

**(1996) 08 BOM CK 0003**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No. 99 of 1996**

Rajaram Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

**Date of Decision : 08-08-1996**

**Acts Referred:**

Constitution of India, 1950 — Article 21, 226  
Criminal Procedure Code, 1973 (CrPC) — Section 432  
Penal Code, 1860 (IPC) — Section 302, 55

**Citation : (1997) 99 BOMLR 98**

**Hon'ble Judges : N.P. Chapalgaonkar, J;D.D. Sinha, J**

**Bench : Division Bench**

**Final Decision : Allowed**

## Judgement

N.P. Chapalgaonkar, J.

1. This is a petition under Article 226 of the Constitution of India by the petitioner Rajaram Mango Patil, Prisoner No. 3637 now detained in Central Jail, Aurangabad, for his premature release. The petitioner was convicted for an offence punishable u/s 302 of the Indian Penal Code and sentenced to death vide judgment dated 21st August, 1981 by the learned Sessions Judge, Jalgaon. This Court in Criminal Appeal No. 745 of 1981 alongwith Confirmation Case No. 4 of 1981, by judgment dated 12th November, 1981 confirmed the order of conviction for an offence u/s 302 of I.P.C but set aside the sentence and substituted it by imprisonment for life. The State Government by an order dated 21st January, 1995 had passed an order that the petitioner will have to serve imprisonment for a period of 30 years since he was covered by Rule 7(a) of the guidelines applicable. This order was challenged before this Court in Criminal Writ Petition No. 455 of 1995. It was contended that Rule 7(a) will not be applicable to the petitioner's case. The contention was accepted by this Court and the matter was remitted back to the State Government for taking a fresh decision. In pursuance of the orders of this Court dated 16th November, 1995, the Home Department

issued an order that the petitioner should be released on completion of 26 year of imprisonment including all remissions subject to the completion of actual imprisonment for 14 years and his good behaviour and conduct in jail upto the time of his release. This order dated 28th December, 1995 signed by the Desk Officer, Home Department Government of Maharashtra, has been challenged in this writ petition.

2. Shri M.B. Sabnis, learned Counsel for the petitioner contended that the impugned order does not mention the category in which the petitioner's case is classified by the State Government on the basis of which he is directed to undergo imprisonment of 26 years. This omission shows non-application of mind on the part of the authorities. The learned Additional Public Prosecutor Shri Chillarge informed that the category is 3(d) of the guidelines dated 11th May, 1992 as per the subsequent information supplied to the Public Prosecutor's office. According to Shri Sabnis, the Murder committed by the accused assuming to be by pre-meditation was not caused by exceptional violence or showing perversity.

3. It is true that the life imprisonment is rigorous imprisonment for life and the convict has no right for a premature release unless his premature release is warranted by the guidelines or Rules framed by the State Government for dealing with the cases of imprisonment for life. But once the guidelines are framed and the State Government has taken a decision to categorise convicts directed to be imprisoned for life on the basis of the nature of their crime and release them after undergoing the imprisonment specified for the category which is applicable to them including all remissions, then the State Government will have no arbitrary right to fix the duration in respect of a particular person directed to undergo imprisonment for life and it will have to pass orders on the basis of the appreciation of the findings recorded by the Court about the nature of the offence and the duration of imprisonment specified for such category in the guidelines. Power of the premature release contained in Section 55 of the Indian Penal Code or u/s 432 of the Code of Criminal Procedure is not an unguided or arbitrary power but it will have to be exercised with due deference to the Rules and guidelines which the State Government itself has framed. Unlike the powers of remission which are the prerogative of the President or the Governor, the power of remission u/s 55 of I.P.C. or u/s 432 of Cr.P.C. are to be exercised by the State within the ambit of the permissible discretion as is regulated by the guidelines. It is not a ministerial act. The validity of the order passed by the State Government in exercise of these powers will have to be judged from the circumstances as are revealed from the order itself. No reasons can be supplemented to the order subsequently so as to make it valid. A convict is also entitled for a protection of Article 21 of the Constitution of India. His detention in the prison would be valid if the State Government applies its mind and takes an appropriate decision. In the absence of the general decision of the State Government to relevant life convicts on completion of a particular period and framing of guidelines for that purpose, the detention till the end of life would

have been valid but in presence of the guidelines, the situation is not so. An order passed u/s 432 of the Code of Criminal Procedure and other powers enabling the State Government remitting a portion of sentence of imprisonment for life will have to be passed after due consideration of the facts and applying the guidelines to those facts. The impugned order dated 28th September, 1995 does not even make mention as to under what category of the guidelines the petitioner is classified. It merely mentions the period of the total imprisonment which he has to undergo. Such orders should not be passed cryptically and then should preferably make a mention about the nature of the crime, though very briefly, and the category in which the State Government includes that crime. Imprisonment of 26 years including all remissions has been mentioned against more than one category in the guidelines of 1992. Therefore, mere mention of the minimum period of imprisonment including remissions will hardly show that Government's application of mind and resultant classification of the crime committed by the petitioner. We would have normally remitted back the matter to the Government but in this case this is second time that the petitioner had to move this Court because of some wrong orders by the State Government. Therefore, we do not see any propriety in remitting the matter again back to the State Government and we chose the second alternative i.e. to consider the facts and determine the category in which the present case falls. It is alleged that the petitioner whose real name is Rajaram Mango Patil got himself employed under a false name Raju Mahadu Patil as an agricultural labour and thereafter committed murder of his master Natu. There are three incised injuries; two on the fore-head and one on the back of the neck. It is alleged that the murder was for the benefit of golden ring and money purse, which were on the person of Natu. Learned Additional Public Prosecutor submitted that three severe blows on the head with the help of an axe is nothing but exceptional violence and therefore the case has been properly categorised in category 3(d).

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 labelled 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.

5. Looking to the facts of this case and the nature of the acts for which the petitioner is punished, we feel that he should have been categorised in category No. 3(b) and direct that he be released after completion of 24 years of imprisonment including all remissions and subject to the condition that he has completed 14 years of actual imprisonment.

6. Rule absolute accordingly.