

**(2013) 03 BOM CK 0010**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No. 3701 of 2012**

Usha Munna Upadhyay

APPELLANT

Vs

State of Maharashtra

RESPONDENT

**Date of Decision : 15-03-2013**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433, 433A  
Penal Code, 1860 (IPC) — Section 302, 34

**Citation : (2013) 3 BomCR(Cri) 417**

**Hon'ble Judges : Thipsay Abhay M., J;Hardas P.V., J**

**Bench : Division Bench**

**Advocate : Indrayani M. Koparkar, for the Appellant; A.S. Pai, Assistant Public Prosecutor, for the Respondent**

## **Judgement**

Thipsay Abhay M., J.—Rule. Rule made returnable forthwith. The learned APP waives service.

2. By consent, heard finally forthwith.

3. The petitioner, who is undergoing a sentence of Imprisonment for life on her conviction, in respect of an offence punishable " u/s 302 of the IPC read with section 34 of the IPC, by this petition under Article 226 of the Constitution of India, challenges the decision of the State Government in respect of benefit of premature release to be given to her. The petitioner is in prison since 10 February 1999, and has undergone 13 years of actual Imprisonment.

4. In exercise of the powers conferred by sections 432 of the Code of Criminal Procedure read with sections 433 and 433-A of the Code of Criminal Procedure, the State Government has framed guidelines in the matter of premature release of convicts. Under these guidelines, the convicts and the crimes committed by them are classified in different categories, and the minimum period of Imprisonment required to be under-gone before being eligible for premature release is mentioned against each category. When the petitioner was convicted,

the guidelines framed in the year 1992 (1992 Guidelines) were in force, but subsequently, revised guidelines have been framed in the year 2010 (2010 Guidelines).

5. The petitioner has been placed in Category 6(a) of the 2010 guidelines, which provide a period of Imprisonment for 28 years to be undergone for the purpose of premature release. Under the 1992 guidelines, the petitioner would be placed in the Category 5(b), which also provides for the same period i.e. 28 years.

6. The grievance of the petitioner is that she has been placed under a wrong category, and that actually she is entitled to be placed in Category 1(b) of 2010 guidelines.

7. In view of the decision of the Supreme Court of India in State of Haryana and Others Vs. Jagdish and Harpal, , it cannot be, and has not been disputed, that the petitioner would be entitled to have the guidelines which are in her favour and more beneficial to her, to be applied. In other words, either the 1992 guidelines, or that of 2010, whichever are in favour of the petitioner, should be applied for considering her case for premature release.

8. In any event, in the instant case, Category 6(a) of the 2010 guidelines and Category 5(b) of the 1992 guidelines, both provide for a period of 28 years.

9. Since the contention of the petitioner is that she is entitled to be placed in Category 1(b) of the 2010 guidelines, it would be appropriate to reproduce the relevant categories here.

10. We have heard Mrs. Indrayani Koparkar, learned Counsel for the petitioner. We have also heard Mrs. A.S. Pai, learned APP for the State.

11. The contention of the learned Counsel for the petitioner is that the petitioner, being a women, is required to be placed in Category 1(b).

12. We have perused the order dated 4 September 2012 passed by the State Government in respect of premature release of the petitioner. The order states that the petitioner falls in Category 5(b) of the 1992 guidelines, and the Category 6(a) of the 2010 guidelines which are similar, and that therefore, her case for premature release would be considered only after she undergoes Imprisonment for 28 years including remission.

13. We find that Category 1(b) of the 2010 guidelines is a new category in respect of "crimes by women". There was no separate category of a similar nature in the 1992 guidelines.

14. The thrust of the arguments of Mrs. Pai, the learned APP is on the fact that the murder committed by the petitioner and the other accused fell under the category of murder committed by gangsters and contract killers, which falls in Category 6(a) of the 2010 guidelines and Category 5(b) of the 1992 guidelines.

15. Accepting for the sake of arguments that the murder committed by the

petitioner was as a gangster, and by way of contract killing, the question would be whether her case would fall under Category 6(a) of 2010 guidelines or 5(b) of the 1999 guidelines, or whether the petitioner being a woman, her case would fall in Category 1(b) of the 2010 guidelines. In other words, where the murder committed by a "woman gangster", or "woman contract killer" would fall under Category 6(a), or whether it would fall under Category 1, which deals with offence relating to "CRIME BY WOMEN", is the question needing determination.

16. The categorization in the guidelines is to be harmoniously constructed. Assuming that the offence committed by the petitioner falls in Category 6(a) of the 2010 guidelines because of the nature of the offence, still, considering that the petitioner is a woman, the offence committed by her, falls within Category 1 of the 2010 guidelines. The only question is what should prevail.

17. We find that the Category 1 is a special category relating to "Crime by Women" which is divided in two sub-categories (a) and (b). The other categories are based on the classification of offences, and not on the classification of the offenders on the basis of gender. Thus, the provision with respect to the offences committed by woman, is a special category and the other categories are general.

18. The categorization as "Crime by Women" in Category 1, indicates that so far as women offenders are concerned, the applicability of other categories is ruled out. It is a settled principle of interpretation of statutes and instruments, that if a special provision is made on a certain matter, that matter is excluded from general provision. This principle is expressed in the maxims *Generalia specialibus non derogant*, and *Generalia specialibus derogant*. Since, in this case, a special provision has been made with respect to the offences or crimes by women, the applicability of the other provisions of a general nature to women offenders, is excluded.

19. It is not possible to take any other view of the matter, inasmuch as, if women offenders are attempted to be fitted in other categories, the Category 1 would be rendered totally and wholly redundant. For instance, the women offenders falling under Category 1(a) can fall also in categories 2(a) and 3(a) and the Women Offenders falling under Category 1(b) can fall in categories 2(b) and 3(b) etc. also. If women offenders were to be placed in other categories, the separate category of women need not have been created at all.

20. In our opinion, Category 1 of the 2010 guidelines which is exclusively for women offenders must cover all the cases of women offenders, and the women offenders can be fitted only in that category. Because of the creation of a special category of women offenders, the other categories which are of a general nature, classified on the basis of nature of offences, would not apply to women offenders. Consequently, we hold that the order dated 4 September 2012 passed by the Government of Maharashtra placing the petitioner in Category 5(b) of the 1992 guidelines and Category 6(a) of the 2010 guidelines, is not proper and that the petitioner may be placed in Category 1(b) of the 2010 guidelines for

considering her premature release.

21. We, therefore, allow the petition by setting aside the order dated 4 September 2012 and direct that the petitioner's case be considered in accordance with the Category 1(b) of 2010 guidelines. Rule is made absolute in the aforesaid terms.