



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

CRIMINAL WRIT PETITION No.303/2026

Nalini W/o Vijay Dapke : **PETITIONER**
Aged 51 years, Occ. Convicted Prisoner,
R/o Narkhed, District Nagpur

VS.

1. State of Maharashtra, Under Secretary, : **RESPONDENTS**
(अवर सचिव, गृह विभाग)
Department of Home Affairs,
Government of Maharashtra,
Mantralaya, Mumbai – 32
2. D.I.G. (Prisons),
Eastern Region, Wardha Road, Nagpur
3. The Superintendent, Central Prison,
Wardha Road, Nagpur (Maharashtra)

Mr. A.K. Bhangde, Advocate for the petitioner

Mrs. N.R. Tripathi, APP for Respondents

**CORAM: URMILA JOSHI PHALKE AND
NIVEDITA P. MEHTA, JJ.**

DATED : 04.05.2026

ORAL JUDGMENT (PER : URMILA JOSHI PHALE)

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

2. By this petition, the petitioner is seeking quashing and setting aside order dated 24.09.2024, seeking remission under Sections 473, 474 and 475 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (In short, BNSS, 2023) (Corresponding Sections 432, 433, 433-A of the Code of Criminal Procedure) and under Article 161 of the Constitution of India.

3. The present petitioner was arrayed as an accused in connection with crime registered under Sections 302, 364, 201, 120-B of the Indian Penal Code (In short, IPC) and she was convicted by the Sessions Court, Nagpur on 18.06.2005. As per the petitioner, she was arrested on 13.05.2003. Thereafter, after completion of investigation, she faced the trial and the trial Court held her guilty and convicted while sentencing her with life imprisonment. Being aggrieved and dis-satisfied with the same, she preferred an appeal before this Court bearing Criminal Appeal No. 435/2005. The said appeal was dismissed on 15.09.2008, thereafter, she approached to the Hon'ble Apex Court along with co-accused by filing Appeal Nos.467/2010, 484/2010 and 11/2015. The Hon'ble Apex Court confirmed the judgment of the Sessions Court and the High Court and maintained the conviction on 03.01.2017.

4. It is further contended that she made a representation to the Inspector General of Prison at Pune through the Superintendent of Prison, Nagpur in the month of October to December, 2023 before preferring Criminal Writ Petition No. 226/2024. It is further contended that the entire behaviour of the petitioner during imprisonment was decent and proper. From last more than 20 years she has not committed any

misconduct during that period, therefore, she is qualified for remission after completion of period of 14 years, but she was wrongly categorized under the category 1(b). It is further contended that in view of the Notification issued by the Government of India and Government of Maharashtra, she is entitled for the remission, which is not given to her and thereby the said benefit be extended to her.

5. The learned APP for the respondent – State in response to the notice strongly opposes the contentions and submitted that as per the provisions of Maharashtra Prison, 1979, the Committee has been formed for the purpose of premature release of the present petitioner. Under the said provisions the nomination chart of the present petitioner with the report of the other information and the report of the nature of offences and the other informant was submitted to the Committee and thereafter the Committee has decided the categorization of the prisoner. The report of 14 years actual imprisonment of the present petitioner with the proposal of pre-mature release was forwarded through the Additional Director of Police and Inspector General of Prison, Maharashtra State, Pune to the Government of Maharashtra. It is submitted that the nature of offence committed by the petitioner as well as the observations in the judgment and order passed by this Court, as well as Hon'ble Apex Court nature of advisory board, the opinion of the Superintendent of Police, the District Magistrate and the Inspector General of the Prisons, the categorization of premature release of the petitioner falls under category 1(b) and, therefore release after 20 years with remission under the Government

Resolution, Home Department dated 15.03.2010. Therefore, petition deserves to be dismissed.

6. Heard learned counsel for the petitioner and learned APP for respondents – State.

7. The learned counsel for the petitioner placed reliance in the case of *Usha Munna Upadhyay Vs. The State of Maharashtra*, reported in *2015 ALL MR (Cri) 3209* as well as *Sandeep Suresh Gurav @ Khatmal Vs. The State of Maharashtra*, reported in *2015 ALL MR (Cri) 3212*.

8. On perusal of the entire record, it reveals that the prisoner was charged for the offences punishable under Sections 302, 364, 201 and 120-B of IPC and she was convicted by the Additional Sessions Judge, Nagpur in Sessions Trial No. 367/2003, vide judgment and order dated 18.06.2005. Her date of arrest was 13.05.2003. On perusal of the judgment and order, it reveals that she was charged with the allegation that on 10.05.2003, one Shriniwas S/o Wasudeorao Tonpe, lodged a report vide Exh.154 about missing of his elder brother Raman with the police Station Narkhed as his brother had left their house in the morning on 08.05.2003 and thereafter he had not turned up to their house. On the said report, the said police station made necessary entry in the missing register and thereafter second report was registered suspecting the involvement of the present petitioner as well as other co-accused on an allegation that they have abducted the deceased and committed his murder. During investigation, the involvement of the present petitioner

was revealed. It also revealed that the act was committed with premeditation and accordingly the petitioner was convicted for the offences punishable under Sections 364 and 302 of IPC. The learned counsel for the petitioner placed reliance on the Government Notification dated 15.03.2010. The said Notification states that the Government had revised guidelines for premature release of prisoners undergoing life sentences from time to time. These guidelines are made applicable from the date of issue of this Government Resolution i.e. from 15.03.2010. In view of that resolution, the prisoners were categorized as per the nature of offence. Specific category is mentioned in category No.1 under the offences relating to crimes by women which states that (a) Where the convict has no previous criminal history and has committed the murder in an individual capacity in a moment of anger and without premeditation under physical, mental provocation and (b) Where the convict has committed murder with premeditation or by a gang. Considering the facts of the offence and the circumstances under which it was committed the petitioner was categorized under 1(b) and specific note in column 3 in the said resolution shows that the period of imprisonment to be undergone including remissions subject to a minimum of 14 years of actual imprisonment including the set-off period wherein before the category 1(b) period of 20 years is mentioned. As per the provisions of the Maharashtra Prisons (Review of Sentence), Rules 1972 for the purpose of recommendation of premature release, the Selection Committee is constituted under the Cr.PC., including the Regional Special

Inspector General of Prisons, any Judicial Magistrate nominated by the District and Sessions Judge, the District Superintendent of Police, concerned Superintendent of Prison and 3 non-official members. As per the provisions of the Maharashtra Prison Manual, 1979, the Committee has been formed for the purpose of premature release. Section 433-A of Cr.P.C. deals with restriction on powers of remission which reads as under:

“433-A. Restriction on powers of remission or commutation in certain cases

Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.]”

9. The proposal of premature release with 14 years imprisonment report with opinion of Advisory Board with the other information of the prisoner was forwarded and the Additional Director General of Police and Inspector General of Prison, Pune categorized the present petitioner. As per the nature of the offence committed and as per the said report, the conviction, the categorization of the present petitioner was under the category of 1(b). The nature of offence and the other factual circumstances categorization of the present petitioner as under 1(b) and therefore release of the prisoner under remission after under the Government Resolution, Home Department dated 15.03.2010 is

provided. Considering all these circumstances, the representation of the present petitioner for remission was considered by the respondents.

10. Though the learned counsel for the petitioner placed reliance on the decision in the case of *Usha Munna Upadhyay Vs. The State of Maharashtra*, (supra), wherein the issue involved was whether the categorization of the petitioner therein would be under the category 6(a) or 1(b) and while answering the same, this Court observed that the category 1 is a special category relating to crime by women which is divided in two sub categories (a) and (b). The other categories are based on the classification of offences and not on the classification of offenders on the basis of gender. Thus the provisions with respect to the offences committed by woman, is a special category and the other categories are general. It is further held that -

“19. The categorization as ‘Crime by Women’ in category 1, indicates that so far as women offenders are concerned, the applicability of other categories is ruled out. It is a settled principle of interpretation of statutes and instruments, that if a special provision is made on a certain matter, that matter is excluded from general provision. This principle is expressed in the maxims Generalia specialibus non derogant, and Generalia specialibus derogant. Since, in this case, a special provision has been made with respect to the offences or crimes by women, the applicability of the other provisions of a general nature to women offenders, is excluded.”

11. Thus before this Court in the said petition issue was regarding the categorization.

12. Admittedly, in the present case, the categorization of the present petitioner was rightly done under 1(b) and, therefore, in view of the Notification dated 15.03.2010, she would be entitled for remission

only after completion of 20 years and not before that. According to petitioner, she has already undergone 19 years 8 months 28 days, whereas according to the respondent, it is 18 years 4 months and 17 days as on 31.03.2026.

13. In view of the submissions made and in view of the provisions and especially the Notification, the present petitioner would be entitled for remission only after completion of 20 years, therefore, she would be at liberty to apply for remission after completion of 20 years.

14. With this, the petition is dismissed and disposed off.

Rule is discharged.

(NIVEDITA P. MEHTA,J.)

(URMILA JOSHI PHALKE, J.)