

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

CRIMINAL WRIT PETITION NO. 2989 OF 2018

Uttam Shantaram Potdar	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Smt. Harjeet Kaur Bhagwant Singh for Petitioner.
Mr. Arfan Sait - APP for the State.

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

DATE : 02 AUGUST 2018

ORAL JUDGMENT : (SMT. V. K. TAHILRAMANI, Acting C. J.)

- 1] Heard both the sides.

- 2] The petitioner preferred an application on 1st June 2017 for parole on the ground of medical problem of his mother. The said application was rejected by order dated 22nd August 2017. Being aggrieved thereby, the petitioner preferred an appeal. The appeal was dismissed by order dated 5th January 2018. Hence, this petition.

- 3] The application of the petitioner came to be rejected in view of Rule 4(13). Rule 4(13) reads as under :

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

.....

4. (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);”

Thus, this *inter alia* means that those prisoners who are convicted for terrorist crime will not be eligible to be released on furlough. Admittedly, the petitioner is convicted for terrorist crime i.e. he is convicted in the 1993 Bomb blast case hence, the Notification dated 26th August 2016 would apply to the petitioner. This is also because the Notification dated 26th August 2016 also stipulates that those who are not eligible for furlough are not eligible for regular parole.

4] The learned counsel for the petitioner submitted that earlier the petitioner was released on parole on the ground of illness of his mother on 14th September 2015. She further submitted that the petitioner was on bail prior to his conviction. Lastly, she submitted that the petitioner has been sentenced to life imprisonment and Notification dated

26th August 2016 pertaining to Rule 4(13) of the Prisons (Bombay Furlough and Parole) Rules 1959 states that if the prisoner has completed his stipulated sentence he would be eligible for furlough. She submitted that in such case the petitioner should have been released on parole.

5] In answer to the above contentions, the learned APP submitted that the petitioner is convicted under section 3(3) of the TADA Act, 1987 for being involved in a case called as Bomb Blast Case No. 1 of 1993. In the said case under section 3(3), the petitioner has been sentenced to life imprisonment. He submitted that in such case Rule 4(13) would not apply because it cannot be said that the petitioner has completed his stipulated sentence under section 3(3) of TADA Act.

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 3(3) of TADA. The Supreme Court in its decision in the case of **Saibanna Vs. State of Karnataka** reported in **(2005) 4 SCC 165** has observed in paragraph 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 paragraph 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 paragraph 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 3(3) of TADA.

8] Thus even though the petitioner has undergone 19 years of imprisonment it cannot be said that he has completed his stipulated sentence under section 3(3) of the TADA Act. Thus, amended Rule 4(13) would be of no help to the petitioner.

9] The learned APP thereafter submitted that in Notification dated 26th August 2016 it is provided that those convicts who are involved in terrorists activities would not

be eligible for grant of furlough. Rule 4(13) of the said Notification states that those persons who are sentenced for offences such as terrorist crimes, mutiny against State, kidnapping for ransom would not be eligible for furlough. Admittedly, the petitioner has been convicted in a bomb blast case. Thus, his case clearly falls under the category of terrorist crimes, hence in view of Rule 4(13), the petitioner would not be eligible to be granted parole or furlough. It is to be noted that the application of the petitioner for parole is after the Notification dated 26th August 2016, hence the rigors of the notification would fully apply to him.

10] The learned counsel for the petitioner submitted that the said Notification dated 26th August 2016 would not come in the way of the petitioner being granted parole in view of the decision of the Aurangabad Bench of this High Court dated **24th November 2017 in Writ Petition No. 1293 of 2017 in the case of Jafar s/o. Abdul Haq Shaikh vs. The State of Maharashtra & Ors.** She pointed out that under Notification dated 26th August 2016 those who are eligible for furlough can be released on parole. She pointed out that in the case of Jafar, the

petitioner was convicted in a bomb blast case. However, despite the Notification dated 26th August 2016, the petitioner was granted furlough. Notification dated 26th August 2016 states that prisoners who have been convicted for terrorist activities shall not be eligible for furlough or parole. We have perused the decision in the case of Jafar. We have noticed that in the said decision after placing reliance on the decision of the Division Bench at the Principal Seat (Coram: Smt. V.K. Tahilramani & Sandeep K. Shinde, JJ.) in ***Altaf Ali Mushtaq Ali Sayed vs. State of Maharashtra and ors*** decided on 21st June 2017 in Criminal Writ Petition No. 2027 of 2017, it was observed that parole was granted to the petitioner therein despite the Notification dated 26th August 2016. Notification dated 26th August 2016 states that prisoners who are convicted for bomb blast cases shall not be eligible to be released on furlough. The Division Bench of this court at Aurangabad has observed that the petitioner, in Writ Petition No.2027 of 2017, Altaf Ali Mushtaq Ali Sayed was also a bomb blast convict, and he was granted parole despite Notification dated 26th August 2016 based on the fact that the conduct and record of the petitioner in Writ Petition No. 2027 of 2011 was good. The

relevant portion of the decision in *Jafar s/o. Abdul Haq Shaikh*, reads as under:

“6] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and the learned APP appearing for the respondent-State. We have carefully perused the impugned order, it appears that the main ground on which the application of the petitioner is rejected appears to be that the Government of Maharashtra, Department of Home, issued a Notification dated 26th August, 2016, merely because in view of the said Notification and since the petitioner is a convict in a bomb Blast case, no parole/furlough can be granted to him. In this respect, it would be gainful to make reference to the order passed by the Division Bench at Principal Seat [Coram : Smt.V.K.Tahilramani & Sandeep K.Shinde, JJ.] in Criminal Writ Petition No.2027/2017, decided on 21.06.2017, wherein the petitioner was a convict in a case relating to the bomb blast and it was mentioned in the police report that if the petitioner is released on parole, he will not report back to the prison. However, keeping in view the earlier record of the petitioner therein, in respect of his release on parole/furlough and the fact that the petitioner therein did not misuse the liberty given to him, and reported back within time to the prison, the Division Bench issued directions to release the petitioner therein for a period of 30 days on parole.”

11] Relying on the above facts, the Division Bench of this Court at Aurangabad in the case of *Jafar s/o. Abdul Haq Shaikh*, granted furlough to the petitioner who was a bomb blast convict. However, the main issue which was involved in the case of *Altaf Ali Mushtaq Ali Sayed* was that his application for furlough was dated 16th March 2016, i.e.,

much prior to the Notification dated 26th August 2016 and in that case obviously, the Notification dated 26th August 2016 could not have been made retrospectively applicable to *Altaf Ali Mushtaq Ali Sayed* and as the said Notification could not have been made applicable to *Altaf Ali Mushtaq Ali Sayed*, the conduct of the said convict when he was earlier released on parole was kept in mind and he was released on parole. In case of *Altaf Ali Mushtaq Ali Sayed* the only ground or reason for rejecting the application for parole was that he was convicted in a bomb blast case and if he is released on parole, he will not report back to the prison in time and the other reason was that if he is granted parole, the surety may not be able to keep a check on him. As the first ground of rejection that he was convicted in a case related to the bomb blast could not be made use of as the Notification dated 26th August 2016 was much after his application for furlough and hence the notification could not be said to be attracted in the case of *Altaf Ali Mushtaq Ali Sayed* because his application was much prior to the Notification and hence, the court had to look to the other grounds for rejecting the application of *Altaf Ali Mushtaq Ali Sayed* for parole. In view of the fact that he had been

released on many occasions on furlough/parole and he had reported back on the due date to the prison and the fact that during the period that he was on parole/furlough, he had not misused the liberty granted to him, the court was of the opinion in the case of *Altaf Ali Sayed (supra)* that the other grounds were also not good grounds to reject the application for parole. Hence, the main point in the case of *Altaf Ali Mushtaq Ali Sayed* was that his application for parole was much prior to the Notification dated 26th August 2016, hence, the fact that he was a bomb blast convict would not have come in the way of *Altaf Ali Mushtaq Ali Sayed* to be granted parole. It is very clear from the very first para of the decision in *Altaf Ali Mushtaq Ali Sayed* that his application for parole was prior to the Notification dated 26th August 2016. This important distinction in the case of *Altaf Ali Mushtaq Ali Sayed* was not brought to the notice of the court when the case of *Jafar s/o. Abdul Haq Shaikh* was decided on 24th November 2017 by the Division Bench of the Court at Aurangabad. Hence, it cannot be said that the decision in *Altaf Ali Mushtaq Ali Sayed* could have been relied upon to hold that even if the application of the prisoner for parole/furlough is after Notification dated 26th

August 2016, he can still be granted parole/furlough. In view of the Notification dated 26th August 2016, any application for furlough or parole after the notification by a bomb blast convict cannot be granted. Thus the decision in the case of Jafar would not help the petitioner in any manner.

12] As stated earlier, the application of the petitioner for parole came to be rejected on the ground that his case was covered by Section 4(13) which was amended by Notification dated 26th August 2016. Thus, even if the petitioner was released on parole or bail earlier, it is seen that this was prior to the Notification dated 26th August 2016. In view of the Notification dated 26th August 2016, we find no error on the part of the Authorities for rejecting the case of the petitioner for parole. In this view of the matter, this petition is dismissed. Rule is discharged.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

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