

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1330 OF 2016

Ismail Yusuf Shaikh	... Petitioner
Vs.	
The State of Maharashtra	... Respondent

Mr. Sachin Chandan, Advocate appointed for the petitioner.
Mr. Arfan Sait, APP for the Respondent - State

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

DATE: SEPTEMBER 7, 2016

ORAL JUDGEMENT : (Per Smt. V.K. Tahiramani, J.)

1. Heard both sides.
2. Rule. By consent, Rule is made returnable forthwith.
3. The petitioner has made three-fold prayers. The first prayer is that he be sent to open prison; the second prayer is that he may be appointed as night watchman; and the third prayer is in relation to remission due to him.
4. As far as the prayer relating to appointment as night watchman is concerned, it is seen that the record shows that the petitioner is connected with Chhota Shakil gang which is clear from the police record of Agripada police station dated 14th October, 2010. In such case, the

petitioner was held not to be eligible for the facility of night watchman. As far as being sent to open prison is concerned, again as the petitioner is connected with Chhota Shakil gang, he has not been sent to open prison. Looking to these facts, we cannot find any fault with the authorities.

5. As far as third prayer relating to remission is concerned, it is the case of the petitioner that he was involved in three cases, i.e., Sessions Case Nos. 704/1999, 173/1999, 430/1999 along with 820/1999. He was convicted in Sessions Case No. 704/1999 by the judgment and order dated 18th August, 2007. In Sessions Case No. 173/1999 he was convicted by judgment and order dated 27th November, 2002. In Sessions Case No. 430/1999 along with 820/1999, the petitioner was convicted by judgment and order dated 31st July, 2003. However, in Sessions Case Nos. 173/1999 and 430/1999 along with 820/1999, the petitioner was acquitted by the High Court. Against the judgment and order in Sessions Case No. 173/1999, the petitioner preferred Appeal before the High Court, being Criminal Appeal No. 233 of 2003. Against the judgment and order in Sessions Case Nos. 430/1999 along with 820/1999, the petitioner preferred Criminal Appeal No. 1281 of 2004. In Criminal Appeal No. 233 of 2003, the petitioner was acquitted by this Court by judgment and order dated 2nd February, 2009. In Criminal Appeal No. 1281 of 2004, the petitioner was acquitted by this Court by judgment and order dated 25th August, 2011. The Appeal preferred by the petitioner against his

conviction and sentence in Sessions Case No. 704 of 1999 was dismissed by this Court. The remission of the petitioner is being counted from the date of conviction in Sessions Case No. 704 of 1999. In that case, he was arrested on 22nd October, 1998. In Sessions Case No. 173/1999, the petitioner was arrested on 25th October, 1998 and in Sessions Case No. 430/1999 along with 820/1999, the petitioner was arrested on 19th February, 1999.

6. The petitioner has been categorized in Category 4(e) of 2010 guidelines. It states that the prisoners falling in that category shall undergo 26 years of imprisonment including remission provided that they have undergone 14 years of actual imprisonment. Category 4(e) deals with murder committed with exceptional violence/brutality/kidnapping or murders committed by bootleggers, gamblers, flesh traders etc. or murder committed by dacoits and robbers in the act of committing dacoities and robberies. The facts relating to the present case are that the petitioner and co-accused fired bullets from revolver at Mohd. Hussain Javed Shaikh. After the said firing Mohd. Hussain got injured and fell down on the ground. Thereafter the petitioner and co-accused went close to where Mohd. Hussain was lying on the ground and fired bullets from the revolver on his face and head. In this view of the matter, the case of the petitioner would fall under Category 4(e) of 2010 guidelines, i.e., murder committed with exceptional violence.

7. The case of the petitioner is that his remission is being counted only after his date of conviction in Sessions Case No. 704 of 1999 whereas his remission ought to have been counted from his date of conviction in Sessions Case No. 173/1999 in which the date of conviction is 27th November, 2002 whereas the date of conviction in Sessions Case No. 704 of 1999 is 18th August, 2007. As far as this contention is concerned, it is seen that thereafter in Sessions Case No. 173/1999 the petitioner came to be acquitted. Hence, remission in that case cannot be counted when the final remission is computed. Same is the case in Sessions Case No. 430/1999 along with 820/1999 in which he was convicted on 31st July, 2003 but later acquitted. The petitioner cannot be given benefit of any remission in relation to Session Case No. 173/1999 or Sessions Case No. 480/1999 along with 820/1999. Thus, we find no merit in this petition.

8. In view of the above, Rule is discharged.

9. Fees to be paid to the appointed counsel are quantified at Rs.2,500/-.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)