**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 252 OF 2016

Jakir Maheboobkhan Pathan,
Convict No.4736,
Open District Prison, Paithan,
Tq. Paithan, Dist. Aurangabad Petitioner

VERSUS

The State of Maharashtra Respondent

Mr. S.J.Salgare, APP for the State.

**CORAM : R.M. BORDE &
K. L. WADANE, JJ.
DATE : 04th April, 2016.**

ORAL JUDGMENT : (Per R. M. BORDE, J.)

1 Heard.

2 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

3 Petitioner, who is a convict, is undergoing sentence of life imprisonment and is presently lodged at Open Central Prison, Paithan, since last sixteen years. Petitioner claims that he has already completed substantive period of imprisonment and that the respondents-authorities have not considered him eligible for the benefit of amended Rule 16 of the Prison (Bombay Furlough and Parole) Rules 1959, which has been brought on the Rule book from

23rd April, 2012. Petitioner claims that in accordance with Rule 16 of the Rules, he is entitled to be granted benefit of 14 days extended period of furlough while considering his claim of remission of sentence.

4 The issue raised in the petition is no more *res integra* in view of judgment of the Supreme Court in the matter of **State of Haryana and others Vs. Jagdish,** reported in 2010 AIR(SC) 1690 as well as decision of Division Bench of this Court at Bombay in Criminal Writ Petition no. 1485/2013 decided on 24th December, 2013. The Supreme Court in the matter of **Jagdish** (supra) in paragraph no. 43 of the judgment has observed thus :

> " The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a lifer for pre-mature release, he should be given benefit thereof." {emphasis supplied).

In view of judgment of the Apex Court, the State has to exercise its power of remission by construing it liberally in favour of the convict. If liberal policy prevails on the date of consideration of the life convict for premature release, he should be given benefit thereof.

5 For the reasons recorded above, we direct that case of the petitioner be considered for premature release. Benefit of

amended Rule 16 of the rules shall be given in case of extended period of furlough of 14 days granted prior to 23rd April, 2012. We, therefore, direct that while considering the claim of petitioner for grant of premature release, remission will have to be granted in terms of the directions specified as above.

6 Rule is accordingly made absolute.

K.L.WADANE
JUDGE

R.M.BORDE
JUDGE

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