

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI. W.P. NO. 2725 OF 2018**

	Mohd. Shafi Najmuddin Shaikh C-3067, Age 54 years, (Presently lodged at Kolhapur Central Prison) R/o C/o Shaikh Kasam, Oshiwara Garden Lane, Sky Park, D-Wing, Flat No. 702, Goregaon, Mumbai - 400 104	..	Petitioner
	Vs.		
1	The State of Maharashtra		
2	The Inspector General of Police Western Region, Yerawada, Pune -6		
3	The Deputy Inspector General of Prisons, Western Region, Yerawada, Pune - 6		
4	The Supdt. of Police, Kolhapur Central Prison, Kolhapur	..	Respondents

....
Mrs. Farhana Shah Advocate for Petitioner
Mr. Arfan Sait APP for the State
....

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

DATED : JULY 13, 2018

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

1 Heard both sides.

2 The petitioner preferred an application for furlough on
6.6.2017. The application was rejected by order dated 8.8.2017.
Being aggrieved thereby, the petitioner preferred an appeal.
The appeal was dismissed by order dated 30.12.2017, hence,
this petition.

3 The main ground for rejecting the application of the
petitioner for furlough is that he has been convicted for an
offence of kidnapping for ransom i.e. he is convicted under
Section 364-A of IPC. We may state here that for the said
offence, the petitioner has been sentenced to life imprisonment.

4 Learned counsel for the petitioner submitted that
when the petitioner preferred an application for furlough on
6.6.2017, the earlier Notification dated 26.8.2016 was in force
and as per the said Notification, prisoners convicted for offence
of kidnapping for ransom were not eligible for grant of furlough.
Ms. Farhana Shah pointed out that thereafter the said
Notification dated 26.8.2016 has been substituted by

Notification dated 16.4.2018. She drew our attention to Rule 4(13) which is mentioned in the Notification dated 16.4.2018 and pointed out that if the stipulated sentence under the respective Sections has been undergone by the prisoner, then he would be eligible to be granted furlough. She further submitted that the petitioner has been in custody since May, 2004 and as of today, the petitioner has completed 14 years of actual imprisonment, hence, it can be said that he has undergone the sentence of life imprisonment awarded to him under Section 364-A, hence, the petitioner would be eligible to be granted furlough.

5 Rule 4(13) of the Notification dated 16.4.2018 reads as under:

For Rule 4 of the Principal Rule, following Rule shall be substituted, namely:-

"4. Eligibility for furlough:- All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough-

(13) Who is sentenced for offences such as terrorist crimes, mutiny against State, kidnapping for ransom

(Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section);"

6 Life imprisonment does not mean 14 years of imprisonment. Life imprisonment would mean imprisonment for life unless the sentence of convict - prisoner is commuted or remitted and he is prematurely released under the Guidelines framed by the Government for premature release. This premature release is usually after the prisoner's case is categorized by the Government and only after the prisoner undergoes the sentence of imprisonment as per the category he has been placed in, then it can be said that he has undergone his sentence of life imprisonment. Thus, a prisoner sentenced to life imprisonment before being released, has to undergo the sentence of imprisonment as per the category he has been placed which would also include the period of remission earned by him. In this view of the matter, it cannot be said that the petitioner has completed the stipulated sentence under Section 364-A of IPC. The Supreme Court in its decision in the case of **Saibanna Vs. State of Karnataka** reported in **(2005) 4 SCC 165** has observed in para 17 as under:

“A prisoner sentenced to life imprisonment is bound to serve the remainder of his life in prison unless the sentence is commuted or remitted and that such sentence could not be equated with any fixed term.”

7 The Constitution Bench of the Supreme Court in ***Gopal Vinayak Godse Vs. State of Maharashtra*** reported in ***(1961) 3 SCR 440 : AIR 1961 SC 600; 1961 Cri.L.J. 736***, observed in para 8, that unless the sentence of life imprisonment is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. So also in para 30 of the decision of the Supreme Court in ***Maru Ram Vs. Union of India and others : (1981) 1 SCC 107***, the Constitution Bench of the Supreme Court observed that life sentence is nothing less than lifelong imprisonment. From all these decisions, it is clear that period of life imprisonment cannot be held to be 14 years as urged by the learned counsel for the petitioner. It cannot be said that the petitioner has undergone his sentence of imprisonment under Section 364-A of IPC.

8 As stated earlier, the application of the petitioner for furlough came to be rejected mainly on the ground that he has been convicted under Section 364-A of IPC. In view of Rule 4(13) of The Prisons (Bombay Furlough and Parole) Rules 1959, we cannot find any error in the order of the authorities rejecting the application of the petitioner for furlough. We may state here that Rule 4(13) as per the Notification dated 26.8.2016 and as per Notification dated 16.4.2018 both state that a person convicted for an offence of kidnapping for ransom will not be eligible for furlough.

9 In view of the above, no case is made out for interference, hence, Rule is discharged. Petition is dismissed.

M.S.SONAK, J.

ACTING CHIEF JUSTICE

kandarkar