on the

post of Warder also known as Convict Officer. The petitioner returned back to prison from the furlough and parole leaves whenever granted. The petitioner has given a detailed chart about his leaves and return. He was also granted parole during pandemic and surrendered back on the very first call made by the Prison Administration. During his Covid parole, the petitioner ran a temporary canteen to serve the needy persons on no profit no loss basis. He has also served as a Compounder cum Public Relation Officer with certain Private Hospitals at Thane. The petitioner also became eligible for being shifted to Open Prison.

21. All the said data ought to have been placed before the Convicting Court and then it also ought to have been considered by respondent No.1 under the said circumstances.

22. For the aforesaid reasons, we are of the opinion that the matter needs to be remanded for fresh decision by respondent No.1 by completing all the requirements as aforesaid.

23. Considering the observations made by Aurangabad Bench of this Court in Criminal Writ Petition No.1346/2024 we pass the following order:-

1. The Writ Petition is partly allowed.

2. The order passed by respondent No.1 dated 28.2.2022 is hereby quashed and set aside.
3. The respondents are directed to get a fresh opinion from the Convicting Court in view of the guidelines in Life Convict Laxman Naskar V/s. State of West Bengal (supra) and Ram Chander V/s. The State of Chattisgarh and another, (supra) within a period of one month. While making communication with the Convicting Court, respondents should forward the details regarding the various achievements of the petitioner during incarceration in jail, report in respect of his good conduct together with special remissions which have been awarded to the petitioner and also the chart regarding leave granted to the petitioner and his reporting back to the jail whether in time or not, so also any offence committed when he was granted parole or furlough leave.
4. Respondents to collect the information in respect of the points laid down in Ram Chander vs. The State of Chattisgarh and another, (supra).
5. After these reports are received, which should be collected preferably within a period of two months from today, respondent No.1 should proceed to decide the proposal for remission under Section 432 of the Code of Criminal Procedure on the basis of those reports, on its merits, as well as by taking into consideration all the decisions of the Hon'ble Apex Court as well as this Court.

6. This entire exercise should be done within a period of four months from today.
7. Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)