

HIGH COURT OF JUDICATURE AT BOMBAY**Bench: A.S. GADKARI & SHARMILA U. DESHMUKH, JJ.****Date of Decision: 12th October, 2023**CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1641 OF 2022**Salim Gulab Pathan****...Petitioner****V/s.****The State of Maharashtra****...Respondents****Sections, Acts, Rules, and Articles Mentioned in the Judgment:**

- Section 302 of the Indian Penal Code (IPC)

Subject of the Judgment:

Quashing of Order on Premature Release Guidelines and Classification of Prisoner

Headnotes

Premature Release Guidelines - Quashing of Order - Classification of Prisoner - Beneficial Guidelines - The petitioner seeks the quashing of an order placing him in a specific category under the premature release guidelines - The incident involved a quarrel between the petitioner and his wife, resulting in her death by fire - Dying declaration by the deceased indicated her husband's involvement in setting her on fire - The Sessions Court's judgment and guidelines from 1992 and 2010 are considered - The court determines that the guidelines beneficial to the convict should be applied - The petitioner should be placed in category 3(a) of the 1992 guidelines, which is more beneficial than the previous classification - The impugned order is quashed, and the petitioner's classification is revised. [Para 3-13]

Referred Cases:

- State of Haryana vs. Jagdish, (2010) 4 SCC 216
- Uday s/o Dhaku Sutar V/s. The State of Maharashtra & Anr. (Criminal Writ Petition No.4544 of 2021)

JUDGMENT : (Per Sharmila U. Deshmukh, J.)

1. Rule. Rule made returnable forthwith with the consent of the learned counsel for the parties istaken up for final disposal. Learned APP waives notice on behalf of the Respondent-State.

2. Heard Mr. Gharte, learned counsel for the Petitioner and Mr. Patil, learned APP for Respondent-State.

3. By this Petition, the Petitioner seeks quashing of the Order dated 29th June, 2020 passed by the Respondent placing the Petitioner in category 6(a) of the Guidelines dated 11th May, 1992 and category 2(c) of the Guidelines dated 15th March, 2010 issued by the State Government for premature release under the "14 Year Rule" of prisoners serving life sentence.

4. Mr. Gharte, learned counsel for the Petitioner has taken this Court through the Judgment of the Sessions Court dated 21st June, 2002 and would submit that, the incident had occurred pursuant to the quarrel between the Petitioner and his wife. He would submit that, in the dying declaration the deceased has stated that her husband had set her on fire after quarreling by suspecting her character. Placing reliance on the decision in the case of State of Haryana vs. Jagdish, reported in (2010) 4 SCC 216, he would submit that the guidelines of 1992 are beneficial and the same is required to be applied. Drawing attention of this Court to the guidelines of 1992, he would submit that, the Petitioner should be placed in category 3(a) of the guidelines of the year 1992.

5. On behalf of Respondent-State, Mr. Pandurang S. Bhusare, Superintendent, Kolhapur Central Prison, Kolhapur has filed an Affidavit dated 27th January, 2023. It is stated that the Sessions Court vide communication dated 6th September, 2014 has opined that, the benefit of guidelines under category 2(c) provided by Government of Maharashtra in the year 2010 can be extended to the Petitioner. It is stated that the concerned police authority and the Advisory Committee has not recommended premature release of the accused as the case falls under category 2(b) of the Guidelines of 2010, and the Additional Director General and Inspector General of Prisons and Correctional Services have opined that the Petitioner should be placed in category 6(a) of 1992 guidelines.

6. Learned APP submits that the State Government has classified the case of the Petitioner under 2(c) of the Guidelines dated 15th March, 2010, which provides for the period of imprisonment of 26 years. He would submit that the conviction is of the year 2002 and as such, the guidelines of the year 1992 and 2010 would apply. Pointing out to the Affidavit filed by the Respondent-State, learned APP would submit that the classification under category 2(c) of the 2010 Guidelines is correct classification.

7. We have perused the decision of the Sessions Court dated 21st June, 2002. The Petitioner has been convicted for life for the offence punishable under Section 302 of IPC. The Petitioner has not preferred any appeal against the said decision. The learned Sessions Judge has recorded in Paragraph No.2 that, the case of the prosecution is that on the date of the incident, there was a quarrel between the Petitioner and the deceased and subsequently, the deceased was seen coming out of the house in burning condition.

7.1. Learned Sessions Judge has considered the evidence of PW-2- Dr. Ugane, who has deposed that, while giving the history, the deceased told that her husband set her on fire after quarreling with her. The 3/ 7 findings indicate that the incident in-question has taken place subsequent to the quarrel between the Petitioner and the deceased in which the Petitioner had set the deceased on fire.

8. The Judgment of the Sessions Court is dated 21st June, 2002 and the guidelines for premature release under "14 Year Rule" of prison serving life sentence, which would apply are the guidelines of 11th May, 1992 and 15th March, 2010. As held by the Apex Court in the case of State of Haryana vs. Jagdish (supra), the guidelines beneficial to the convict are required to be applied. The Respondent-State has applied guidelines of 15th March, 2010 and has placed the Petitioner in category 2(c). The Respondent-State has considered that, the case of the Petitioner falls in category 6(a) of the guidelines of the year 1992, as he had escaped from prison on 22nd May, 2011, however, as the guidelines of 2010 were more beneficial, the same were applied.

9. Perusal of the guidelines of 11th May, 1992 indicate that the case of the Petitioner would fall either in category 3(a) or 6(a). For brevity the relevant categorization under the guidelines dated 11th May, 1992 along with relevant guidelines of 2010 are reproduced hereinbelow:

Category 3(a) and 6(a) of the 1992 Guidelines 4/ 7 Category Categorization of Crime Period of imprisonment to be No. undergone including remissions subject to a minimum of 14 years of actual imprisonment including set-off period.

3 MURDERS FOR OTHER REASONS

<p>a) Where a murder is committed in the course of a quarrel without premeditation in an individual capacity where the person has no previous criminal history.</p>	<p>6 Escapees</p>	<p>22 years.</p>
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a) Prisoners who have escaped from lawful custody while undergoing imprisonment or who absconded while on parole or furlough. Category 2(c) of 2010 Guidelines

Category be No.	Categorization of Crime	Period of imprisonment to undergone including remission of actual set off
2	OFFENCES RELATING TO CRIME AGAINST WOMEN AND MINORS.	

committed with exceptional violence and or with brutality or death of victim due to burns.

10. As regards category 3(a) or 6(a) of the Guidelines of 1992 are concerned, category 3(a) applies, where the murder is committed in the 5/ 7 course of quarrel without premeditation in an individual capacity and where the prisoner has no previous criminal history and provides for period of imprisonment of 22 years, where category 6 (a) is applicable to escapees and provides imprisonment for 28 years. As discussed above, the findings of the Sessions Court is that, prior to the occurrence of the incident a quarrel took place between the Petitioner and the deceased and thereafter, the deceased was found in burnt condition. The dying declaration to that effect is also given by the deceased. As held by the Co-ordinate Bench of this Court in the case of Uday s/o Dhaku Sutar V/s. The State of Maharashtra & Anr. passed in Criminal Writ Petition No.4544 of 2021, the principle of giving benefit to the convict of beneficial policy certainly applies to two different policies/guidelines but the same will also apply to the categories in the same/policy/guidelines, if case falls under both the categories. In the instant case, category 3(a) of the guidelines of 1992 is more beneficial than category 6(a) of the guidelines of 1992. A similar comparison between category 2(c) of the Guidelines of 2010 and the categorization under 3(a) of the guidelines of 1992 discloses that categorization under 3(a) of the Guidelines of 1992 are beneficial to the convict.
11. Having regard to the above discussion, the impugned Order dated 29th June, 2020 is hereby quashed and set aside.

12. We direct that the case of the Petitioner be placed under category 3(a) of the Guidelines dated 11th May, 1992.
13. Petition is allowed. Rule is made absolute in the above terms.
14. All the concerned to act on an authenticated copy of this Order.
(SHARMILA U. DESHMUKH, J.) (A.S. GADKARI, J.) 7/ 7 Signed by:
Sanjay A. Mandawgad Designation: PA To Honourable Judge Date:
12/10/2023 18:40:20

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