

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3698 OF 2015

Indin @ Mohiddin Sayyad Ali Shaikh. ..Petitioner.

Versus

State of Maharashtra & Others. ..Respondents.

Mr. N. N. Gawankar and Mr. M. N. Gawankar for the Petitioner.
Mrs. S. V. Sonawane, learned APP for the State.

Coram : RANJIT MORE &
R. G. KETKAR, JJ.

Date : **October 13, 2015.**

P. C. :

. Heard learned Counsel appearing for the Petitioner and learned APP for the State. Learned Counsel appearing for the Petitioner states that the Petitioner is restricting this petition to the reliefs claimed in prayer clauses (a) and (b). Statement is accepted.

2. The reliefs claimed in prayer clauses (a) and (b) are as under :

[a] this Hon'ble Court be pleased to issue appropriate writ, order or direction to quash and set aside the the impugned order dated 26-08-2015 passed by Respondent No. 1 in Parole Appeal No. PAR-0915/PRA.KRA.26/2015/PRS-3;

[b] this Hon'ble Court be pleased to issue appropriate writ, order or direction remanding the matter to Respondent No.3 ordering and directing Respondent No. 3 to reconsider the parole proposal of the Petitioner bearing Outward No. YOP/1577/

2014 dated 03-07-2014 in accordance with law and pass appropriate orders thereon;”

3. The Petitioner filed an application for parole before the Divisional Commissioner, Pune Division, Pune, which came to be rejected by the order dated 9th December 2014. Being aggrieved thereby, the Petitioner preferred an appeal before the appellate authority, namely, the Minister of State for Home. By the communication dated 26th August 2015 sent under the signature of Desk Officer, the Petitioner's appeal was rejected. Therefore, the present writ petition.

4. When this petition was placed before us for admission on 7th October 2015, we directed the learned APP appearing for the State to take instructions whether the order dated 26th August 2015 which is signed by the Desk Officer and challenged in this writ petition is indeed passed by the appellate Authority or is it merely a communication.

5. Today, learned APP for the State placed on record Notings pertaining to the file of Petitioner's appeal. These notings show that the Desk Officer prepared a detailed note, recommending grant of parole to the Petitioner for the period of 30 days. This recommendation was accepted by the Dy. Secretary and also by the Principal Secretary, however, the Minister of State for Home did not accept the noting. The Minister has put the remark “A- अमान्य”. On the basis of this remark of the Minister,

communication dated 26th August 2015 has been issued, intimating that the Petitioner's appeal has been rejected. Initially it was argued by the learned APP that the order dated 26th August 2015, is the order rejecting the Petitioner's appeal. However, now stand is taken that it is only a communication and the Petitioner's appeal is rejected by the Minister. We are rather surprised to see that the communication dated 26th August 2015 is issued by the order and in the name of the Governor.

6. Be that as it may, learned APP for the State does not dispute that neither the Petitioner nor his representative was given any hearing by the Minister. The order rejecting the Petitioner's appeal is not supported by any reasons. Learned APP for the State having taken instructions from the Deputy Secretary (Home), who is present in the Court makes a statement that henceforth the procedure to dispose of appeal arising from the parole or furlough leave applications would be streamlined and the appeal would be disposed of by speaking order and they will give personal hearing to the Applicant/Appellant or his representative. Statement is accepted as an undertaking to this Court.

7. Learned APP for the State also states that she has no objection if the impugned order / Communication is quashed and set aside and matter is remanded back for afresh disposal.

8. In the circumstances, petition is made absolute in terms of prayer clauses (a) and (b). The appellate authority shall dispose of Petitioner's appeal afresh as expeditiously as possible and at any rate within the period of four weeks from the date of receipt of a copy of this order.

[R. G. KETKAR, J.]

[RANJIT MORE, J.]