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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1241 OF 2016

Adam Gafoor Shaikh ... Petitioner
vs.
The State of Maharashtra & Ors. ... Respondents

Mrs. Farhana Shah, Advocate for the petitioner.
Mrs. A.S. Pai, APP for the respondent/State.

CORAM: MRS. V.K. TAHILRAMANI &
MRS. MRIDULA BHATKAR, JJ.

JUNE 29 , 2016.

ORAL ORDER (Per Mrs. V.K. Tahilramani, J.)

Heard both sides.

2. Rule. By consent, rule is made returnable forthwith.

3. The petitioner is a life convict. The case of the petitioner is that he had been illegally detained since 8 years. It is his case that he has completed 14 years of actual imprisonment in the year 2007, hence he should be released. Reliance was placed on the decision dated 21st June, 2009 of the Division Bench of this Court (Coram: Bilal Nazki and Anoop Mohta, JJ.) in Writ Petition No. 2391 of 2008 rendered in the case of

Vishwajit Shankar Khavanekar vs. State of Maharashtra & Ors. It was pointed out that in the said order, reference was made to the present petitioner and it is reflected in the order that he has completed 15 years, 10 months and 12 days as on 31st December, 2008. Hence, in effect, he has been in wrongful confinement for a period of almost 2 years, which position cannot be accepted. Based on this observation in the order dated 21st January, 2009, the petitioner has claimed that he has been illegally detained. Hence, directions be issued to release him immediately from custody. It is also prayed that show-cause notice be issued to the respondents for the illegal detention and non-compliance of the order passed by this Court dated 21st January, 2009 in Criminal Writ Petition No. 2391 of 2008.

4. Life convicts are prematurely released from prison under section 433/433A of Cr. P.C. Under both sections, the Government has power to commute the sentence of life imprisonment. However, Section 433A deals with cases where a life sentence is imposed for an offence for which death is one of the punishments. The petitioner's case falls in this category, hence, he would be covered by Section 433A. When a life convict

completes 12 years of actual imprisonment, his case is referred to the State Government for commutation of sentence. Thereafter, the Government takes into consideration the facts and circumstances of the case and the guidelines issued in relation to commutation of sentence and thereafter decides which category the convict would fall in. Once the category is decided, the convict, who falls under Section 433A, is released on completing the sentence of imprisonment as mentioned in the category including remission provided that the convict has completed 14 years of actual imprisonment.

5. In the order dated 21st January, 2009 in paragraph 3 it is stated that the petitioner is in wrongful confinement as he has completed 15 years, 10 months and 12 days of actual imprisonment. However, in the said order, it is also reflected that directions are issued that those persons, who according to the respondents have completed 14 years of imprisonment and **"who in terms of guidelines are entitled to be released"** on completion of 14 years, be released forthwith. The petitioner has been placed in category 5(b) of 1992 guidelines. 5(b) deals with Murders committed by gangsters, contract killers, smugglers, drug traffickers, racketers, bootleggers, gamblers, flesh traders and those indulging in other forms of organized

crime in furtherance of their criminal activities. Category 5(b) provides that convicts who are placed in this category will be released on completing 28 years including remission.

6. The affidavit of Mr. Jaysing Lakadya Pawara, Deputy Secretary attached to Home Department, Mantralaya, Mumbai shows that the petitioner is categorized under category 5(b) of 1992 guidelines, i.e., he will be released on completing 28 years of imprisonment including remission. Till 31st May, 2016 the petitioner has completed actual imprisonment of 17 years, 3 months and 2 days and including remission the petitioner has completed 25 years 3 months and 29 days. The probable date of release of the petitioner is 1st July, 2018.

7. The learned counsel for the petitioner submitted that in view of the order of this Court dated 21st January, 2009 the petitioner ought to have been immediately released from prison as he has completed 14 years of actual imprisonment. As stated earlier, in the order dated 21st January, 2009 it is reflected that the convicts who have completed 14 years of imprisonment, be released forthwith if they are entitled to be released as

per guidelines. As per the guidelines, the petitioner is placed in 5(b) category, i.e., release after 28 years including remission. The petitioner would approximately complete 28 years with remission on about 1st July, 2018. Thus, when he completes 28 years with remission, he would be released from prison.

8. As far as the order dated 21st January, 2009 is concerned, we would like to refer to some decisions of the Hon'ble Supreme Court. They are as under:

(i) **Sangeet & Anr. vs. State of Haryana, reported in (2013) 2 SCC 452**. In paragraph 74 of the judgment, it is observed that there is a misconception that a prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years or twenty years of imprisonment. The prisoner has no such right. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under section 432 of the Cr. P.C. which in turn is subject to the procedural checks in that section and the substantive check in section 433A of the Cr. P.C.

(ii) A Bench of three Judges of the Supreme Court in the case of **Swamy Shraddananda (2) vs. State of Karnataka, reported in (2008) 13 SCC 767** has observed in paragraph 75 that "It is now conclusively settled by a catena of decisions that the punishment of imprisonment for life handed down by the Court means a sentence of imprisonment for the convict for the rest of his life (See the decisions of this Court in Gopal Vinayak Godse vs. State of Maharashtra, AIR 1961 SC 600 (Constitution Bench), Dalbir Singh vs. State of Punjab, (1979) 3 SCC 745, Maru Ram vs. Union of India, (1981) 1 SCC 107 (Constitution Bench), Naib Singh vs. State of Punjab, (1983) 2 SCC 454, Ashok Kumar vs. Union of India, (1991) 3 SCC 498, Laxman Naskar vs. State of W.B., (2000) 7 SCC 626, Zahid Hussein vs. State of W.B., (2001) 3 SCC 750, Kamalanantha vs. State of T.N., (2005) 5 SCC 194, Mohd. Munna vs. Union of India, (2005) 7 SCC 417 and C.A. Pious vs. State of Kerala, (2007) 8 SCC 312)."

(iii) The Supreme Court in the case of State of **Uttar Pradesh vs. Sanjay Kumar, reported in (2012) 8 SCC 537** in paragraph 24 has observed that life imprisonment cannot be equivalent to

imprisonment for 14 years or 20 years, rather it is considered for natural life of convict.

9. We are bound by the decisions of the Supreme Court. From the decisions of the Supreme Court it is clear that the person cannot be released from prison just because he has completed 14 years of actual imprisonment. A person would be entitled to release only after he completes the sentence of imprisonment as per the category, he has been placed in pursuant to the guidelines framed by the Government in that respect.

10. In view of the above, it cannot be said that it is a case of illegal detention. Hence, there is no question of taking any action against any of the respondents. Hence, Rule is discharged.

(MRS. MRIDULA BHATKAR,J.) **(MRS. V.K. TAHILRAMANI, J.)**