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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.505/2016

Abdul Hannan Abdulhai Kadri (C-4288),
at present in
Open Prison, Paithan Dist.Aurangabad.
Through Jail.

...Petitioner..

Versus

The State of Maharashtra.

...Respondent...

.....

Application received through jail.
Shri S.P. Deshmukh, APP for respondent.

.....

**CORAM: R.M. BORDE &
K.L. WADANE, JJ.**

DATE: 18.04.2016

ORAL JUDGMENT : (Per Borde, J.)

- 1] Heard learned APP for the respondent.
- 2] Rule. Rule made returnable forthwith and heard finally at the admission stage.
- 3] Petitioner, a convict, is undergoing sentence of life imprisonment and is presently lodged at Open Central Prison, Paithan since last several years. Petitioner claims that he has already completed more than 16 years' imprisonment and that the respondent-authorities have not

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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 premature 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, J.)

(R.M. BORDE, J.)