



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

WRIT PETITION NO.547 OF 2025

Ganesh S/o. Radhesham Sharma

Vs.

State of Maharashtra and Another

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. A.Y. Sharma, Advocate for the petitioner.

Mr. S.A. Ashirgade, APP for Respondents.

CORAM: ANIL L. PANSARE AND
SIDDHESHWAR S. THOMBRE, JJ.

DATED : 25th SEPTEMBER, 2025

1. The challenge is to order dated 31st July, 2020 passed by the respondent No.1, refusing to release the petitioner in terms of Section 432 read with Sections 433 and 433-A of the Code of Criminal Procedure, 1973 (for short "CrPC").

2. The petitioner has been convicted for the offence punishable under Sections 302 and 498-A of the Indian Penal Code, 1860 (for short "IPC") with maximum sentence of life imprisonment. The petitioner is in jail since the year 2003. The respondent has referred to the guidelines issued by the Government vide Resolution dated 15.03.2010 to extend the benefits for the offences covered under Section 433-A of CrPC. As per the guidelines, the offences have been categorized under various heads like 'Offences relating to crime by women', 'Offence relating to crime against women and minor', 'Murders arising out of land dispute, family feuds,' etc.

3. In the present case, since, the offence is relating to crime against women, there is no dispute that the petitioner's case falls in the category of 'Offences relating to crime against women and minor'. The said category is numbered as second category in the guidelines. The second category consists of four sub-categories.

4. Category 2(a) is where the convict has no previous crime history and committed a murder in a individual capacity in a moment of anger and without pre-meditation. The period of imprisonment to be undergone is 20 years whereas Category 2(b) covers the crime as mentioned in category 2(a), but is committed with pre-meditation. In this category, the period of imprisonment to be undergone is 22 years. There are two other categories, but we are not concerned with those crimes.

5. The respondents have categorized the petitioner under category 2(b) and accordingly, the respondent No.1 has passed an order, saying that the petitioner shall be released after 22 years, subject to minimum 14 years of actual imprisonment. There is no dispute that the petitioner has undergone the actual imprisonment of 14 years, at least the impugned order doesn't disclose so.

6. The argument is that the petitioner falls under category 2(a). The learned counsel for the petitioner submits that, neither was it the case of prosecution, nor is there any evidence that the petitioner has committed murder with pre-meditation.

7. Thus, according to him, the petitioner should have been categorized under category 2(a). In any case, he submits that the respondent No.1 should have given reasons as to why the petitioner cannot be categorized under category 2(a) or why is he categorized under 2(b) of the said guidelines.

8. In support, he has invited our attention to the judgment passed by the Co-ordinate Bench of this Court in the case of **Ankush Bharat Gaikwad and Anr. Vs. The State of Maharashtra and Anr.**, reported in **2024 ALL MR (Cri) 1117**, to contend that since the respondent No.1 has not applied his mind to criteria for categorization, the impugned order is unsustainable.

9. Learned APP has opposed the application, saying that the High Court in the First Appeal, has observed that the petitioner was responsible for deadly assault on his wife. He further submits that the petitioner has been convicted under Section 498-A of IPC as well, indicating that petitioner has repeatedly harassed his wife. He submits that the continued harassment and beating to petitioner's wife is a fact self-sufficient to prove that the petitioner has killed his wife with pre-meditation.

10. We are not impressed with the arguments so made by the learned APP. The harassment to the petitioner's wife was with a view to extract certain valuable things and therefore, the petitioner may not be wanting to see his wife dead. In other words, the petitioner would not kill her, if his intention was to extract valuable things from his wife.

11. In any case for deciding whether the petitioner has killed his wife with pre-meditation, the authority below should have gone through the facts of the case, the evidence led before the Trial Court and the findings given by the Trial Court. The authority below was further under obligation to go through the judgment passed by the High Court in First Appeal to ascertain whether the case will fall under category 2(a) or category 2(b) of the guidelines issued in the year 2010.

12. In the present case, the respondent No.1 has referred to the guidelines of 2010 and has noted a single statement that the petitioner has beaten his wife for dowry and in such beating, she suffered death, to opine that the petitioner falls in category 2(b).

13. Thus, it appears that the respondent No.1 was of the opinion that the petitioner's wife suffered death because of physical attack on her. The finding doesn't indicate that the petitioner has killed his wife. As such, the Sessions Court has rendered a categorical finding that the petitioner is responsible for the murder. The respondent No.1 therefore, could not have said that in the beating at the hands of the petitioner, his wife suffered death. Such an incorrect assessment of facts itself is sufficient to hold that the order impugned is passed without application of mind. In any case, there is nothing in the order to show, why the petitioner's case should be not considered under category 2(a) of the Guidelines of the year 2010.

14. The Co-ordinate Bench in Ankush Gaikwad's case (supra), has held as under :-

*12. Bearing in mind these principles, the opinion of the convicting court submitted under section 432(2), dated 17-12-2018 clearly ignores the law laid down in the matter of **Sangeet**. In paragraph no. 1, facts have been narrated and in the second and concluding paragraph, it has been simply observed that the petitioner's case fell under category 5(a) of 2010 guidelines.*

13. Similarly, as has been cursorily observed herein-above, the impugned order not even refers to the opinion expressed by the Presiding Judge in this report under section 432(2) of Cr.P.C., which clearly demonstrates that the respondents no. 1 and 2 and particularly, the latter who has actually passed the order has treated the report under section 432(2) as a merely formality and the order has been passed de hors the opinion expressed in that report and taking into consideration and reproducing some portion from the judgment whereby the petitioners were convicted.

14. In view of such state-of-affairs, the impugned order is grossly illegal and is liable to be quashed and set aside. However, considering the limited scope of the powers vested in this Court under Article 226 and 227 of the Constitution of India, this Court cannot independently undertake any exercise to ascertain if the petitioners are entitled to any remission and if yes, under which category

15. The Co-ordinate Bench has then remanded the matter back to the respondents to take a decision afresh.

16. Thus, the Co-ordinate Bench held that the order passed by the authority below is illegal being sans reasons and further because opinion of Sessions Court who had convicted the petitioner therein, was not considered.

17. Here also, respondent No.1 has passed impugned order without assigning any reason and also without considering the opinion of Sessions Court.

18. Accordingly, the petition is partly allowed. Impugned order dated 31.07.2020 is hereby quashed and set-aside. The matter is remanded back to the respondents to decide afresh in accordance with law. The convicting Court shall re-consider the matter and submit fresh report under Section 432(2) of the CrPC, in terms of the judgment in the case of **Ram Chandra 2022 ALL SCR (Cri) 916** and **Sangeet 2013 ALL SCR 534**. Once the report of convicting Court is received, the respondent No.1 shall pass order afresh in accordance with law. The entire exercise shall be done within a period of six weeks from the date of receipt of the order.

(Siddheshwar S. Thombre J.)

(Anil L. Pansare J.)

Privel