

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

**CRIMINAL WRIT PETITION NO. 5337 OF 2017
WITH
CRIMINAL APPLICATION NO. 238 OF 2018**

Shahid Akhtar @ Raj Shafiq Ahmad	...Petitioner
Versus	
The State of Maharashtra	...Respondent

Ms Rohini Dandekar - Advocate Appointed for Petitioner.
Mr. Arfan Sait - APP for State.

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

DATE : 08 AUGUST 2018

P.C.

1] Heard both sides.

2] The petitioner had preferred an application for parole on 28th March 2016. The said application was rejected by order dated 5th December 2016. Being aggrieved thereby, the petitioner preferred an appeal. The appeal was dismissed by order dated 13th February 2017. Hence, this petition.

3] The application of the petitioner for parole came to be rejected in view of Notification dated 26th August 2016. By the said Notification, prisoners who are convicted for the offence of kidnapping are not eligible to be released on parole. This is the main reason for rejecting the application of the petitioner for parole. However, learned counsel for the petitioner pointed out that the application in the present case is dated 28th March 2016 hence, this Notification would not be attracted to the case of the petitioner. She pointed out two decisions of this Court in the case of ***Sharad Devaram Shelake vs. State of Maharashtra 2017(1) ABR (Cri) 33*** and ***Santosh Namdeo Bhukan vs. State of Maharashtra 2017(1) ABR (Cri) 404***, wherein it is held that the Notification dated 26th August 2016 cannot be applied with retrospective effect. In view of this legal position, the orders dated 5th December 2016 and 13th February 2017 cannot be sustained. Hence, the said orders are set aside and the matter is remanded back to the competent authority to consider the application of the petitioner for parole afresh.

4] Petition is disposed of in above terms. In view of disposal of petition, application does not survive and is disposed of.

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

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA

Sunita
Kishandas
Chandka

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Sunita Kishandas
Chandka

Date: 2018.08.10
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