

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

WRIT PETITION NO.4923 OF 2019

Zuber Mohd. Kasam Shaikh

...Petitioner

Vs.

The State of Maharashtra

...Respondent

Mr. N.N. Gawankar a/w Manas N. Gawankar for the Petitioner.

Smt. S.D. Shinde, APP for the Respondent/State.

Mr. P.M. Nagawade, Jailor, Gr. - 2, Nashikk Central Prison.

**CORAM : B. P. DHARMADHIKARI &
SMT. SADHANA S. JADHAV, JJ.**

DATE : 6th NOVEMBER 2019.

PC.:

1 Heard for sometime. During arguments the learned counsel for the petitioner submitted that conviction under MCOCA is not a bar for availing furlough leave. He adds that after his conviction under section 302 IPC and under section 3(1)(i) of MCOCA on 5th September 2000, this Court acquitted him. This acquittal was set aside by the Hon'ble Apex Court on 17th December 2003 and he has been convicted only under section 302 of IPC. Thus, there is no conviction under MCOCA.

2 The learned APP has submitted that after he was released in first matter, he has committed other offences. Our attention is drawn to report of Senior Police Inspector of Mahim Police Station dated 16th February 2019 to submit that it shows indulgence in two more offences after he was released.

3 It appears that applicant has been convicted under section 12 of Passport Act and other sections in Gujarat and he has completed that imprisonment. It is also alleged that he was found involved in some offence in New Delhi.

4 It appears that the orders impugned do not specifically show that the Hon'ble Apex Court has maintained conviction of petitioner under MCOCA. The petitioner also has not specifically raised any contention in this respect. The alleged commission of two offences after he was released by trial Court again does not find express mention in any order.

5 We therefore find both orders unsatisfactory. Furlough is being denied to petitioner on the strength of those orders.

6 We therefore quash and set aside those orders and direct Respondent No.3 to pass fresh orders within six weeks from today. With these directions, we dispose of the petition.

(SMT. SADHANA S. JADHAV, J.) (B. P. DHARMADHIKARI, J.)