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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 5034 OF 2017

Radhe Jholidas Mandal ...Petitioner

Vs.

The State of Maharashtra ...Respondent

.....
Mr. Prosper D'Souza, Advocate appointed for the petitioner.
Mrs. G.P. Mulekar, A.P.P. - State.
.....

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

DATE : 11th JANUARY, 2018.

ORAL JUDGMENT (PER SMT. V.K. TAHILRAMANI, A.C.J.):-

Heard both sides.

2. The petitioner preferred an application for death parole on 14/5/2016, on the ground that his mother expired on 30/4/2016. The said application was rejected by order dated 3/5/2017. Being aggrieved thereby the petitioner preferred an appeal which was dismissed by order dated 1/7/2017, hence, this petition.

3. The application of the petitioner for death parole came to be rejected on the ground that a prisoner who is convicted for the offence such as dacoity, terrorist crime, kidnapping, smuggling or under the NDPS Act cannot be granted furlough. Notification dated 26/8/2016 states that the prisoners who cannot be granted furlough, are also not eligible to be released on parole. The learned APP placed reliance on Rule 4 (13) which states that a prisoner is not eligible to be released on furlough, if he has been convicted for the offence of dacoity, terrorist crime, kidnapping, smuggling or under the NDPS Act. As stated earlier, this Notification is dated 26/8/2016 and the application of the petitioner is dated 14/5/2016, hence, this Notification cannot be made applicable to the case of the present petitioner. Moreover, Rule 4(13) of Prisons (Bombay Furlough & Parole) Rules, 1959, speaks of 'dacoity' which falls under Section 395 of the Indian Penal Code whereas the petitioner has been convicted for the offence of 'robbery' which falls under Section 392 of the Indian Penal Code. In this view of the matter, also this Notification cannot be made applicable to

the case of the petitioner. The case of the petitioner does not fall under Rule 4 (13). Thus, the grounds on which the application of the petitioner for parole came to be rejected are not good grounds and deserves to be set aside.

4. As far as appellate order is concerned, it states that emergency parole on account of death cannot be granted 1 year after the death, hence, the appeal was dismissed. No doubt, the mother of the petitioner expired on 30/4/2016 but it is noticed that the petitioner preferred the application for parole on 14/5/2016. The said application came to be rejected on 3/5/2017 and the appellate order is passed on 1/7/2017 i.e. more than one year after the petitioner preferred the application for death parole. As far as delay of more than one year is concerned, the petitioner cannot be held responsible for the same and it is the authorities who have delayed in considering the application of the petitioner for death parole. The authorities cannot take advantage of delay which was caused by them. As far as this aspect is concerned, the learned APP states that after the petitioner preferred the application for death parole, the

police report was called from Madhubani, State of Bihar and as the police report was not received, there was delay in deciding the application and the appeal of the petitioner. She further pointed out that the police report was finally received on 30/9/2017. The copy of the said police report is taken on record and marked 'X' for identification. The said police report shows that the mother of the petitioner expired on 3/4/2016 at Madhubani, State of Bihar. In this view of the matter, we find that none of the grounds are good grounds and the rejection order and the appellate order are set aside. The petitioner shall be released on parole subject to usual terms and conditions as set out by the competent authority. The Writ Petition is disposed of accordingly.

5. Rule is made absolute in above terms.

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

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)