

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

CRIMINAL WRIT PETITION NO. 2202 OF 2018

Parvez F. Dalvi	...Petitioner
Versus	
The State of Maharashtra	...Respondent

Mr Prosper D'Souza, appointed Advocate – for the Petitioner.
Mr. Arfan Sait, APP for the Respondent-State.

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

DATE : 12.07.2018.

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

- 1] Heard both sides.
- 2] The case of the petitioner is that his father expired on 2.12.2017, hence, the petitioner has prayed for being released on death parole. The Superintendent, Nashik Road Central Prison rejected the application of the petitioner for death parole dated 4.12.2017 by order dated 9.12.2017. Being aggrieved thereby, the petitioner preferred an appeal to the Divisional Commissioner, Nashik. The said appeal was dismissed by order dated 22.3.2018.

3] As the appeal of the petitioner was dismissed by the Divisional Commissioner, Nashik by order dated 22.3.2018, the petitioner approached this court by filing Criminal Writ Petition No. 1244 of 2018. This writ petition was disposed of by order dated 11.4.2018. In the said order, it was observed that in the order dated 22.3.2018 passed by the Divisional Commissioner, Nashik it is stated that if he is aggrieved by the order dated 22.3.2018 , then he may prefer an appeal within eight days to the State Government. The order dated 22.3.2018 was served on the petitioner on 24.3.2018. However, when Writ Petition No. 1244 of 2018 came to be decided , it was seen that the petitioner had not preferred an appeal to the State Government and he had directly approached this court by filing Writ Petition No. 1244 of 2018. In this view of the matter, this Court, in its order dated 11.4.2018 in Writ Petition No.1244 of 2018, had observed that as there is remedy of preferring an appeal, the Court was not inclined to entertain the said writ petition and the petitioner was relegated to the remedy of preferring an appeal to the State Government. It was further observed that if the petitioner prefers an appeal to

the State Government, the same be decided expeditiously by the State Government .

4] It appears that pursuant to the said order, the petitioner preferred an appeal and submitted it to the Superintendent of Nashik Road Central Prison, where he was lodged, to forward it to the State Government for consideration of the said appeal. The petitioner gave the appeal, addressed to the State Government, to the Superintendent of Nashik Road Central Prison on 15.6.2018 with a request to forward the same to the State Government. However, it appears that while the Jail Authorities were processing the appeal so as to forward to the State Government, a Circular dated 25.6.2018 came to be issued by the Government in relation to release on Parole and Furlough. In the Circular dated 25.6.2018, it was stated that in cases of death parole, there is no provision of appeal to the State Government. In view of the Circular, the Jail Authorities did not forward the appeal to the State Government. However, it is seen that the petitioner preferred an appeal on 15.6.2018, i.e., prior to Circular dated 25.6.2018. Hence, the said Circular cannot be made

applicable to the petitioner and the earlier Rules would be applicable.

5] In this view of the matter, the Superintendent, Nashik Road Central Prison, Nashik to forward the appeal of the petitioner to the State Government and the State Government to take a decision thereon as expeditiously as possible.

6] Accordingly, Rule is made absolute in the above terms.

7] Office to communicate this order to the petitioner, who is in Nashik Road Central Prison, Nashik.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

Digitally signed
by Dinesh
Sadanand Sherla
Date: 2018.07.19
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