

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 135 OF 2019**

Jafar S/o Abdul Haq Shaikh

Age : 58 Years, Prisoner,

Convict No. C-7682,

Central Prison, Harsul

Aurangabad

...PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai- 32.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad
3. The Deputy Inspector General of Police
(Prison)
Central Prison, Harsul Aurangabad
4. The Superintendent of Prison
Central Prison, Harsul
Aurangabad

..RESPONDENTS

*Respondent No.3 deleted as per order passed on dated
08.02.2019 as per request of Advocate for the petitioner.*

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Advocate for the petitioner : Mr. M. M. Chaudhari

A.PP for respondent Nos. 1,2, & 4 : Mr. M.M. Nerlikar

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**CORAM :T.V. NALWADE AND
K.K. SONAWANE ,JJ.
DATE : 11th JULY, 2019.**

JUDGMENT(PER T.V. NALWADE, J] :-

Rule. Rule made returnable forthwith. By consent, heard both
the sides for final disposal.

2. The proceeding is filed to challenge the order made by respondent No.2 by which regular parole was refused to the petitioner. He had prayed for regular parole on the ground of sickness of his wife. This Court has seen the order made by the respondent. In the order the grounds are mentioned that he cannot be released on parole due to provision of Rule 4(4) and 4(13). It appears that there is adverse police report [Rule 4(4)] and the respondent is feeling that the petitioner is a Terrorist (Rule 4(13) of the Prisoner and Parole Rule 1959)

3. The submissions made and record show that in Railway bomb blast case at Mumbai the petitioner is convicted for the offence punishable under Section 302 of the Indian Penal Code. Though there was charge for the offences punishable under the provision of TADA also, he his acquitted of those offences. What was the accusation against the petitioner is immaterial now and while considering the application for furlough or parole, only the offences for which the conviction given can be considered. As he is not convicted for any offences under the provisions of TADA, it cannot be said that he needs to be treated as Terrorist and so the bar of Rule 4(13) which is in respect of furlough and which can be used for parole also can be used against him.

4. The submissions made and record show that in the past even furlough was refused to him and he had approached this Court by filing

Criminal Writ Petition No. 129 of 2017. By order dated 24.11.2017 the order of the authority was set aside by this Court and furlough leave was granted to him. This order of this Court was challenged by the respondent in Supreme Court. By dismissing Criminal Leave Petition No. 1680 of 2018 the Apex Court refused to interfere in the decision given by this Court on 24.11.2017. Thus, the grounds raised for refusal of furlough which were similar were not accepted by this Court in the past and Hon'ble Apex Court refused to interfere in the order made by this Court on that occasion also.

5. Learned A.P.P submitted that the point of illness of the wife which falls under Rule 19(2)(a) was not considered by the respondent and so the matter can be remanded back to the authority for taking decision on this point. He submits that at present it needs to be decided as to whether the wife is still sick and whether at the relevant time the wife was sick. This submission is not at all acceptable. When the authority like respondent takes decision on any application, all the grounds which needs to be considered must be considered by the authority for deciding the application. If some grounds are not decided, it will not be open to the respondent authority to submit to this Court that the authority now wants to decide such points. When the persons is in prison he is not in a position to collect relevant record every time and the aforesaid act is nothing but intentional harassment of the prisoners. If this Court makes

order to allow the authority to decide such point now, it will create a bad practice and it will send a wrong signal to the authority. Every time the authority will do the same thing which is not permissible. Due to all these reasons this Court holds that the relief claimed needs to be granted. In the result, following order :-

ORDER

1. Petition is allowed.
2. The order passed by respondents authority is hereby set-aside.
3. The application filed for regular parole is allowed.
4. He is to be released on regular parole subject to routine conditions.
5. Rule made absolute in those terms.

[K.K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

YSK/