

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRITI PETITION NO. 1500 OF 2019

Gabriel @ Baba Hana Moben, Age
56 Years, Occ. Nil, Convict
No.7737, Resident of 7/153,
Sayyad Chal, Shanti Nagar, MIDC
12th Road, Andheri East, Mumbai –
93, at present in Central
Prison, Aurangabad, District
Aurangabad

PETITIONER

V E R S U S

- 1 The State of Maharashtra,
Through Secretary Home
Department, Mantralaya, Mumbai
- 2 The Inspector General of
Prisons, Maharashtra State, Pune
- 3 The Superintendent of Central
Prison, Aurangabad, District
Aurangabad

RESPONDENTS

Ms. Bharati B. Gunjal, Advocate for the Petitioner
Mr. K.S. Patil , A.P.P. for Respondents/State

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**CORAM : T.V. NALWADE AND
M.G. SEWLIKAR, JJ.**

DATE : 9th January, 2020

ORAL JUDGMENT [T.V. NALAWADE, J.] :

Rule. Rule is made returnable forthwith. With consent of learned counsel for both the sides, heard finally.

2. Present proceeding is filed for challenging the order made by the Addl. Secretary, Home Department, dated 9th July, 2019, by which the proposal of pre-mature release came to be rejected. The Addl. Secretary has mentioned one paragraph of Judgment delivered of conviction against the petitioner, it is as follows :-

"106...Accused no.3 (Mohmad Arshad Taaher Shaikh), 6 (Bacchi @ Ramchandra Sitlaprasad Pande) and 7 (Gabriel @ Hana Moben) has already been convicted previously and are presently out on bail in other offences. Despite this, prima facie it seems that there are other offences being registered against all the aforementioned accused, even while they are out on bail. As such, criminal activities prima-facie have not ceased though fact remains that dozens of offences are registered against all the aforementioned accused and they are on bail in several of the cases arising out of the same. From this it seems on the very face of it that they have violated conditions of bail in several cases. Accused nos. 3, 6, 7 are apparently habitual offenders and their actions do not show any remorse, in spite of being convicted previously. Also as far as accused no.1 is concerned, I have already observed in the body of the judgment itself that his

activities have led to wide spread fear and terror in the minds of the common man on the street. His record indicates that possibility of his indulging in criminal activities again cannot be ruled out."

3. It is also mentioned by the learned Addl. Secretary that after release of the petitioner, he may again indulge in similar activities and he may harass them and there will be problem of law and order. It is also mentioned that he is habitual offender of that nature, and so, decision is taken of not giving him benefit of pre-mature release.

4. The record of other pending matters or of decisions, in which the petitioner is convicted, was not produced in the matter which is decided against the petitioner. This Court cannot decide the matter only on the basis of some observations made by the Judge who has convicted the petitioner. If there is no such material, that cannot be a ground for rejecting the proposal of premature release. This Court has not touched the point of power of the State to take decision in such cases under Section 432 [1] of Cr.P.C. and the observations made by the Supreme Court in the case reported in **2014, Volume 5 Scale 600** [*Union of India V. Sriharan @ Murugan & Ors.*]

5. As there are no particulars in the order made by the respondents for rejection of premature release

proposal, this Court is remanding back the matter to the respondents for its reconsideration.

O R D E R

- [1] Writ Petition is allowed.
- [2] Impugned order is quashed and set aside.
- [3] Matter be remanded back to the respondents for re-consideration.
- [4] The respondents are expected to give particulars of the matters while passing the order on the proposal.
- [5] Matter be reconsidered within eight weeks from today, failing which there is liberty to the petitioner to come this Court again.

Rule made absolute in above terms.

(M.G. SEWLIKAR, J.)

(T.V. NALAWADE, J.)