

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3774 OF 2017

Muzzammil Aatur – Rehman]
 Shaikh, Aged about ___ years,]
 Indian Inhabitant, Resident of 203,]
 Trupti Balaji Building, Naya Nagar,]
 Mira Road (East), Thane]
 At present lodged at Nasik Road]
 Central Prison,].. Petitioner

Vs.

- | | |
|---------------------------------|-----------------|
| 1) The State of Maharashtra |] |
| through Additional Secretary, |] |
| Home Deptt., Mantralaya, |] |
| Madam Cama Road, |] |
| Mumbai-400 032 |] |
| |] |
| 2) The Divisional Commissioner, |] |
| Nasik Division, Nasik |] |
| |] |
| 3) The Superintendent of Nasik |] |
| Road Central Prison. |] |
| |] |
| 4) The Police Superintendent |] |
| Office Thane village |].. Respondents |

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Mrs.A.M.Z. Ansari along with Mrs. Nasreen S.K. Ayubi Advocate
 appointed for the Petitioner

Mr. Arfan Sait A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
SHRI.M.S.KARNIK, JJ.
DATED : OCTOBER 05, 2017**

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

1 Heard both sides.

2 The petitioner preferred an application for parole on
5.5.2016 on the ground of illness of his mother. The said
application was rejected by order dated 20.3.2017. Being
aggrieved thereby, the petitioner preferred an appeal. The
appeal was dismissed by order dated 13.6.2017, hence, this
petition.

3 The application of the petitioner for parole came to be
rejected on the ground that he is convicted in the Railway Bomb
Blast case and the police report is adverse which shows that if
the petitioner is released on parole, there may be law and order
situation.

4 As stated earlier, first ground for rejecting the
application of the petitioner for parole is that he has been
convicted in the Railway Bomb Blast case. In the Railway Bomb

Blast case, 188 people died and 828 persons were injured.

5 As observed by the Supreme Court in the case of ***Asfaq Vs. State of Rajasthan and others*** rendered in Civil Appeal No. 10464 of 2017 arising out of SLP (C) No. 16803 of 2017, parole can only be granted in certain situations, one of them being that a member of prisoners family has died or is seriously ill. In the present case, the petitioner has sought parole on the ground that his mother is ill. Reliance is placed on medical certificate dated 4.2.2016 which shows that she is suffering from Cholelithiasis (Gall bladder stones), however, the prosecution has recorded the statement of the Doctor who gave the certificate and he has stated that Ms. Parveen Banu (mother of the petitioner) came to his hospital only on 4.2.2016 for the first time for consultation and neither prior to that nor after that she has come to his hospital. He was requested to give the medical certificate on the ground that the certificate is needed for getting monetary help for the patient from a charitable trust, hence, he gave the said certificate. It is to be noted that another certificate is annexed to the petition which is dated 24.5.2017 issued by Saidee hospital, however, this certificate

makes no reference at all to “Gall Bladder Stones”. Thus, we are of the opinion that ground on which the petitioner is seeking parole is not a good or genuine ground.

6 The learned counsel for the petitioner placed reliance on a decision of this Court dated 8.6.2017 in Criminal Writ Petition No. 1733 of 2017 in the case of ***Rajendra Kantilal Jagdale Vs. The State of Maharashtra***. She placed reliance on this decision to support her contention that if the conduct of the prisoner is good, he is entitled to be released on parole. We have perused the said decision. In the said case, the petitioner therein was released on parole on two occasions and he had reported to the prison on due date on his own on both the occasions. In the said case, the mother of the prisoner was suffering from cancer and she was taking treatment for the same. Looking to this fact and the fact that the conduct of the prisoner in the jail was stated to be good, parole was granted to the said prisoner. However, facts in the present case are entirely different. The father of the petitioner is very much available to take care of his wife i.e. the mother of the petitioner. As stated earlier, the recent medical certificate

makes no reference at all to the Gall Bladder Stone. If at all the mother of the petitioner was indeed suffering from Gall Bladder Stone which was of a serious nature, she would have continued her treatment with the same doctor. But for more than 1½ years after the certificate was issued, the mother of the petitioner has not gone back to the said Doctor, which shows that ailment is not serious in nature. As stated earlier, the recent reports do not show any evidence of gall bladder stones.

7 The learned counsel for the petitioner thereafter placed reliance on the decision of the Supreme Court in the case of **Asfaq (supra)** to contend that parole can be granted in certain situations. Even the Prisons (Bombay Furlough and Parole) Rules, 1959 also provide for release of prisoner on parole. Parole is granted in case of death or serious illness of nearest relatives or in case of natural calamity. In the present case, looking to the medical certificate and the statement of the Doctor, it cannot be said that illness of the mother of the petitioner is serious in nature. Thereafter the learned counsel for the petitioner again placed reliance on the decision in the case of **Asfaq (supra)**, to state that if the conduct of the

prisoner is good, he should be released on parole. The learned counsel for the petitioner has placed reliance on the observations made in paragraphs 10 to 19 of the said decision. We have carefully perused the said decision. In paragraphs 17 & 18 of the said decision, it is stated that not all people in prison are appropriate for grant of furlough or parole. It is stated that authorities are supposed to address the question as to whether the convict is such a person who has tendency to commit a crime. It is further observed therein that obviously, society must isolate those who show patterns of preying upon victims. It is further observed therein that the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a Court) of having perpetrated a criminal act. Care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough, the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large.

8 In paragraph 19 of the said decision, the Supreme Court stated that while granting parole, it has to be considered whether the prisoner is a hardened criminal and a threat to society. In this connection, the learned A.P.P. pointed out that there is another case pending against the petitioner which is registered in the State of Karnataka. The said case pertains to forgery of documents. In paragraph 19 in the case of **Asfaq (supra)**, it is observed that another vital aspect that needs to be discussed is as to whether there can be any presumption that a person who is convicted of serious or heinous crime is to be, *ipso facto*, treated as a hardened criminal. Hardened criminal would be a person for whom it has become a habit or way of life and such a person would necessarily tend to commit crimes again and again. Obviously, if a person has committed a serious offence for which he is convicted but at the same time it is also found that it is the only crime he has committed, he cannot be categorized as a hardened criminal. In his case, consideration should be as to whether he is showing the signs to reform himself and become a good citizen or there are circumstances which would indicate that he has a tendency to commit the crime again or that he would be a threat to the

society. As stated earlier, the petitioner is not involved in just one offence, but he is involved in more than one offence. In addition, it is stated that two brothers of the petitioner are also involved in the very same Bomb Blast case. One of them has absconded and has fled the country and Red Corner notice has been issued against him. It is apprehended that if the petitioner is released, he may also flee the country.

9 The Supreme Court in the case of ***Asfaq (supra)***, has made a reference to the police report wherein it is stated that if the petitioner is released on parole, it may lead to untoward incidents in the society. In the present case also, the police report makes a reference that if the petitioner is released on parole, there is likelihood of law and order situation arising. Looking to the facts of the case at hand, we do not think that this is a fit case to interfere. Hence, petition is dismissed. Rule is discharged.

[M.S.KARNIK, J.]

[SMT.V.K.TAHILRAMANI, J.]