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

CRIMINAL WRIT PETITION NO.38 OF 2024

Pradipsingh Murlidharsingh Thakur,
aged about 50 years,
Occ. Nil, R/o in Central Jail,
Nagpur … Petitioner

-vs-

1. State of Maharashtra,
through its Secretary,
Department of Home,
Mantralaya, Mumbai-32

2. State of Maharashtra,
through Police Station Officer,
Panchpoli Station, Nagpur

3. State of Maharashtra,
Jail Superintendent, Central Jail,
Nagpur … Respondents

Shri Y. P. Bhelande, Advocate for petitioner (Appointed).
Smt N. R. Tripathi, Additional Public Prosecutor for respondents/State.

CORAM : NITIN W. SAMBRE AND MRS VRUSHALI V. JOSHI, JJ.
DATE : November 26, 2024.

Oral Judgment : (Per : Nitin W. Sambre, J.)

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

The petitioner, convicted in Sessions Trial Case No.301/2001 by the Court of 2nd Ad-hoc Additional Sessions Judge, Nagpur is seeking his release based on the categorization permitted under Annexure-I Category 2 (b) of the Government Resolution dated March

15, 2010 issued under Section 432 of the Criminal Procedure Code, 1973.

2. The petitioner infact has sought his categorization. The State Government vide its order dated September 14, 2018 refused to extend the benefit of categorization to the petitioner considering the fact that the petitioner was a Police personnel and has murdered his pregnant wife.

3. The facts necessary for deciding the petition are as under :

The petitioner got married to the deceased in 1994 and has committed an offence of strangulating his wife on February 24, 2001. Having regard to the fact that the death occurred within seven years of marriage, the petitioner was charged with the offences punishable under Sections 302, 498-A and 304-B of the Indian Penal Code. The Sessions Court believing the testimony of PW-1 Brijeshsingh, brother of the deceased and PW-11 Vishal Kamble, convicted the petitioner for an offence punishable under Section 302 of IPC and sentenced him to be hanged till death. The petitioner was also convicted for the offence punishable under Section 498-A of IPC and was sentenced to suffer three years rigorous imprisonment and to pay fine of Rs.3,000/- and he was acquitted of the offence punishable under Section 304-B of IPC.

4. Being aggrieved, the petitioner preferred an appeal before this Court vide Criminal Appeal No.141/2003 whereas the State Government made a reference for confirmation of death sentence vide Confirmation Case No.2/2003 which came be decided on August 11, 2003. The appeal against conviction preferred by the petitioner came to be partly allowed thereby converting his punishment to life imprisonment and the judgment of conviction accordingly stood modified.

5. In this backdrop, the petitioner has sought his categorization pursuant to the Resolution issued by the State Government under Section 432 of the Criminal Procedure Code meaning that the petitioner should be categorized which shall make him entitled for the benefit of remission in his punishment. This prayer has been rejected by order dated September 14, 2018.

6. Shri Y. P. Bhelande, learned counsel (appointed) for the petitioner would urge that the impugned communication dated September 14, 2018 cannot be said to be sustainable as the scheme of Section 432 of the Criminal Procedure Code does not confer any power on the State Government to discriminate amongst the convicts

so as to refuse the prayer for categorization. So as to substantiate his claim, the learned counsel would draw support from the Division Bench judgment of this Court in the matter of *Satish Ramji Chaurasiya vs. State of Maharashtra* ***2024(4) MhLJ (Crl) 558*** so as to claim that the respondent-State Government in the matter of categorization and release of a convict cannot make discrimination. In paragraphs 13 and 16 of the judgment it is observed thus :

> " *13. Dr.Chaudhry has relied upon a recent decision of the Apex Court in the case of Rajkumar Vs. The State of Uttar Pradesh2, where, by referring to its earlier judgment in the case of Rashidul Jafar @ Chota Vs. State of Uttar Pradesh & Anr.3, directions were issued for premature release of a person sentenced for imprisonment for life and the question came of implementing the guidelines formulated by the State of Uttar Pradeh, the grievance made by 50 persons who were subjected to a pick and choose policy, Dr.Chandrachud, the Hon'ble The Chief Justice of India, has specifically held as under :-*
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> > *"13. The State having formulated Rules and Standing Policy for deciding cases of premature release, it is bound by its own formulations of law. Since there are legal provisions which hold the field, it is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release. It must strictly abide by the terms of its policies bearing in mind the fundamental principle of law that each case for premature release has to be decided on the basis of the legal position as it stands on the date of the conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination. The provisions of the law must be applied equally to all persons. Moreover, those provisions have to be applied efficiently and transparently so as to obviate the grievance that the policy is being applied unevenly to similarly circumstanced persons. An arbitrary method adopted by the State is liable to grave abuses and is liable to lead to a situation where persons lacking resources, education and awareness suffer the most."*
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> *16. …. Since there is no discretion left in the State Government to further categorise him and refuse him premature release on the pretext that he is found guilty of a heinous offence hit by immorality, as he has committed rape on her own daughter and impregnated her, the refusal by the State Government to release him on completion of more than 20 years of actual imprisonment, including remission is in*

> *utter violation of its own policy framed in exercise of power under Section 432 of the Code of 1973. Since, the Petitioner has already undergone 22 years of actual imprisonment, including remission, he is entitled for premature release, by declaring that he has undergone the sentence awarded to him, on finding him guilty of committing an offence of rape.*

7. According to Shri Bhelande, the conduct of the petitioner in any case cannot be termed to be the act of committing an offence of murder with exceptional violence or brutality. He would claim that at the most the act of the petitioner can be categorized under category 2(b) that is where the crime is committed with premeditation having regard to the factual matrix. In support of this contention, the learned counsel would rely on the observations made in paragraph 23 of the judgment of this Court in **Criminal Writ Petition No.4721/2021** *(Bilal Bashid Shaikh vs. The State of Maharashtra and ors.)* delivered at Principal Seat which read thus :

> *"23. In case of Rajaram Patil vs. State of Maharashtra, 1996 DGLS (Bom.) 18, the Division Bench of this Court while entertaining a writ petition under Article 226 of the Constitution of India has made the following pertinent obervations, which can be extracted from paragraph 4, as under :-*
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> > *"4. Every murder is a result of some kind of violence. Use of weapon or blows on the vital part by itself cannot be termed to be an exceptional violence. Such a violence would be ordinary violence for committing murder. It appears that the State Government wanted to create a separate category of murders in which there is an exceptional violence or which show the perversity of mind. In a peace loving society, every murder is bound to shock the members of the society but the exceptional violence creates tremors of shock and indignation. We do not wish to give examples which amount to exceptional violence but suffice it to say that, the present case is not one which can be lebelled as a case of exceptional violence. Though every*

> *offence of murder is creation of an ill-mind, perversity is something more than that. Perverse individuals may act in a fashion in committing the murder as would show that depravity of balance of mind. We do not see anything in the acts committed by the present petitioner which show any perversity in his mind. The question as to whether there is an exceptional violence or there is perversity in a particular case will have to be decided on the basis of the facts and circumstances of that case and no yardstick of universal application can be available for this purpose."*

8. In support of the prayer for premature release, the learned counsel would also draw support from the observations made in paragraphs 17 and 18 of the judgment in *Dilip S. Shetye vs State Sentence Review board and ors.* ***2021 (1) AIR BomR (Cri) 263*** delivered at Goa Bench which read thus :

> *" 17. As regards the first reason cited by the Board, it is no doubt true that the offence committed by the petitioner was a serious one. This is the reason why the petitioner was sentenced for life and as on date has suffered actual incarceration of about 20 years. The Board was, therefore, required to consider whether this sentence was sufficient and commensurate to the crime committed by the petitioner. Merely stating that his was a serious crime without anything else, cannot be a good ground to refuse premature release of the petitioner….*
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> *18. … Besides, the record very clearly indicates that this petitioner was released on parole and furlough on not less than 23 occasions. There is no complaint that on any of these occasions the petitioner defied the terms and conditions subject to which he was released. "*

9. As against above, the learned Additional Public Prosecutor Smt Tripathi would invite our attention to the occupation of the petitioner of being a Police personnel at the relevant time when the offence was

committed. According to her, considering the nature of duty entrusted to the petitioner, the act of strangulating his own pregnant wife sufficiently prompted the State to exercise the powers not to extend the benefit of premature release. According to her, the offence committed by the petitioner as such falls under the exceptional category and that being so, the State has powers to decide whether to extend the benefit of premature release so conferred under Section 432 of the Criminal Procedure Code vide the Government Resolution referred above.

10. We have considered the rival submissions.

It is not in dispute that the conviction of the petitioner was modified by the High Court by its judgment and order dated August 11, 2003. The prosecution claim was accepted in appeal and so also in the Court below that the petitioner in the capacity of husband strangulated his wife for not fulfilling his demand of dowry.

11. The fact that the deceased was pregnant at the relevant time is sought to be relied upon by the learned Additional Public Prosecutor to establish that the act of the petitioner can be termed as brutal and heinous. The State has taken a stand that in exercise of powers under the Government Resolution dated March 15, 2010, particularly

Category 2(c) of Annexure-I, it has decided not to grant prayer for premature release. Such decision is based on the following foundations :

(a) that the petitioner was an employee of Police department;

(b) he being a Police personnel, commission of crime of violence with brutality was not expected of him and if so released in this backdrop, same would have an adverse impact on the society ;

(c) that he has murdered his pregnant wife.

12. If we appreciate the aforesaid reasoning in the backdrop of provisions of Section 432 of the Criminal Procedure Code, we are required to be sensitive to the powers conferred by the legislation to suspend or remit the sentence. So as to regulate the said issue, the State has issued a resolution dated March 15, 2010, particularly Category-8 of Annexure-I of the said resolution gives liberty to the State Government to decide individual case on merit. Perusal of the said Annexure-I further depicts that the maximum imprisonment which is prescribed under category (2) in the said resolution is 26 years. As such, the intention of the State Government appears to be to grant remission in sentence to all the categories of convicts and not to deny them the benefit empowered under Section 432 of the Criminal Procedure Code.

13. In such an eventuality, just because the petitioner was an employee of Police department and the fact that he murdered his pregnant wife by itself would not disenttile him to get the benefit of remission which is provided under the aforesaid legal provision. Rather there is no separate category carved out as an exception to the normal Rules of remission provided under Section 432 of the Criminal Procedure Code for a Police personnel committing heinous crime of murdering his pregnant wife.

14. For the aforesaid reasons, refusal by the State to admit the petitioner for remission cannot be said to be sustainable and that being so, the order impugned dated September 14, 2018 is hereby quashed and set aside.

15. This takes us to the next submission of the counsel for the petitioner about categorization of the petitioner under category 2(b) and not under category 2(c) as the same has been claimed in an alternate submission made by the learned Additional Public Prosecutor. Category 2(c) contemplates life imprisonment of 26 years with remission where the crime is committed with exceptional violence and/or with brutality.

16. We have considered the reasoning given by the Division Bench while partly allowing the appeal against conviction of the petitioner. The Division Bench was of the view that the petitioner has strangulated his wife and as such, the same does not fall in the category of rarest of rare case.

17. In an offence of murder having regard to the provisions of Sections 300 and 302 of IPC, one has to be sensitive of the fact that the elements of violence are necessary for drawing a conclusion of commission of such offence. The scheme of remission framed under Section 432 of the Criminal Procedure Code as sought to be relied by the petitioner is based on the gravity and number of convictions.

18. One of the important aspect while dealing with the claim of remission which this Court is required to be sensitive to is whether the act amounts to perversity in combination with violent mind.

In the case at hand, it is specifically demonstrated from the judgment of the appellate Court that the conviction of the appellant (petitioner here) for an offence punishable under Section 498-A and 302 IPC is based on the non-fulfillment of demand dowry and subsequent death of victim who happened to be wife of the petitioner within seven years of marriage. Of course the act of strangulation

which is attributed to the petitioner is a violent act but whether such an act can be termed as one causing death with brutality or with exceptional violence, is required to be looked into.

19. In our view, having regard to the evidence which is brought on record particularly of PW-1 Brijeshsingh, brother of deceased and PW-11 Vishal Kamble, we are of the view that it cannot be inferred that the petitioner has caused the murder of his wife with exceptional violence or that with brutality. We are required to be sensitive to the nature of injuries suffered by the deceased. In this case, the victim suffered two injuries; one ligature mark on neck and another nail abrasion on right side of neck. The aforesaid injuries have also prompted us to form an opinion that the case of the petitioner cannot fall under exceptional circumstances so as to make him liable to undergo 26 years of imprisonment for murdering his wife with exceptional violence or brutality. As such, the contention canvassed by the learned Additional Public Prosecutor that the petitioner can be categorized under category 2(c) of Annexure-I appended to the Government Resolution dated March 15, 2010 is liable to be rejected.

20. For the aforesaid reasons we categorize the petitioner under category 2(b) of Annexure-I appended to the Government Resolution

dated March 15, 2010 by holding that the petitioner committed crime with premeditation. That being so, the petitioner is liable to undergo 22 years imprisonment including remission.

21. We direct the Jail authorities to appropriately implement the aforesaid observations to form an opinion as to whether the petitioner has undergone 22 years of imprisonment including remission.

22. In view of the aforesaid observations, Rule is made absolute.

23. Fees of the Advocate appointed for the petitioner be paid as per the Rules.

(Vrushali V. Joshi, J.) (Nitin W. Sambre, J.)

Asmita-PS