



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 28 OF 2026

1. Mohmad Naim Nabi Mohmad Khan,
(Convict No.5213)
Age : 45 Years, Occ. Convict,
R/o Chawl No.2, Dube Qureshi Nagar,
Sonapur, Bhandup (E) Mumbai,
At present confined in Open Jail Paithan
Chhatrapati Sambhajanagar. **..PETITIONER**

VERSUS

1. The State of Maharashtra,
Through Superintendent of Jail,
Open Jail Paithan, Chhatrapati
Sambhajanagar
2. Secretary,
Hone Department (Prison),
Mantralaya, Mumbai 40005. **..RESPONDENTS**

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Advocate for the Petitioner : Mr. Rupesh A. Jaiswal
A.P.P. for Respondent Nos. 1 and 2/State : Mr. N. B. Patil
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**CORAM : SANDIPKUMAR C. MORE AND
ABASAHEB D. SHINDE, JJ.**

**RESERVED ON : MARCH 23, 2026
PRONOUNCED ON: MARCH 27, 2026**

FINAL ORDER (PER SANDIPKUMAR C. MORE, J.) :-

1. Heard learned counsel Mr. Rupesh Jaiswal for the petitioner and learned A.P.P. Mr. N. B. Patil for the Respondents/State.
2. Rule. Rule made returnable forthwith. Heard finally with consent of the rival parties.

3. By way of this petition, the petitioner has taken exception to the impugned order dated 03.11.2025, passed by respondent No.2, whereby he is directed to undergo punishment of 26 years, under the category 2(c) of the Guidelines of 2010.

4. The learned counsel Mr. Rupesh Jaiswal for the petitioner submits that, respondent No.2 has placed the petitioner in category 2(c) of Guidelines of 2010 erroneously. According to him, the petitioner should have been placed under category 2(b) instead of 2(c) of those guidelines, since there was no exceptional violence in committing murder of the victim. He placed reliance on the judgment of Hon'ble Apex Court in the case of State of ***State of Haryana Vs. Jagdish reported in (AIR 2010 SC 1690)***, wherein it is held that the convict should be given the benefit of the policy, which is more beneficial to him, which was existing at the time of his conviction or at the time of deciding the issue of his premature release. Besides, the learned counsel for the petitioner also relied on the judgment of this Bench in the case of ***Sopan S/o Bhausahab Gunjal Vs. State of Maharashtra and another (Criminal Writ Petition No. 1128 of 2022) dated 12th April, 2023.***

5. Per contra, the learned A.P.P. strongly opposed the submissions made on behalf of the petitioner. According to the learned A.P.P., the present petitioner had in fact committed murder of his own daughter

of three years age. In the earlier night of the incident, the petitioner had thrown her twice or thrice on the floor, and thereafter, in the early morning of the next day, he strangled her with the help of string (Sutali) and thereafter, without paying further attention, he left the house. The petitioner had even threatened his own wife, who had witnessed the incident of strangulation. As such, the learned A.P.P supported the impugned order, which was committed with exceptional violence and brutality.

6. Admittedly, the petitioner has been convicted for committing murder of his own daughter namely Ashraf Unnisa, who was merely three years of age at the time of incident. The aforesaid conviction is granted by learned Sessions Judge for Greater Bombay in Sessions Case No. 560 of 2010 under the judgment and order dated 01.11.2011. Thus, it appears that the petitioner has already undergone imprisonment of 14 years and 2 months actually and after including the remission, of 24 years.

7. Further, it is not in dispute that the Hon'ble Apex Court in the case of *State of Haryana Vs. Jagdish (supra)* has observed that the convict should be given benefit of policy which is more beneficial to him. The learned counsel for the petitioner is claiming that the respondent No.2 should have placed the petitioner under category 2(b) instead of category 2(c) of 2010 Guidelines. For quick reference,

we would like to reproduce those categories herein below :-

“2(b) Where the crime as mentioned above committed with premeditation”.

2(c) Where the crime is committed with Exceptional violence and or with brutality or death victim due to burns.

8. The learned counsel for the petitioner vehemently argued that though there was premeditation for committing murder of own daughter of the petitioner, but the said act was not covered under the category of 2(c), since there was no exceptional violence. Further, he also relied on the other judgments passed by this Court as mentioned above and submits that beneficial policy has to be adopted by the respondent/State. Admittedly, the category in which the convict is to be placed is determined on the basis of nature of the criminal act. In the instant case, it is clearly evident that the petitioner was having strong dislike with her own three years old daughter, who due to some illness used to pass urine wherever she was sitting or sleeping. On the day of incident also, she had urinated near the door, and therefore, the petitioner got angry and gave her two to three slaps and by lifting her, he threw her on the floor on two or three occasions. Thereafter, in the early morning, he strangulated her with thin rope i.e. Sutali. When his wife intervened, he also threatened her on the point of knife. Thus, the unfortunate little daughter of the petitioner got killed.

9. It is significant to note that the certain authorities, after going

through the nature of that act, recommended that the petitioner be placed under category 2(b). However, the same is not binding upon the State. The act of committing murder of own daughter of tender age is definitely brutal in nature and considering the manner in which the petitioner behaved with his own daughter, it can be inferred that there was exceptional violence in his act. The gravity of the act of the petitioner certainly increases specially considering the fact that the deceased was not even in position to retaliate. Therefore, considering these aspects, we are not inclined to place the petitioner under category 2(b) of those guidelines, since his act is squarely covered under the category 2(c) of 2010 Guidelines. It is to be noted that the benefit can be extended to such petitioner or convict, only if, there is scope to hold that his act comes under two or more categories of those guidelines. Therefore, we do not find any merit in this petition and accordingly it stands dismissed. Rule is discharged.

(ABASAHEB D. SHINDE)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

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