

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4550 OF 2018

Farooq Illiyas Motorwala.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. N. N. Gawankar I/b Mr. M. N. Gawankar for the Petitioner.

Mrs. A. S. Pai, APP for the Respondent-State.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **October 29, 2018.**

P. C. :

1. Heard the learned counsel for the Petitioner and learned APP for the Respondent-State. By this petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the communication dated 15th June 2017 issued by Respondent No.4. By the said communication, it is has intimated that the Petitioner's application against the oder of Respondent No.3 [being order dated 20th March 2017] refusing parole to the Petitioner, is rejected.

2. Mr. Gawankar, learned counsel for the Petitioner placed reliance upon the decision of Apex Court in Asfaq v. State of Rajasthan [(2017) 15 SCC 55] and the decision of Division Bench of this Court [Bench at Aurangabad] in Mohammad Moin Qureshi v. the State of

Maharashtra in Criminal Writ Petition No. 446 of 2018 [being order dated 4th July 2018] and urged that appeal deserves to be remanded back to the State Government.

3. On the contrary, Mrs. Pai, learned APP relied upon the decision of Division Bench of this Court in Bashir Ahmed Usman Gani Kairullah v. State of Maharashtra in Criminal Writ Petition No. 3988 of 2017 [being order dated 7th August 2018] and she submitted that this writ petition deserves to be dismissed.

4. It is the submission of Mr. Gawankar, the learned counsel for the Petitioner that Apex Court in the case of Asfaq (supra) was also dealing with the accused in serial bomb-blast which took place on 6th December 1993. According to him, the issue involved before the Apex Court was about the grant of parole to such convicts who were convicted under the TADA Act and awarded life imprisonment. Mr. Gawankar has relied on the observations of the Apex Court paragraph 19 to the following effect :

"19. 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 categorised 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 tendency to commit the crime again or that he would be a threat to the society. Mere nature of the offence committed by him should not be a factor to deny the parole outrightly. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced."

. Relying upon the said judgment, Mr. Gawankar's submission is that merely because the Petitioner is convict in the serial bomb-blast, he cannot be outrightly rejected parole. According to him, the Division Bench of this Court at Aurangabad, relying upon the said judgment has granted parole to a similar convict.

5. Mrs. Pai has placed reliance on judgment in the case of *Bashir (supra)*. We have carefully perused the said judgment. No doubt, the Division Bench has relied upon the judgment of the Apex Court in Asfaq and was also conscious of Rule 4(13) of the Prison Rules as contained in notification date 26th August 2016 thereby disentitling the convicts in terrorist crime from availing furlough. The Division

Bench had made reference to the case of Santosh Namdeo Bhukan vs. State of Maharashtra [(2016) BCR (J Cri) 165 and Sharad Devaram Shelake vs. State of Maharashtra [2016(4) Mh.L.J. 228] which revolve around the said notification dated 26th August 2016.

. However, we have also noted that the Division Bench has also examined the case of the Petitioner on its merits and examined the conduct of the Petitioner in the backdrop of the report of the Superintendent of Nashik road Central Prison and on consideration of the said report was pleased to refuse parole to the Petitioner therein. It is thus clear that the said judgment is not precedent on the point that the parole has been refused merely in view of the bar contained in Rule 4(13) of the Prisons Rules.

7. So far as the present case is considered, the Petitioner's application for parole is rejected on the sole ground by invoking the bar under Rule 4(13) of the Prisons Bombay (Furlough and Parole) Rules, 1959. It is clear that Respondent No.3 and Respondent No.4 have not gone into merits of the matter, namely, the conduct of Petitioner and his entitlement. In addition to this, it is contention of

Mr. Gawankar, the learned counsel for the Petitioner that the Petitioner was not heard by the appellate authority.

8. In the light of above, order passed by the Commissioner as well as the order passed by the appellate authority cannot be sustained and the same are accordingly quashed and set aside. Matter is remanded back to Respondent No.3 for fresh consideration of the Petitioner's application in the light of decision of the Apex Court in Asfaq's case and decisions of the Division Bench of this Court in Bashir's case and Mohammad Qureshi's case.

9. Needless to state that the Petitioner's application shall be decided as expeditiously as possible and preferably within the period of four weeks from the date of receipt of a copy of this order.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]