

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1178 OF 2015

Issa s/o Abdul Razzaq Memon,
Age-47 years, Occu:Prisoner,
R/o-Bismilla Manzil, 3rd Floor,
Flat No.11, Cadle Road, Mahim West,
Mumbai-16,
At present Convict No.7640,
Central Prison, Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Home (Prison/Jail), Department,
Mantralaya, Mumbai-32,
- 2) The Divisional Commissioner,
Commissioner Office, Delhi Gate,
Aurangabad,
- 3) The Superintendent of Prison,
Central Prison, Aurangabad.

...RESPONDENTS

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Mr. M.S. Chaudhari Advocate for Petitioner.
Mr. B.L. Dhus, A.P.P. for Respondents.

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**CORAM: A.B. CHAUDHARI AND
INDIRA K. JAIN, JJ.**

DATE : 11TH SEPTEMBER, 2015

ORDER :

1. Mr. Chaudhari, learned counsel for the Petitioner vehemently argued that impugned orders passed by the Authorities, including that of the Commissioner rejecting the parole leave application are in contravention with the undertaking given by the Secretary, (Appeals and Security) before this Court in the matter of disposal of Criminal Writ Petition No.662 of 2012 (between Sukhadeo Hanmant Pandhare vs. The State of Maharashtra) and therefore the action by way of contempt should be taken against the Respondent Authorities. He then invited our attention to the fact that Petitioner requires parole leave for attending 40th day ceremony of the death of his brother, who died on 30th July 2015 in Nagpur Jail. He then submitted that the application for parole leave was made as early as on 2nd August 2015 i.e. immediately after the death of his brother, but the same was kept pending deliberately till the

impugned final order was passed by the Commissioner on 26th August 2015 and immediately after getting the copy of the said order, the present Petitioner is filed and therefore with utmost diligence, the Petitioner has filed the present Petition for seeking parole. He then invited our attention to the order dated 4th September 2015 in respect of the co-accused of the Petitioner, passed in Criminal Writ Petition no.1151 of 2015 and submitted that co-accused was released on parole on account of death of his mother and why the present Petitioner should not get the same treatment. He therefore submitted that parole should be granted in the instant case.

2. Per contra, the learned A.P.P. has filed affidavit on record sworn by Mr. Vijay Raut, Tahsildar, in the office of the Divisional Commissioner (Revenue) Aurangabad dated 11th September 2015. He invited our attention to various paragraphs in the affidavit and submitted

that the Petitioner was recently released on parole and returned back in jail on 13th July 2015. He submitted that though it is true that death in question is occurred after his return from parole leave, i.e. on 30th July 2015, the fact remains that Petitioner was released on parole at very recent point of time. That apart, he invited our attention to various reports from Mahim Police Station, which are placed on record and duly certified by the higher officers, and submitted that release of the Petitioner on parole would create law and order situation since the death of brother of the Petitioner took place at very recent point of time and the tense conditions are still prevailing in the area and therefore parole should not be granted.

3. Upon hearing learned counsel for the rival parties, and upon perusal of entire record including affidavit filed by Vijay Raut on behalf of the Respondents, we have given serious and

conscious consideration to the entire matter. We find that in normal course the Petitioner could have been extended the facility of release on parole for attaining 40th day ceremony of his dead nearest relative. But then we find that death of brother of the Petitioner took place in recent point of time in the first place and the events took place after his death, pre and post, to our mind, were certainly destructive of public peace and tranquility. It was only because of the timely steps taken by the police machinery for maintaining law and order, the ultimate object of public tranquility and peace could be achieved. It would be appropriate to quote the apprehension expressed by the deponent in Paragraph Nos.3 and 4 of his affidavit:-

"3. I say and submit that, the petitioner has already released on parole leave on 13.4.2015 and he reported to the Jail authority 13.7.2015. I say and submit that, the present petitioner has been convicted

by the Hon'ble Court in case of Bombay Bomb Blast, which has happened in the year 1993. It is not out of place to mention here that, the parole leave sought by the petitioner, cause of that release of parole is already infructuous since all last rites and rituals has been already over in respect of the death of his brother and therefore, there is no sum and substance to release the present petitioner on parole within such short span of time.

4. I say and submit that, considering the situation after execution of the death sentence of Yakub Memon who was the master mind in 1993 Bombay Bomb Blast and the brother of the present petitioner, considering the police report the answering respondent after considering all these aspects rejected the application of the parole leave of the present petitioner so as to there will not be any threatens in regard of law and order in City of Bombay or any other place. The copy of police report dated 18.8.2015 of the Senior Police Inspector, Police Station, Mahim, Mumbai is

annexed herewith and marked as **EXHIBIT**
R-1."

4. In that view of the matter, the apprehension expressed by the deponent in his affidavit, referred above, coupled with the reports of Mahim Police Station and the senior officers who have certified the said record, we think that the Petitioner-prisoner, at least at this stage, cannot be released on parole. We are aware that the reasons for refusal of parole are compelling but then there is no other way and therefore we are inclined to reject the application.

5. Insofar as the aspect of contempt about which the learned counsel made submissions, we do not think it appropriate to take up the said issue in present Petition, as the substantive matter in the present Petition is about release of the Petitioner on parole. We therefore, keep the said

issue open with liberty to raise the said issue in the appropriate proceedings.

6. Insofar as order made by this Court on 4th September 2015 for release of the co-accused on account death of his mother, in that case mother of prisoner died on 31st July 2015 and therefore he was released on parole and there were no reports before the Court, as in the instant case about the possible law and order situation. We, therefore, distinguish the said case from the present case.

7. That being so, we make the following order:-

O R D E R

. Criminal Writ Petition No.1178 of 2015
is rejected.

[INDIRA K. JAIN, J.]

[A.B. CHAUDHARI, J.]