
(2011) 05 BOM CK 0044

In the Bombay High Court

Case No : Criminal Writ Petition No. 2788 of 2010

Harjeetsingh Niranjansingh Jabbal

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 433A
Penal Code, 1860 (IPC) — Section 302, 397
Prisons Act, 1894 — Section 59(5)

Citation : (2011) 113 BOMLR 1555 : (2011) 8 RCR(Criminal) 2520

Hon'ble Judges : A.R. Joshi, J;A.M. Khanwilkar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—By this petition under Article 226 of the Constitution of India, the Petitioner takes exception to the order passed by the Desk Officer, Home Department, Government of Maharashtra, dated 7th September, 2009 bearing No. RLP 1009/397/CR-475/PRS-3, categorising the Petitioner in Category No. 5(a) of the Guidelines dated 11th May, 1992 (hereinafter referred to as "the Guidelines of 1992") framed by the Government of Maharashtra for premature release under the "14-Year Rule" of prisoners undergoing the life sentence.

2. According to the Petitioner, the Appropriate Authority ought to have decided the Petitioner's case on the basis of Guidelines dated 16th November, 1978 (hereinafter referred to as "the Guidelines of 1978"), wherein the maximum period of imprisonment specified for the prisoners, who are convicted of murders during dacoities and robberies, as 22 years.

3. Briefly stated, the Petitioner was arrested on 2nd December, 1994 by Bhoiwada Police Station in connection with C.R. No. 399 of 1994. The Petitioner was tried by the Sessions Court, Mumbai, for offences punishable under Sections 302 and 397 of the Indian Penal Code in Sessions Case No. 380 of 1995. The

Sessions Court, by judgment and order dated 4th August, 1998, found the Petitioner guilty of the said offences, and, accordingly, convicted and sentenced him to undergo rigorous imprisonment for life in connection with offence u/s 302 and rigorous imprisonment for seven years in connection with offence u/s 397 of I.P.C. The substantive sentences were directed to run concurrently. According to the Petitioner, by the time the present petition came to be filed, he has already completed 15 years of actual imprisonment, inclusive of under-trial period, and 22 years of imprisonment, with remissions. On that basis, he claims that he was entitled for premature release on the basis of Guidelines formulated by the Home Department on 16th November, 1978, as the maximum period of imprisonment, including remissions, for the murder committed by prisoners during dacoities and robberies is only 22 years as per Clause 4 of the said Guidelines. However, the proposal of the Petitioner was considered by the Appropriate Authority by applying the Guidelines of 1992 and that too by categorising the case of the Petitioner under Category 5(a) of the said Guidelines, which provides for total imprisonment period for the same offence committed by prisoners up to 26 years. In this backdrop, the Petitioner filed the present petition challenging the decision of the Appropriate Authority dated 7th September, 2009 and prayed for direction against the authority to consider the claim of the Petitioner as covered under Clause 4 of the Guidelines of 1978 to release the Petitioner from prison forthwith, as he has already served 22 years of imprisonment, with remissions. It is also asserted that at best the Petitioner's case would be covered by Category 3 of the Guidelines of 1992, in which case, the total period of imprisonment, including remissions, would be up to 24 years.

4. During the pendency of this petition, the Petitioner has amended the petition, and asked for further relief of declaration that the Guidelines of 1992 are ultra vires Sub-section (5) of Section 59 of the Prisons Act, 1894 and contrary to the decisions of the Supreme Court in the case of State of Haryana Vs. Mahender Singh and Others, and Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, . It is further prayed that Category 5(a) of the Guidelines of 1992 be struck down, being violative of Article 14 of the Constitution of India.

5. The grounds urged in the petition in support of the aforesaid reliefs are as follows:

(i) Category 5 refers to "professional criminals", whereas the relevant clause under the Guidelines of 1978, Clause 4 refers to these prisoners as "hardened criminals". It is urged that to be classified as professional criminal / hardened criminal, there should be more than one conviction for dacoity / robbery, whereas the Petitioner was convicted for a solitary offence.

(ii) Further, on the date of the consideration of the Petitioner's case for premature release, two different Guidelines were in force, i.e., dated 16th November, 1978 and 11th May, 1992. The Guidelines of 1978 were more favourable, as the same required the Petitioner to undergo only 22 years of imprisonment, with remissions. Reliance is placed on the decision of the Apex

Court in the case of State of Haryana and Others Vs. Jagdish and Harpal, to contend that, on completion of 22 years of imprisonment, with remissions, the Petitioner was entitled to be prematurely released.

6. By way of amended grounds, it is urged that the revised Guidelines are in the nature of departmental instructions. The same are liable to be struck down, being ultra vires Sub-section (5) of Section 59 of the Prisoners Act, inasmuch as the said provision enables the State Government to make statutory rules, and, despite such a provision, the State Government has failed to make any rules in that behalf in the last 51 years. Further, the revised Guidelines of 1992 have no force of law, and the categorisation of the Petitioner thereunder is illegal and unconstitutional. It is further urged that the Guidelines as issued are not in conformity with the decision of the Apex Court in Maru Ram and Others Vs. Union of India (UOI) and Others, , and are, therefore, ultra vires the said decision.

7. It is then urged that Category 5(a) of the revised Guidelines does not provide any intelligible basis for classification between a robbery/dacoity by a gang of robbers/dacoits and a robbery by a single individual. Failure to make distinction between an individual and a group act is arbitrary and liable to be struck down under Article 14 of the Constitution of India. Moreover, the said category applies the same yardstick to prisoners convicted for offence in connection with a single, solitary act and the prisoners, who were members of professional gangs of robbers/dacoits involved in multiple offences of the same kind. Thus, category 5(a) is discriminatory in nature. Further, categories 1 to 4 of the revised Guidelines of 1992 provide for different periods of imprisonment, depending on whether the act is in the individual capacity or as a member of a gang. The provision of 26 years of imprisonment imposed upon a habitual robber/dacoit having history sheet and a robber for a single, solitary act is arbitrary and liable to be struck down under Article 14 of the Constitution of India.

8. During the course of arguments, the grounds urged in the writ petition were reiterated by the counsel for the Petitioner. In addition to oral arguments, the counsel for the Petitioner has filed Synopsis of his Submissions. In the Written Submissions, it is additionally contended that prisoners, who were similarly placed, and who were convicted prior to 11th May, 1992, were given benefit of the Guidelines of 1978, and released by the Government in year 2009-10 on completion of 18 years of imprisonment, with remissions, in spite of the fact that their cases were covered u/s 433-A of the Criminal Procedure Code. On that basis, it is contended that the Petitioner should be given benefit on the same terms by applying the Guidelines of 1978.

9. Reliance is also placed on the decisions of the Apex Court in the case of Laxman Naskar Vs. Union of India and Others, to contend that the Apex Court has laid down Guidelines in respect of premature release. The Guidelines of 1992, as also the subsequent Guidelines framed by the State Government have overlooked the criteria specified by the Apex Court of reckoning good behaviour

for premature release. It is contended that a prisoner convicted for murder with robbery having a bad prison record will be released on completion of 26 years and prisoner convicted for the same offence, having exceptionally good prison record, will also be released on completion of the same period of 26 years of imprisonment, including remissions. In other words, the good behaviour factor is completely overlooked, and straight-jacket principle is applied by the Guidelines, which cannot be countenanced. It is also urged that Guideline 5(a) does not make distinction between individual offence and group offence, as also with regard to offence committed with pre-meditation and without pre-meditation. Thus, there is no intelligible differentia between a group act and an individual commission of offence with pre-meditation and without pre-meditation, for which reason, Guideline 5(a) deserves to be struck down.

10. Having considered the rival submissions and the relief which is pressed into service, we would proceed to answer the controversy on hand.

11. However, before that, we may advert to the relevant Guidelines. The first guideline can be traced to letter of the Home Department bearing No. RLP-5171/53409-IV dated 8th January, 1974 and followed by another letter No. RLP-1077-348-XXIV dated 14th October, 1977. The Guidelines are specified in these letters, for premature release under the 14-Year Rules of prisoners undergoing life sentence, which were in vogue. These Guidelines came to be revised by the Guidelines framed by the Home Department on 16th November, 1978. This position is reinforced from the recital of Guidelines of 1978. The guiding principle laid down in the Guidelines of 1978 was to indicate the broad division of the pattern of crimes for the purpose of premature release of prisoners sentenced to imprisonment for life, and not covered by the categories of prisoners sentenced for various offences. Therefore, it was felt necessary to revise the underlying principle so as to have a more comprehensive coverage of cases involving the punishment of imprisonment for life, which would be followed while considering the prisoner's case for premature release under the 14-Year Rule. Accordingly, the Guidelines of 1978 were framed. As far as the case of the Petitioner is concerned, the same would have been covered by Guideline 4 of the said Guidelines, which reads thus:

Categorisation of Crime

Period of total imprisonment, including remissions, to be under

4

Hardened Criminals

Prisoners whose crime forms part and parcel of other criminal activities like theft, smuggling or breaking of other laws such as those relating to prohibition, gambling or immoral traffic in women and girls; also hired killers and those convicted of murders during dacoities and robberies.

22 years

(Twenty two years)

12. Paragraph 2 of the Guidelines of 1978 may be of some relevance, which is reproduced thus:

2. The criteria in the guidelines prescribed in the preceding paragraph refer to normal cases i.e. the cases of prisoners with normal features and having good behaviour in the prisoners. However, prisoners having exceptionally good behaviour or possessing factors, which justify a sympathetic consideration, may be released earlier by a period upto one year than that specified in the guidelines. Similarly, prisoners whose cases possess unfavourable factors requiring a longer detention could be detained for a further period of upto two years beyond that specified in the guidelines. The Prison Advisory Boards should consider the cases of premature release of prisoners on the basis of these guiding principles, and make specific recommendations in this behalf. While submitting the cases of lifers to Government for review under the 14 year Rule, the recommendations of the Advisory Boards in each case, based on the abovementioned guiding principles, and the recommendations of the Inspector General of Prisons should invariably be submitted to Government. In cases, where the Inspector General of Prisons differs from the recommendations of the Prison Advisory Board, reasons for the difference in the view should also be furnished in the reports under the 14 Year Rule.

13. It is indisputable that the provisions of the Code of Criminal Procedure came to be amended, and Section 433-A was inserted with effect from 18th December, 1978. The same reads thus:

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 punishment provided by law, or where a sentence of death imposed on a person has been commuted u/s 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.

14. In view of the said amendment, the parameters regarding premature release of convicts covered by Section 433-A were required to be changed to be brought in consonance with Section 433-A. In furtherance thereof, the Home Department issued Guidelines on 11th May, 1992 for premature release under 14-Year Rule of prisoners serving life sentence. That position is re-stated in the recitals of the Guidelines, which read thus:

In view of the amendment to Code of Criminal Procedure 1973 and introduction of Section 433-A by Code of Criminal Procedure (Amendment) Act 78 imposing restrictions on the power of the appropriate Government to remit the sentences of prisoners convicted after 18th December, 1978, the existing guidelines issued by letter, dated 16th November 1978 under reference had become inapplicable in the cases of prisoners undergoing life imprisonment covered by Section 433-A

Criminal Procedure Code. The question of framing revised guidelines in consonance with Section 433-A Code of Criminal Procedure was therefore, under consideration of the Government. The Government is now pleased to issue revised guidelines for considering the cases of such prisoners convicted after 18th December 1978 for premature release. The earlier guidelines dated the 16th November 1978 however continue to apply to the cases of the convicts not covered by Section 433-A excepting those which are specifically included in the revised guidelines, namely, the convicts covered under Category No. 8."

2. The guiding principles laid down herein indicate only a broad division of the pattern of crimes for the purpose of premature release of prisoners sentenced to imprisonment for life after 18th December 1978 and do not cover all the categories of prisoners for various offences.

3. The criteria in the guidelines prescribed refer to normal cases i.e. the cases of prisoners within normal features and having good behaviour in the prisons. While submitting the cases of such prisoners to Government for review under the "14-Year Rule" on completion of 12 years of actual imprisonment the recommendations of the Advisory Board in each cases, based on the above mentioned guiding principles and the recommendations of the Inspector General of Prisons should invariably be submitted to Government.

4. In cases where the Inspector General of Prisons differs from the recommendations of the Prison Advisory Boards, reasons for the difference in the views should also be furnished in the reports under the "14-Year Rule".

5. The enclosed revised guiding principles may, therefore, be followed in making recommendations to Government about premature release of the prisoners while submitting their cases under the "14-Year Rule". The State Government will then consider these cases for remission of sentence and issue orders in exercise of power vested in it u/s 432 Criminal Procedure Code.

15. On plain reading of these Guidelines, it is noticed that the guiding principle laid down in this Guidelines was to indicate only a broad division of the pattern of crimes for the purpose of premature release of prisoners sentenced to imprisonment for life after 18th December, 1978; and not to cover all the categories of prisoners for various offences. The criteria in the Guidelines prescribed refer to normal cases, i.e., the cases of prisoners within normal features and "having good behaviour in the prisons". This change is brought about in the Guidelines of 1992 to bring it in consonance with the mandate of Section 433-A of the Code.

16. In so far as the prisoners convicted for offence of dacoities and robberies, with which we are presently concerned, as per these Guidelines, the same were to be covered by Clause 5(a), which reads thus:

Categorisation of Crime

(5)

MURDERS BY PROFESSIONAL dacoities and robberies.

26 years

17. The Petitioner, to further his challenge, has also invited our attention to other categories, to which we shall advert to at the appropriate stage.

18. As stated earlier, the Petitioner was arrested on 2nd December, 1994 in connection with C.R. No. 399 of 1994. He was convicted in connection with the said offence by the Sessions Court on 4th August, 1998. By now, it is well established position that the date on which the prisoner is convicted is the material date and the Guidelines for premature release in force on the said date will have to be applied for considering the proposal for premature release of such prisoner. This legal position has been re-stated by the Apex Court in *State of Haryana v. Bhup Singh and Ors.* [2009 All MR 524 (S.C.)]. It may be useful to also advert to the exposition of the Apex Court in the recent decision in the case of *State of Haryana v. Jagdish* (supra). The question considered in this decision was whether the policy which makes a provision for remission of sentence should be that which was existing on the date of the conviction of the accused or should it be the policy that existed on the date of consideration of his case for premature release by the appropriate authority. On analysing the relevant decisions and the legal position, the Apex Court has concluded that, in case of liberal policy prisoners, "on the date of consideration" of the case for premature release, they should be given benefit thereof.

19. These decisions, however, are not an authority on the proposition, as is canvassed before us that, the prisoner must be given benefit on the basis of the superseded Guidelines which were not prevalent on the date of conviction. As in the present case, the Guidelines dated 16th November, 1978 ceased to operate in respect of prisoners undergoing life imprisonment covered by Section 433-A of the Code and convicted after 18th December, 1978.

20. We will, therefore, revert back to the recital of the Guidelines of 1992, which are in anterior point of time, and were in force on 4th August, 1998. The same makes it amply clear that the Guidelines of 1978 issued under letter dated 16th November, 1978 have been superseded and are inapplicable to prisoners undergoing life sentence covered by Section 433-A of the Code; and instead, the revised Guidelines issued on 11th May, 1992 would govern the field. Understood thus, it is not open to the Appropriate Authority to apply the Guidelines of 1978, even if the same were more favourable to the Petitioner. Indeed, the decision in the case of *Jagdish* (supra) can be pressed into service by the Petitioner to contend that the Appropriate Authority would be obliged to consider the claim of the prisoner, keeping in mind the "subsequent Guidelines" issued after 11th May, 1992, if the same were more favourable to the Petitioner. It is noticed that, after 11th May, 1992, the Home Department issued two further revised Guidelines, which, in our opinion, do not affect the case of the Petitioner, one way or the other, inasmuch as the subsequent Guidelines issued on 11th April, 2008 were

not to supersede the Guidelines dated 11th May, 1992, but to revise the Guidelines in respect of convicts undergoing life sentence and not covered by Section 433-A of the Code. It is not the case of the Petitioner that his case would fall in the excepted category. If so, the Guidelines of 11th April, 2008 will be of no avail to the Petitioner. In any case, even as per these Guidelines, the prisoners, who are convicted for murder committed in the act of committing dacoities/robberies would be considered for being released after 26 years, as provided in the Guidelines dated 11th May, 1992. Even for that reason, the later Guidelines cannot be said to be more favourable Guidelines to the Petitioner. Similar position obtains with regard to the Guidelines dated 15th March, 2010. These Guidelines were issued to cover grave offences such as life imprisonment under stringent laws like TADA, MCOCA and POTA, which were not covered under the previous Guidelines. At the same time, murders committed in the act of committing dacoities and robberies have been classified under Clause 4(e) of these Guidelines, for which the period of imprisonment to be undergone, including remissions, subject to a minimum 14 years of actual imprisonment, including set off periods, is specified as 26 years. Thus, even these Guidelines will be of no avail to the Petitioner and cannot be said to be more favourable. In other words, the Appropriate Authority has rightly examined the proposal of the Petitioner, keeping in mind the Guidelines dated 11th May, 1992, which were applicable to the case of the Petitioner and answered the issue on that basis, as the subsequent Guidelines were not more favourable to the Petitioner.

21. To get over this position, the Petitioner contends that the Guidelines of 1992, in particular, Category 5(a) specified therein, is, ultra vires and hit by Article 14 of the Constitution of India. This argument does not commend to us. On perusing the Guidelines of 1992, it is noticed that the classification is done on a rationale basis. We would think it apposite to reproduce the said Guidelines of 1992 in its entirety, which read thus:

GUIDELINES FOR PREMATURE RELEASE OF PRISONERS SENTENCED TO LIFE IMPRISONMENT OR TO DEATH PENALTY COMMUTED TO LIFE IMPRISONMENT AFTER 18TH DECEMBER 1978

Categorisation of Crime

Period of imprisonment

to be undergone

including remissions

subject to a minimum of

14 years of actual

imprisonment including

set-off period.

1) MURDERS RELATING TO SEXUAL MATTERS OR ARISING OUT OF RELATIONS WITH WOMEN, DOWRY DEATHS 7 OTHER FORM OF BRIDE KILLING ETC.

a) Where the convict is the aggrieved person and has no previous criminal history and committed the murder in an individual capacity in a moment of anger and without premeditation.

b) Where the crime as above is committed by the aggrieved person with premeditation.

c) Where the crime as above is committed against the aggrieved person without premeditation.

d) Where the crime is committed against the aggrieved person with premeditation.

e) Where the crime is committed with exceptional violence or with perversity.

22 years

24 Years

24 years

26 years

28 years

2) MURDERS ARISING OUT OF LAND DISPUTE, FAMILY FUEDS, FAMILY PRESTIGE AND SUPERSTITION

a) If the offence is committed in an individual capacity and without premeditation and the prisoner has no previous criminal history.

b) Crime committed as above with premeditation or by a gang.

22 years

24 years

3) MURDERS FOR OTHER REASONS:

a) Where a murder is committed in the course of quarrel without premeditation in an individual capacity and where the person has no previous criminal history.

b) As at (a) above but with premeditation or by a gang.

c) Murders resulting from trade union activities and business rivalry.

d) Murder committed with premeditation and with exceptional violence or perversity.

22 years

24 years

26 years

26 years

4) MURDER FOR POLITICAL REASONS

- a) Murders arising out of political rivalry and political interest without premeditation.
- b) Murder arising out of political rivalry and political interest with premeditation.
- c) Murders committed in pursuance of a political philosophy and as a means to acquire political powers as by terrorist or extremist groups.

24 years

26 years

30 years

5) MURDERS BY PROFESSIONAL CRIMINALS

- a) Murders committed by dacoits and robbers in the act of committing dacoities and robberies.
- b) Murders committed by gangsters, contract killers, smugglers, drug traffickers, racketeers, bootleggers, gamblers, flesh traders and those indulging in other forms of organised crime in furtherance of their criminal activities.

26 years

28 years

6) ESCAPERS :

- a) Prisoners who have escaped from lawful custody while undergoing imprisonment or who absconded while on parole or furlough.

28 years

7) DEATH SENTENCE COMMUTED TO LIFE IMPRISONMENT

- a) Prisoners in whose cases death sentence has been committed to life imprisonment.

30 years

8) PERSONS GUILTY OF OFFENCES NOT INVOLVING MURDER, WHO ARE SENTENCED TO LIFE IMPRISONMENT.

- a) Persons sentenced to life imprisonment for offences like (a) Offences against the State (Chapter VI) IPC, (b) Abetment of Mutiny (Sec. 131, 132 IPC) (c) Offences against public justice (Sec. 222 & 225 of IPC, (d) Offences in respect of Coinage, Stamps (Sec. 232, 238, 225 of IPC, etc.)

30 years

22. Each of the categories of the subject Guidelines deals with offence of murder covered by Section 433-A of the Code. Category 1 deals with murders relating to sexual matters or arising out of relations with women, dowry deaths, other form of bride killing, etc. In Clause (a) of this category, if the convict is the aggrieved person, and has no previous criminal history and committed the murder in an individual capacity in a moment of anger and without premeditation, he would have to undergo period of imprisonment of 22 years, including remission, subject to minimum 14 years of actual imprisonment. On the other hand, as per Clause (b), if the crime is committed by the aggrieved person with premeditation, he would have to undergo 24 years of imprisonment, including remissions, subject to minimum of 14 years of actual imprisonment. In Clause (c) of Category 1, if the crime is committed against the aggrieved person without premeditation, the period of imprisonment is 24 years and, as per Clause (d), if it is with premeditation, it is 26 years. In Clause (e), if the crime is committed with exceptional violence or with perversity, the period of imprisonment provided is 28 years, subject to minimum of 14 years of actual imprisonment.

23. Indeed, such classification is not found while dealing with murders committed by dacoits and robbers in the act of committing dacoities and robberies. That, in the first place, is a policy matter. The policy makers did not think it appropriate to make any distinction of this nature, if the murder was committed in the act of committing dacoities and robberies. Merely because such classification is not found while dealing with the convicts involved in murders committed by them in the act of committing dacoities and robberies, that, by itself, would not make Category 5(a) discriminatory or hit by Article 14 of the Constitution of India. Moreover, the fact that there is no distinction made between murder committed for the first time or solitary act and successive acts also does not take the matter any further. Category 5(a) is for murders committed by professional criminals. The clubbing of convicts of first time offence of dacoity and robbery and successive offences of the same nature also would make no difference. The fact that it is the first offence of dacoity and robbery of the concerned convict does not make him less professional criminal. By the very nature of the offence, the crime of dacoity and robbery is a professional crime, as it does not happen on the spur of the moment or because of any intimidation. If the policy-makers are of the opinion that the prisoners convicted for offence of murders committed by them in the act of committing dacoities and robberies is one category that cannot be found fault with on the touch-stone of Article 14 of the Constitution of India, as is contended.

24. Significantly, Clause (b) of Category 5 deals with murders committed by gangsters, contract killers, smugglers, drug traffickers, racketeers, bootleggers, gamblers, flesh traders and those indulging in other forms of organised crime in furtherance of their criminal activities. These crimes are treated to be more serious than the crimes of dacoities and robberies. Resultantly, the sentence

period is also relatively higher up to 28 years in respect of those convicts. Even in this category, there is no scope to classify the offence as with premeditation and without premeditation, as in the cases covered under other categories.

25. Much emphasis was placed on the description of Category 4 in the Guidelines of 1978, which mention the prisoners falling under that category as hardened criminals, whereas, in the Guidelines of 1992, they have been described as murderers or professional criminals. Such description does not undermine the nature of offence for which the imprisonment period for premature release is specified in the Guidelines of 1992 as 26 years. The policy-makers have thought it appropriate to enhance the imprisonment period from 22 years to 26 years in the revised Guidelines. As a matter of fact, in Category 4 in the Guidelines of 1978, besides the convicts of murders during dacoities and robberies, even other type of offences were clubbed together, such as theft, smuggling or breaking of other laws (such as those relating to prohibition, gambling or immoral traffic in women and girls, as also hired killers). To bring more clarity to the policy and to provide for appropriate classification, the revised Guidelines of 1992 have been framed. In that, Category 4 of the Guidelines of 1978 covers different type of crimes which were put in one basket to provide for sentence up to 22 years, subject to minimum 14 years of actual imprisonment. Viewed thus, in our opinion, there is no infirmity in the Guidelines of 1992 and, by no stretch of imagination, the same can be said to be hit by the vice of Article 14 of the Constitution of India.

26. It was also argued that the Guidelines do not take into account the principle of good behaviour of the prisoner at all. We are not impressed by this argument. From the Guidelines, it is amply clear that the prisoners having exceptionally good behaviour factor, which justifies a sympathetic consideration, can be considered for being released. If the behaviour of the prisoner is not good or he has indulged in prison offences, that is a matter which must weigh with the Appropriate Authority while considering his proposal. It is not as if the prisoner is entitled to be released as soon as he completes the prescribed sentence period. The prisoner can be released only upon passing order of release by the Appropriate Authority, which is the clemency power exercised by the authority concerned. Suffice it to observe that this argument cannot be the basis to invalidate the Guidelines in question.

27. The Petitioner has relied on the decision of the Apex Court in the case of Laxman Naskar (supra). In that case, the Court considered the efficacy of the West Bengal Rules relating to premature release of a life convict to answer the claim of the Petitioner therein. In the present case, we have noticed that the Appropriate Authority has rightly categorised the Petitioner as covered by Category 5(a) of the Guidelines of 1992. In our opinion, the claim of the Petitioner has been rightly answered on the basis of the Guidelines of 1992. The exposition in the case of Laxman Naskar (supra) does not militate against the approach or the conclusion reached by the Appropriate Authority in the present

case.

28. Reliance was also placed on the decision in the State of Haryana v. Mahendra Singh (supra). We fail to understand as to how this decision will be of any avail to the Petitioner. The legal position expounded in this decision is that a right to be considered for remission is a legal one. That legal right springs from not only the Prisons Act, but also the Rules framed thereunder. The Court clearly observed that no convict can be said to have any constitutional right for obtaining any remission in his sentence. His claim will have to be considered, keeping in mind the policy decision, whether by reason of the statutory rule or otherwise at the time of his conviction.

29. In the case of Maru Ram (supra), the constitutional validity of Section 433-A of the Code was tested. Even this decision will be of no avail to the Petitioner. Even the decision in the case of Maharao Sahib Shri Bhim Singhji (supra) will be of no avail to the Petitioner for the reasons already recorded hitherto.

30. The next argument is that Category 5(a) is ascribable to offence of robbery and dacoity. The Petitioner was sentenced to suffer seven years of rigorous imprisonment therefor. That sentence period has already been completed by the Petitioner long back. Thus, the Petitioner was now undergoing only sentence regarding the offence of murder. If so, the categorisation must be one under Category 3(b) which deals with murders with premeditation or by a gang. The imprisonment period provided for that category is only 24 years with remission. That would be favourable to the Petitioner instead of Category 5(a) which provide for imprisonment period up to 26 years with remission. This argument will have to be stated to be rejected. For, Category 3 is a residuary category. In that, it encompasses only those cases convicted for offence of murder other than the murder covered by Categories 1, 2, 4 and 5 respectively. The Category 5(a) specifically deals with murders committed by dacoits and robbers in the act of committing dacoities and robberies. Therefore, the case of Petitioner cannot fall in the residuary Category 3 and more particularly in Category 3(b) even if that refers to murder committed with premeditation or by a gang. Further, Category 3(b) deals with a crime involving murder committed in the course of quarrel with premeditation in an individual capacity and where the person has no previous criminal history. Suffice it to observe that the fact that the Petitioner has already undergone sentence period for offence of robbery does not extricate him from the offence of murder committed by him in the act of committing robbery, which is covered by Category 5(a) of the Guidelines of 1992.

31. The other argument canvassed before us is that other similarly placed persons were given benefit of the Guidelines of 1978; and were released on completion of 18 years of imprisonment, with remissions, in spite of the mandate of Section 433-A of the Code. Assuming that this grievance is correct, however, because of some irregular or misdirected order passed in respect of some other convicts, that cannot be the basis to allow the proposal of the Petitioner. The Petitioner's proposal will have to be considered on its own merits. The fact

whether such irregularity has been committed in respect of other convicts by releasing them on completion of only 18 years of imprisonment, with remissions, in spite of the mandate of Section 433-A of the Code, that is a matter which will have to be looked into by the Competent Authority. We hope that the Secretary of the Home Department, Government of Maharashtra, will look into the said aspect, and take appropriate remedial and corrective measures, including against the concerned officials, who were responsible to show favour to those convicts, in spite of the mandate of Section 433-A of the Code. All questions in that behalf are left open, to be considered on their own merits.

32. We may, however, agree with the Petitioner that the State of Maharashtra should be well-advised to frame statutory rules under the Prisons Act, as has been done by other States. That obligation flows from Section 59(5) of the Prisons Act, 1894. If such statutory rules are framed, the same would be the governing law on matters covered thereunder, and not the Guidelines issued by the Executive from time to time. At the same time we may observe that the fact that such statutory Rules have not been framed so far does not militate against the authority of the State to issue executive directions. The Guidelines so issued cannot be termed as ultra vires Section 59(5) of the Prisons Act. Until the statutory Rules are framed the cases covered by the Guidelines for premature release will have to be considered on that basis.

33. Be that as it may, on examining all aspects of the matter, we are of the considered opinion that the Petitioner is not entitled for any relief. In other words, the decision of the Appropriate Authority dated 7th September, 2009 to categorise the Petitioner as covered by Category 5(a) of the Guidelines of 1992 is just and proper, and needs no interference.

34. Hence, this petition fails, and is dismissed.

35. A copy of this judgment be sent to the Secretary, Home Department, Government of Maharashtra for information and necessary action with reference to the observations made in paragraphs 31 and 32 above.