

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.133 OF 2022**

Mohammad Mushtaq Moosa Tarani	Petitioner
Versus	
The State of Maharashtra and 2 ors.	Respondents

Ms. Aisha Z. Ansari i/b. Ms. Farhana Shah, advocate for the petitioner.
Ms. M. H. Mhatre, APP for the State.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATE : 9th FEBRUARY, 2022.

P.C. :

1. Heard Ms. Ansari, learned counsel for the petitioner at length.

2. The petitioner is before this Court challenging the order of the competent authority i.e. Superintendent, Yerwada Central Prison, Pune, dated 12th January, 2022, whereby the petitioner was permitted to attend the 40th day ritual scheduled on 30th January, 2022, on account of death of his mother, by releasing him on emergency parole leave subject to condition of bearing expenses of police escort team.

2. To deal with the grievance raised in the petition, it would be necessary for us to refer to certain facts.

SHUBHADA
SHANKAR
KADAM

Digitally signed
by SHUBHADA
SHANKAR
KADAM
Date:
2022.02.10
10:36:29
+0530

The petitioner - Mohammad Mushtaq Moosa Tarani is undergoing life imprisonment awarded to him vide judgment and order passed by the Special Judge of Special TADA Court, Mumbai. The petitioner is presently lodged in Yerwada Central Prison as convict No.15143. The petitioner on account of death of his mother - Hawabai Moosa Tarani on 22nd December, 2021 submitted an application for grant of emergency parole leave to attend the 40th day ritual falling on 30th January, 2022. On receipt of the application, by complying with necessary formalities such as seeking report, the competent authority viz. Superintendent, Yerwada Central Prison, vide order dated 12th January, 2022, by exercising the powers under Rule 19(1) of the Prisons (Bombay Furlough and Parole) Rules, 1959, permitted the applicant to attend 40th day ritual falling on 30th January, 2022 for that particular day subject to bearing the expenses of escort. The said order is placed on record at Exhibit-C. It is recorded in the said order that the petitioner is an accused in a serious crime viz. Mumbai Bomb Blast. Perusal of the order shows that though an objection was raised for release of the petitioner by concerned Police Station on the ground that one of the sureties i.e. brother of the petitioner – Abubaker Moosa Tarani is not a permanent resident of Mumbai City and the said surety is residing at the current place on the basis of leave and license agreement. The concerned Police Station recorded this objection with an apprehension that as the surety is

not permanent resident of Mumbai City and if the petitioner is released, he may misuse the liberty granted to him. Now, though this was the objection raised by the concerned police station, the competent authority i.e. Superintendent, Yerwada Central Prison, Pune, by referring to the past conduct of the petitioner that the petitioner on earlier occasion was granted emergency parole leave for attending the marriage of his daughter as well attending the rituals on account of death of his brother and had surrendered back to the prison on the scheduled date as well as considering the aspect that the petitioner has made a request to attend the last rituals on account of death of his mother, the application was allowed.

3. Learned counsel for the petitioner submitted that though the petitioner was allowed to be released, due to the rider in the nature of condition, the petitioner was unable to attend the 40th day ritual. The petitioner then prayed for his release as the 40th day ritual is rescheduled on 13th February, 2022.

4. It seems that the matter was listed before this Court on 24th January, 2022 and as the copy of the petition was served upon the Office of the Public Prosecutor, learned APP sought time to seek instructions and a report dated 5th February, 2020 is submitted to the Office of Public Prosecutor by the Superintendent, Yerwada Central

Prison, Pune. Learned APP has tendered the copy of the said report. The same is taken on record and marked "X" for identification. It is submitted in the report that the competent authority was pleased to consider all the necessary aspects in the matter viz. negative police report, nature of offence committed by the petitioner, behaviour of the petitioner in the prison and his earlier record. It is also stated in the report that certain instances took place in other States. It is stated that in the State of Uttar Pradesh, one of the convict was released on parole so as to attend the marriage of his daughter and though the said prisoner was released under the police escort, the said prisoner, by misusing the liberty granted to him, was successful in fleeing away. As such, the authorities, by way of extra caution and care, are imposing the condition of police escort so as to avoid the instances of misusing the liberty. It is also stated in the report that as all the necessary rituals post death of the mother of the petitioner are concluded, the petitioner may not be released. Now, though it is stated in the report that all necessary rituals are completed, the communication dated 4th February, 2022, of the Senior Police Inspector, Pydhonie Police Station, Mumbai, shows that the 40th day ritual which was to take place on 30th January, 2022 is now rescheduled to 13th February, 2022 after evening namaz (magarib namaz) or night namaz (isha namaz). The expenses for the escort team are referred to in a tabular form in the annexure to the report. It may not be necessary for us to refer to these details. Suffice to say that the escort

team constitutes of 5 persons i.e. team under the officer of the rank of API. Thus, escort team charges, vehicle charges, halting charges etc. are also stated in the annexure to the report. The total expenses for a day are quantified @ Rs.29000/-. Thus, for the period of five days, the petitioner may have to bear expenses roughly amounting to Rs.1,50,000/-.

5. Learned counsel for the petitioner submitted that the expenditure for the escort team is exorbitant. Learned counsel for the petitioner submitted before this Court that the petitioner is undergoing imprisonment in Yerwada Central Prison for more than 28 years and 9 months. Learned counsel for the petitioner, on instructions, submitted that the brother of the petitioner is taking care of the petitioner's family and the petitioner's brother earns his livelihood by doing a small business. Learned counsel for the petitioner further submitted that it would be impossible for the petitioner to make arrangement of an amount towards escort expenses and failure on the part of the petitioner to do so, would result in depriving the petitioner to attend the last rituals of his mother and resultantly though there would be an order in favour of the petitioner on paper, but in reality, the petitioner would not be availing that relief of release. In support of her submission, learned counsel placed heavy reliance on the judgment and order of this Court in the matter of **Essa @ Anjum S/o. Abdul Razzaq Memon versus the State of Maharashtra and ors. in criminal writ petition No.190 of 2021** to submit that in

identical circumstances, this Court permitted release of the petitioner - Essa @ Anjum S/o. Abdul Razzaq Memon without insisting upon the condition of escort team. It would be useful to refer to certain observations of the Division Bench in the matter of Essa @ Anjum S/o. Abdul Razzaq Memon. The relevant observations are reproduced herein below :

"1.....

5. An affidavit of the petitioner was tendered by the learned counsel for the petitioner specifically stating that although, the brother of the petitioner had died on 26th June, 2020, due to the Covid-19 pandemic, the religious rituals, including the 40th day programme could not be organised. Now, that strict lockdown had been relaxed to some extent and the religious rituals can be performed in the presence of limited family members, the petitioner is reiterating his prayer before this Court for release on emergency death parole, without insisting upon payment of charges for police escort. It is specifically submitted that the religious programmes would start on 28th January, 2021, but the main ritual i.e. Fateha Khwani is to be held on 29th January, 2021.

....

9. In the present case, it is undisputed that the petitioner is undergoing sentence of life imprisonment and that he has already undergone more than twenty six years of imprisonment. It is also on record that the petitioner was earlier released on furlough leave and on parole and he reported back to jail in time. The reasons stated in the affidavit, tendered on behalf of the petitioner dated 16th January, 2021, shows that

the religious rituals pertaining to the death of the petitioner's brother are to be undertaken from 28th January, 2021 and the main ritual of Fateha Khwani is to be held on 29th January, 2021.

...

11. Accordingly, the writ petition is allowed. Respondent No.5 is directed to release the petitioner forthwith on parole for a period of seven (7) days, subject to usual conditions as required under the aforesaid Rules, without police escort. The petitioner shall report to the Kurla Police Station, Kurla (West), Mumbai on third and sixth day of release.

...."

Learned counsel for the petitioner submitted that the petitioner - Essa @ Anjum S/o. Abdul Razzaq Memon was also an accused in Mumbai Bomb Blast and was convicted and sentenced by TADA Court, Mumbai and had undergone more than 26 years of sentence.

6. On hearing learned counsel for the petitioner, we find considerable merit in the submissions made on behalf of the petitioner. Though the petition is opposed by learned APP placing heavy reliance on the report dated 5th February, 2022, of Superintendent, Yerwada Central Prison, Pune, in our opinion, learned counsel for the petitioner has made out a case. Learned counsel for the petitioner was also justified in submitting before this Court that the petitioner is not only similarly circumstanced with the petitioner - Essa @ Anjum S/o. Abdul Razzaq

Memon but the present petitioner is on a better footing in view of the fact that the petitioner - Essa @ Anjum S/o. Abdul Razzaq Memon had undergone sentence of 26 years, whereas, the present petitioner had served the sentence for more than 28 years. Learned counsel for the petitioner was also justified in submitting before this Court that putting an onerous condition or imposing exorbitant condition would frustrate the object of the Rules.

7. Accordingly, the petition is partly allowed. The order dated 12th January, 2022 passed by the Superintendent, Yerwada Central Prison, Pune, is modified with certain conditions mentioned hereinbelow:

1. The petitioner- Mohammad Mushtaq Moosa Tarani be released on emergency parole leave for five days w.e.f. 11th February, 2022 to 15th February, 2022 so as to attend the last rituals scheduled on 13th February, 2022, on account of death of his mother, subject to petitioner attending Pydhonie Police Station twice a day in the morning between 9.00 a.m. to 10.00 a.m and in the evening between 8.00 p.m. to 9.00 p.m. on 11th, 12th, 14th and 15th day of February, 2022 and once a day, either in morning or evening on 13th February, 2022.

2. The petitioner shall report and surrender to the prison authorities on 16th February, 2022.

The petition, accordingly, stands disposed of.

8. Learned APP to communicate this order to the prison authorities.

9. All concerned to act upon a copy of this order duly authenticated by the Registry of this Court.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)