

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 3993 OF 2018**

Shri Vitthal Pundalik Zendge,

Age 48 years,

R/o. 8511, Vitthal Mandir Vasahat,

Gerbai Wadia Road, Sewree,

Mumbai-15.

.....Petitioner

Vs.

The State of Maharashtra,

through it's Chief Secretary, Mantralaya,

(at the instance of R.A.K. Marg Police

Station in C.R. No. 431/1995,

Yerwada Central Jail)

.....Respondent.

Mr. Prosper D'Souza for the Petitioner.

Ms. P.P. Shinde APP for the Respondent-State.

**CORAM : A. S. OKA, AND**

**A. S. GADKARI, JJ.**

**DATE : 4<sup>th</sup> JANUARY, 2019.**

**ORAL JUDGMENT (PER A.S.OKA, J.):-**

By earlier Order notice of final disposal was issued. Rule.

The learned APP waives service.

2 By the Judgment and Order dated 8<sup>th</sup> June, 1999, the Additional Sessions Judge, Greater Mumbai convicted the Petitioner, who was the accused No. 1, along with Accused Nos. 2, 3, 4, 5, 6, 7 and 8, for the offences punishable under Sections 144, 148 and 302 of the Indian Penal Code read with Section 149 thereof. The Petitioner was sentenced to suffer rigorous imprisonment for life.

3 By the Government Resolution dated 15<sup>th</sup> March, 2010, guidelines were issued for premature release of prisoners undergoing life sentences in exercise of power under Section 432 of the Code of Criminal Procedure, 1973. According to the instructions received by the learned APP, the Petitioner has undergone sentence for a period of about 23 years (inclusive of all remissions).

4 The case of the Petitioner in brief is that his case is covered by sub-clause (b) of clause 4 of Annexure-I to the said Government Resolution dated 15<sup>th</sup> March, 2010 and therefore, he should be considered for premature release, after completion of period of 22 years. The contention of the State is that, the case will be covered by sub-clause (e) of clause 4 of Annexure-I.

5 The learned counsel appearing for the Petitioner has taken us through the Judgment of the learned Additional Sessions Judge,

under which, the Petitioner was convicted. His submission is that, sub-clause (b) of clause 4 of Annexure-I, will apply even assuming that, the murder was committed by the Petitioner, with premeditation.

The submission of the learned APP is that it is a case of murder committed with exceptional violence and therefore, the case will have to be categorized in sub-clause (e) of clause 4 of Annexure-I. Her submission is that, co-accused of the Petitioner who are convicted under the same Judgment and Order, have been categorized in sub-clause (e) of clause 4 of Annexure-I. We may note here that, it is not a case of the State that any of the co-accused have challenged their classification under sub-clause (e) of clause 4 of Annexure-I.

6 We have considered the submissions. We have perused the Judgment and Order dated 8<sup>th</sup> June, 1999 and the findings recorded thereunder against the Petitioner.

7 There is no dispute that, the case of the Petitioner will be covered by one of the 5 sub-clauses of clause 4 of Annexure-I to the Government Resolution dated 15<sup>th</sup> March, 2010.

For the sake of convenience, we reproduce clause 4 of Annexure-I, which reads thus:-

Category No.	Sub Category	Categorization of Crime	Period of imprisonment to be undergone including remission subject to a minimum of 14 years of actual imprisonment including set off period
4.		<b>MURDERS FOR OTHER REASONS</b>	
	(a)	Where a murder is committed without premeditation in an individual capacity and the person has no previous criminal history.	20
	(b)	Murder committed with premeditation, or a person having criminal history.	22
	(c)	Murder resulting from trade union activities and business rivalry.	22
	(d)	Murder committed by more than one person/ group of persons	24
	(e)	Murder committed with exceptional violence/ brutality/ kidnapping. Murder committed by dacoits and robbers in the act of committing dacoities and robberies. Murder committed by bootleggers, gamblers, flesh traders etc.	26

8 We have carefully perused the findings recorded against the Petitioner and the prosecution case. As per the prosecution case, the accused had gathered near the house of one Subhash, on 15<sup>th</sup> December 1995 at about 11.30 p.m.. The Complainant, while visiting a public toilet had noticed their presence. The case of the prosecution is that the accused No. 4 came out of the house of said Subhash keeping his hands around the shoulder of Yasin. At that time, the accused No. 4 started abusing Yasin. Some of the co-accused held the hands of the said Yasin and thereafter, the accused No.4 by a sharp edged weapon started giving blows on the stomach of Yasin. Thereafter, the accused No.2 also gave blows with the weapon on the stomach and other parts of the Yasin. It is alleged that, thereafter the present Petitioner (the accused No.5) and accused No. 3 gave the blows with the weapons in their hands to Yasin.

9 Perusal of paragraph No.13 of the Judgment, which reproduces injuries found on the dead body of Yasin, will show that, most of the incised wounds found on the body are attributable to the acts of the accused, other than the present Petitioner.

10 Taking the prosecution case as correct, several blows were given by the accused No.4 on the stomach of Yasin and thereafter Shiva-the accused No.2, gave several blows by a sharp edged weapon on the stomach and other parts of the Yasin.

11 Now, coming back to clause 4 of Annexure-I, sub-clause (a) will not apply, as the murder is not committed in an individual capacity. Sub-clause (b) will apply when murder is committed with premeditation or by a person having criminal history. This clause will not apply. On the face of it, sub-clause (c) will not apply. Taking the prosecution case as correct, the category in sub-clause (d) will be attracted, which is of murder committed by more than one person/group of persons. Sub-clause (e) will apply if the murder is committed with exceptional violence/brutality/kidnapping. Even according to the case of the prosecution, other two parts of sub-clause (e) are not applicable. When we consider the applicability of various clauses of Annexure-I to Government Resolution dated 15<sup>th</sup> March, 2010, roles played by the concerned accused will have to be considered and not by the co-accused.

12 Taking the case of the prosecution as correct, it cannot be said that the Petitioner was guilty of committing murder with

exceptional violence/brutality. Considering the role attributed by the prosecution to the Petitioner, he will not fall in any of the categories of sub-clause (e) of sub-clause 4. Therefore, her case will be covered by sub-clause (d) of clause 4 as in this case, the murder was committed by more than one persons and by a group of persons.

13 Therefore, going by the said Government Resolution, the case of the Petitioner for premature release of the Petitioner will have to be considered on Petitioner undergoing imprisonment for a period of 24 years, including remission, subject to undergoing minimum 14 years of actual imprisonment, including the set off period.

14 We, therefore, hold that, sub-clause (d) of clause 4 of Annexure-I to Government Resolution dated 15<sup>th</sup> March, 2010 will apply to the Petitioner and not sub-clause (e) of Clause 4 as contended by the State.

15 We may note here that, the learned APP, on instructions, accepted that the case of the Petitioner will be governed by the State Government Resolution dated 15<sup>th</sup> March, 2010.

16 Therefore, the Petition must partly succeed. We pass the following order:-

- a) We direct the State Government to immediately consider the case of the Petitioner for premature release on completion of 24 years undergoing of imprisonment including all remissions, subject to the Petitioner undergoing minimum 14 years of actual imprisonment, including the set off period;
- b) The case of the Petitioner shall be considered in the light of the findings recorded by the Judgment and Order;
- c) Rule is made partly absolute on the aforesaid terms.

**(A.S. GADKARI, J.)**

**(A.S. OKA, J.)**