



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

CRIMINAL WRIT PETITION NO.963/2024

(Navalkishor S/o Champalal Jain Vs. State of Maharashtra and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.Y. Sharma, Advocate for the petitioner.
Mr. A.B. Badar, A.P.P. for respondent Nos.1 and 2.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 26.2.2025.

P.C.

Heard.

2. The petition is taken up for final disposal by consent of the parties.

3. By this petition the petitioner is seeking the quashment of the order dated 26.9.2024 passed by the State Government wherein the petitioner, who is presently undergoing imprisonment at Open Prison, Morshi pursuant to his conviction in Sessions Case No.75/1999 vide judgment and order dated 2.8.2004 is directed to undergo 26 years of imprisonment. The aforesaid categorization is carried out by the State Government in view of prayer of the petitioner for remission which is sought to be prosecuted pursuant to the Government Resolution dated 11.5.1992 and the subsequent Government Resolution dated 15.3.2010.

4. The facts necessary for deciding the present petition are as under:-

The present petitioner accused No.1 along with his real elder brother Vinodkumar, his mother Kisnabai and his maternal uncle

Iswarlal were prosecuted for the offence punishable under Sections 498-A, 302 read with Section 34 of the Indian Penal Code and also under Section 201 of the I.P.C. for giving false information. The said prosecution being Sessions Case No.75/1999 came to be decided against the petitioner thereby ordering following convictions:-

i) Accused no.1 Navalkishor Champalal Jain is convicted of the offences punishable under sections 498-A, 302 and 201 of the Indian Penal Code.

ii) He is sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/- (Rs. Five Hundred only), in default to suffer R.I. for two months for committing offence punishable u/s 498-A of the Indian Penal Code.

iii) Accused no.1 Navalkishor Champalal Jain is also sentenced to undergo imprisonment for Life and to pay a fine of Rs.1000/- (Rs. One Thousand only), in default of payment of fine to suffer further R.I. for four months for committing the offence punishable u/s 302 of the Indian Penal Code.

iv) He is further sentenced u/s 201 of the Indian Penal Code to suffer Rigorous Imprisonment for three years and to pay a fine of Rs.700/- (Rs. Seven Hundred only), in default of payment of fine to suffer further R.I. for three months.

v) The substantive sentences shall run concurrently.

vi) Accused no.1 Navalksihor Champlal Jain was in custody during the course of investigation, enquiry and trial from 23-4-1999 to 17-7-1999 and from 2-8-2004 to 5-8-2004 therefore the above period is given set off as per section 428 of Cr.P.C.

viii) Accused no.2 to 4 are acquitted of the offences punishable under sections 498-A, 302 read with section 34 of the Indian Penal Code.

ix) They be set at liberty and their bail bonds stand cancelled.

x) The seized muddemal property being worthless be destroyed after the period of appeal is over.”

The petitioner has sought his categorization pursuant to the policy of the Government reflected in the Government Resolution dated 15.3.2010 particularly under clause 2(b) viz. for 22 years as reflected in the Annexure-I therein. Vide impugned order the State Government has categorized the petitioner's period of imprisonment to the extent of 26 years under clause 2(c) of Annexure-I to the aforesaid Government Resolution. As such, this petition.

5. Mr. Sharma, learned Advocate for the petitioner would invite attention of this Court to the nature of allegations, the evidence which is brought before the Sessions Court and considered for the conviction of the petitioner. According to him, in the matter of deciding remission/categorization, what is required for the Authority is to look into the judgment of the trial Court viz. in this case the judgment delivered by the Sessions Court in Sessions Case No.75/1999. According to him, the cause of death from the evidence of the two doctors who have performed the postmortem on deceased and the injuries which deceased suffered can be identified as death due to the violent act and not by burns. So as to substantiate the aforesaid contention he has drawn support from the Division Bench judgment of this Court in the matter of Hamid Rahim Khatik V/s. State of

Maharashtra and others reported in 2007 ALL MR (Cri) 1121

particularly para 9 which reads thus:-

“9. The State Government has prepared guidelines for premature release under section 432 of the Criminal Procedure Code. There is no dispute regarding the copy of the guideline which is placed on record, on behalf of the petitioner. Thus the State Government has exercised the powers under section 432 of Criminal Procedure Code and framed guidelines. In the present case, though from the prosecution allegation it appears that the genesis of the occurrence is out of business rivalry in between the present petitioner and other accused persons on one hand and deceased Isak on the other hand, ultimate finding recorded by this Court in Criminal Appeal No.114 of 1994, is a murder of deceased Isak in the course of quarrel without premeditation and in an individual capacity. In our view, the prosecution allegation is one aspect of every criminal case. While applying the guidelines, the finding recorded by the Court regarding the occurrence and offence is important. If the Court comes to the conclusion that the occurrence or the murder has been committed in course of quarrel or without premeditation and in individual capacity, as well as where the person has no previous criminal history, in that circumstances, the guideline framed by the State Government under category 3(a) needs to be applied. In other words, finding recorded by the Court, regarding the offence of murder is material and has to be taken into consideration while considering the individual case of prisoner under these guidelines. In the present case, in our view, finding recorded by the High Court is nowhere referred to in the counter or in the order passed by the Government, which is annexed as R-1 to the Petition. In this view of the matter, the order passed by the State Government dated 28th September, 2006, needs to be quashed and set aside. Instead of, in our view, the case of the present petitioner falls under category 3(a) of the guidelines.”

6. In addition to above, his contention is that considering the nature of allegations in the criminal trial, the intention attributed to the petitioner and the evidence which is brought on record, the State Government so also this Court is required to be sensitive to the fact that death being caused due to the injuries and not because of the burn suffered by the deceased. Drawing support from para 18 of the Division Bench judgment of this Court in the matter of Pradipsingh Murlidhar Thakur V/s. State of Maharashtra and others reported in **2025 (1) Mh.L.J. (Cri) 223** it is urged that the petitioner's categorization is required to be for a period of 22 years and not for 26 years under clause 2(b) of the Annexure-I to the aforesaid Government Resolution.

7. As against above, learned A.P.P. appearing for the petitioner, with assistance of learned Advocate appearing for the petitioner Mr. Sharma, has taken us through the judgment of the conviction in Sessions Case No.75/1999 decided on August 2, 2004. According to Mr. Badar, considering the nature of evidence brought on record and documents relied on for ordering conviction speaks of the exceptional violent act and brutality on the part of the petitioner. According to him, the State Government was sensitive to the role which was proved before the Sessions Court in the matter of commission of offence by the petitioner viz. murdering his own wife and the evidence of the Medical Officers and has rightly drawn conclusion of awarding imprisonment of 26 years and as such, the dismissal of the petition is sought.

8. We have considered the rival claims.

9. The Sessions Case No.75/1999 which led to the conviction of the petitioner the necessary facts of it which are germane to decide the issue are as follows:-

After the marriage of the petitioner with Jyoti D/o Rameshchandra Jain on 27.6.1992 this petitioner and Jyoti were blessed with two children.

It appears that initially for a period of one year from the date of marriage Jyoti was treated well, however, subsequent thereto for non-fulfilling demand of dowry she was subjected not only to physical assault but at times was driven out of the home.

In an incident of July 1997 Jyoti along with her two children came to her parental house and lodged report to Ramdas Police Station, Akola being Crime No.00/97 punishable under Section 498-A read with Section 34 of the Indian Penal Code. However, the said F.I.R. came to be transferred to Nandura Police Station and same culminated into Crime No.133/1997 punishable under Section 498-A read with Section 34 of the Indian Penal Code.

10. It is brought on record through the evidence particularly the brother of deceased Jyoti that Jyoti was subjected to cruelty and was physically assaulted for not fulfilling the demand of dowry. Since the petitioner had given an undertaking and assurance that he will treat Jyoti respectfully, she again become pregnant and Jyoti started residing together with the petitioner.

11. It appears that on April 23, 1999 body of deceased Jyoti was discovered from a bolted door showing not only having injuries but also almost 21% of the burns.

12. This led to registration and investigation of the offence in question. Dr. K.B. Mendhe and Dr. Mrs. S.V. Kulkarni, Medical Officers, have conducted postmortem on the body of deceased Jyoti and discovered three external injuries which were suffered by her before her death and a panchanama was drawn at Exh.60. The Medical Officers referred above in their evidence has brought on record that she has suffered 21% of burn injuries on various parts of the body and the said burn injuries were claimed to be *ante mortem* injuries.

13. Apart from above, deceased Jyoti has also suffered three injuries of the following nature.

“1) contusion on right side of the nose and on the cheek. 1/2” below right eye, size 4 Cm X 2 Cm., reddish inflamed.

2) Contusion on left side of the nose on cheek 1” below the left eye, size 5 Cm X 2 Cm. Reddish inflamed. Nose become completely flatten and nostrils of the nose were completely blocked with blood and blood clots.

3) Lacerated wound on right side of the face 1/2” below the left eye, size 2 Cm X 2 Cm X 1 Cm bleeding present. Base of the injury is red inflamed. Margins of the injuries irregular. Skin of the face is blackened due to the soots.”

14. The said injuries are reflected by the postmortem report at Exh.79.

15. Thereafter the evidence of the experts viz. doctors who performed postmortem specifically states that not only physical injuries were there but also burn to the extent of 21% were noticed on the body of deceased Jyoti.

16. Having appreciated the conduct which was attributed to the petitioner it was duly established before the Sessions Court not only

from the documents and medical evidence but also from the expert evidence which led to drawing of only conclusion that the act of the petitioner not only in murdering his own wife but also burning her can very well fall within the head of crime committed with exceptional violence and brutality.

17. The conduct of the petitioner of practicing exceptional violence and murdering his own wife Jyoti especially when both of them were blessed with two children and she was pregnant with third child must fall in the category of the crime committed with exceptional violence and brutality. In addition to above, having regard to the burn injuries, which were also noticed to the extent of 21% on the body of Jyoti, the State Government, in our opinion, is justified in categorizing the petitioner's imprisonment to the extent of 26 years and not 22 years as claimed.

18. The State Government while categorizing the imprisonment of the petitioner to the extent of 26 years under clause 2(c) of the Government Resolution dated 15.3.2010 was sensitive to the judgment of conviction delivered by the Sessions Court which in detail dealt with the medical evidence of the expert. The medical evidence of the experts have once established about the violence and brutality practiced by the petitioner, the State Government, in our opinion, was justified in relying on the judgment of conviction. As such, reliance placed by the learned Advocate for the petitioner in the matter of Hamid Rahim Khatik (*supra*) can be stated to be beneficial to the respondent and not to the petitioner as the mandate therein is followed by the State Government.

19. Apart from above, if we consider the observations made in para 18 of the judgment referred above in the matter of Pradipsingh Murlidhar Thakur (supra) it has to be noted that in the said case the petitioner had strangled his wife and this Court had permitted to categorize the petitioner to 22 years.

20. In this background, if we consider the evidence which led to the conviction of the petitioner, conclusion could be drawn that not only violence was practiced on Jyoti by inflicting physical injuries on her but also causing her body to suffer burn injuries to the extent of 21%. Hence the judgment in the matter of Pradipsingh Murlidhar Thakur (supra) will hardly assist or support the case of the petitioner accused.

21. In this view of the matter, the impugned order is quite justified for the reasons which are reflected hereinabove.

22. That being so, no case is made out warranting interference by this Court.

23. Writ petition stands dismissed accordingly.

(MRS.VRUSHALI VJOSHI, J.)

(NITIN W. SAMBRE, J.)