

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL W.P.NO. 2208 OF 2017**

Mohammad Mushtaq Moosa
Tarani

.. Petitioner

Vs.

The State of Maharashtra & Ors.

.. Respondents

....

Mrs. A.M.Z. Ansari along with Mrs. Nasreen S.K. Ayubi Advocate
for Petitioner
Mr. Arfan Sait A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATED : DECEMBER 13, 2017

ORAL JUDGMENT [PER SMT. V.K.TAHILRAMANI, J.]:

1 Heard both sides.

2 The petitioner preferred an application for parole on 29.5.2016 on the ground of illness of his wife. The said application was rejected by order dated 28.10.2016. Being aggrieved thereby, the petitioner preferred an appeal. The appeal was dismissed by order dated 14.2.2017, hence, this petition.

3 It is seen that the appeal is dismissed on two grounds i.e. as the petitioner has been convicted in a Bomb Blast case, in view of the Notification dated 26.8.2016, he cannot be granted parole and the second ground is that the medical certificate relied upon by the prosecution which shows that his wife has a medical problem, is dated 9.5.2016, hence, on 14.2.2017, it was not possible to know the current state of the health of the wife of the petitioner and as the petitioner has not produced any recent medical certificate of the wife, the seriousness of the illness could not be made out. As far as second ground is concerned, the petitioner has annexed a medical certificate dated 9.5.2016 along with his application which was preferred on 29.5.2016. As the matter was pending before the authorities, the petitioner had no way of knowing when the application would be decided hence, he did not furnish any fresh medical certificate. The petitioner cannot be blamed for not submitting a fresh medical certificate.

4 We have reproduced the two grounds on which the appeal of the petitioner came to be dismissed, however, we find

that the appeal of the petitioner was rejected on entirely different grounds than the grounds on which the application of the petitioner for parole was rejected. The grounds on which his application was rejected and appeal was dismissed are entirely different grounds and are not at all in consonance with each other. In this view of the matter, both the orders dated 28.10.2016 and 14.2.2017 are set aside. The application of the petitioner dated 29.5.2016 to be considered afresh along with latest medical certificate which will be submitted by the petitioner to the concerned authority. Rule is made absolute accordingly. Petition is disposed of.

5 Parties to act on an authenticated copy of this order.

M.S.KARNIK, J.

ACTING CHIEF JUSTICE

Kandarkar