

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4145 OF 2017

Mohammad Rafiq Usman Shaikh

Age: 51 years

M. K. Building, B Wing, R.no.01,

Ground floor, Pipe Compound,

Maharaja corner, Amrut Nagar,

Mumbra, District: Thane,

Thane – 400 612.

Presently lodged in Kolhapur

Central Prison Convict no.C-5839.

... Petitioner

Versus

1. The State of Maharashtra.

2. The Secretary,
Home Department,
Mantralaya, Mumbai – 400 032.

3. The Superintendent of Prison,
Kolhapur Central Prison,
Kalamba, Kolhapur

... Respondents

.....

Mrs. Farhana Shah for the Petitioner.

Mr. Arfan Sait, APP for the State.

.....

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. KARNIK, J.**

DATE : 12th DECEMBER, 2017.

ORAL JUDGMENT : [Per Smt. V.K. Tahilramani, Acting C.J.]

1. Heard both sides.
2. The petitioner had preferred application for parole on the ground of illness of his wife. The said application was rejected by order dated 17th November, 2016. Being aggrieved thereby, the petitioner preferred an appeal, the same was dismissed by order dated 16th February, 2017, hence this petition.
3. The application of the petitioner for parole came to be rejected mainly on the ground that the petitioner is a terrorist as he is a convict in a bomb-blast case, hence, in view of notification dated 26/08/2016, he cannot be released on parole. The learned APP submitted that, as per the police report, if the petitioner is released on parole, there may be a law and order problem.
4. Learned Counsel for the petitioner submitted that the fact that the petitioner is a bomb-blast convict, cannot be a ground to reject his application for parole. She submitted that the notification dated 26/08/2016 cannot be made applicable to the

case of the petitioner, because the application of the petitioner for parole was prior to 26/08/2016. She submitted that the said notification cannot be made retrospectively applicable to the application of the petitioner for parole, as his application was prior to the notification. No doubt there is much merit in this submission and we find it to be a correct view, however, the fact remains that the petitioner is involved in terrorist activities and the authorities apprehend that there will be a law and order problem if the petitioner is released on parole.

5. The learned counsel for the petitioner thereafter placed reliance on the decision of 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, to contend that parole can be granted in certain situations and the present case is one of them. The Prisons (Bombay Furlough and Parole) Rules, 1959 provide for release of a prisoner on parole. Parole is granted in case of death or serious illness of nearest relative or in case of natural calamity. We have perused the medical certificate which is relied upon by the petitioner to seek parole. The said certificate is issued by Dr. Neena S. Nichlani. It

shows that the wife of the petitioner is suffering from prolapse of uterus and she is to be posted for surgery. The statement of Dr. Neena S. Nichlani has been recorded on 22/10/2017. In the statement, Dr. Nichlani has said that the operation is not such as is dangerous to life, which means that the operation is not serious in nature.

6. 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 and 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 questions 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.

7. 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 the petitioner is involved not only in the bomb-blast case but also in many other cases. 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. The present petitioner is not involved in just one offence, but he is involved in more than one offence. Besides the bomb-blast case, he is involved in CR 203/2009 of Tardeo Police Station and two other cases under Local Act. Moreover, in jail, the conduct of the petitioner is also not satisfactory as he is not doing the work allotted to him in the jail and he is also not following the rules and regulations. Report of the Jailor to the said effect is taken on record and marked "X-1" for identification.

8. 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 dated 11/12/2017 states that if the petitioner is released on parole, law and order situation will arise. The said police report and other papers are taken on record and marked "X-2" collectively for identification. We also cannot be unmindful of the fact that in the bomb-blast case in which the petitioner has been convicted 188 people died and 828 people were injured.

9. As stated earlier, the petitioner has relied on the medical certificate issued by Dr. Neena S. Nichlani, who is attached to Universal Hospital & Universal Medical Institute at Mumbra, Thane. It is pertinent to note that the sister of wife of petitioner is working in the very same hospital. Thus, the sister is very much available to take care of the wife of petitioner in case she is required to undergo surgery. Thereupon, the learned Counsel for the petitioner submitted that it is a private hospital and the wife of the petitioner may not be able to afford treatment in the said

hospital. Assuming this is so, it is seen that the sister of the wife of the petitioner is residing in the same area, as the wife of the petitioner. Therefore, the sister of wife of the petitioner can very well take care of the wife of the petitioner. In view of all the above facts, the petition is dismissed. Rule discharged.

(M. S. KARNIK, J.)

(ACTING CHIEF JUSTICE)