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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4230 OF 2021

Mohd. Arshad Mohd. Tahir Shaikh

.. Petitioner

Versus

State of Maharashtra and Ors.

.. Respondents

-
- Mr. Milan Desai i/by Ms. Saeeda Shaikh, Advocate for the Petitioner
 - Mr. K.V. Saste, APP for the State
-

**CORAM : S.S. SHINDE &
MILIND N. JADHAV, JJ.**

DATE : JUNE 13, 2022.

P.C.:

- 1.** Heard learned counsel appearing for the parties.
- 2.** By the present petition, Petitioner has prayed for the following main reliefs:

- "(c) That this Hon'ble Court be pleased to direct that the remaining sentence of the Petitioner in S.C. No.218/99 in C.R. No. I-89/93 registered with Vitthalwadi Police Station be commuted and the Petitioner be forthwith released from jail in connection with the said case.
- (d) That in alternative this Hon'ble Court be pleased to direct the Respondent No.3 to consider the case of the Petitioner for premature release as per the provisions of RULE 6 R/W RULE 16, RULE 17, RULE 25, RULE 21, RULE 23 OF THE MAHARASHTRA PRISONERS (REVIEW OF SENTENCE) RULES and s.432 & 433 of the CODE OF CRIMINAL PROCEDURE on connection with the sentence imposed in S.C. No.218/99 in C.R.No. I-89/93 registered with Vitthalwadi Police Station."

3. Petitioner was arrested on 18.02.1993 in connection with C.R. No.I-89 of 1993 for the offence punishable under section 302 of the Indian Penal Code, 1860 (for short "**IPC**"). By order dated 29.11.2013 the learned Sessions Judge at Kalyan convicted the Petitioner for the offences punishable under Section 302 read with 120B, 450, 506, 353 and 34 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.5,000/- and in default thereof suffer rigorous imprisonment for six months.

4. Petitioner filed Criminal Appeal No.1322 of 2013 against the order of conviction which came to be dismissed on 14.10.2014. According to the Petitioner he has also undergone actual imprisonment of almost 28 years including remissions in connection with the present case.

5. It is pleaded that the Superintendent of Kolhapur Jail submitted the case of the Petitioner to the State Government for remission as required under Rule 25 of the Maharashtra Prisoners (Review of Sentence) Rule 1972 and by order dated 09.07.2019 the State Government rejected the proposal in view of the nature of the offence attributable to the Petitioner. Alongwith the Petitioner two other co-accused viz. Gabriel @ Baba Hana Moben and Bacchi @ Ramchandra Sitlaprasad Pandey were also convicted in the same

crime by the learned Sessions Court. The proposal for remission of Gabriel and Bacchi were also rejected by the State Government by order dated 09.07.2019.

6. Learned counsel Mr. Desai appearing on behalf of the Petitioner submits that the co-accused Gabriel challenged the order of rejection before the Hon'ble High Court, Bench at Aurangabad in Writ Petition No.1500 of 2019. By order dated 09.01.2020 the Aurangabad Bench directed the State Government to reconsider the proposal for premature release. The State Government by its order dated 04.01.2021, categorized Gabriel as a convict to be released on completing imprisonment of 26 years including all remissions and setoff subject to him having undergone at least 14 years of actual imprisonment. Learned counsel has also placed on record copy of order dated 04.08.2021 passed by this Court in Writ Petition No.4619 of 2019 in the case of Bacchi @ Ramchandra Sitalprasad Pandey Vs. the State of Maharashtra wherein the order dated 09.01.2020 passed by the State Government categorising Bacchi in category 5(b) of Annexure-I to the Government Resolution / Guideline dated 15.03.2010 and ordering him to undergo imprisonment of 26 years was set aside and he was directed to be released on the same terms and conditions on which the co-convict Gabriel was ordered to be released by order dated 04.01.2021.

7. The Petitioner has invoked the applicability of the guidelines pertaining to categorization issued by the State of Maharashtra vide G.R. dated 15.03.2010 as also twin orders dated 04.01.2021 and 04.08.2021 passed by this Court in the case of Gabriel and Bacchi (two other co-accused with the present petition with the same offence) and argued that the Petitioner be treated on parity since he has suffered actual imprisonment of more than 28 years as on date including remissions and setoff and be released from imprisonment.

8. We have perused the petition and the pleadings. It is seen that the Petitioner has completed more than 25 years in imprisonment in the present case. The Petitioner has undergone actual imprisonment almost more than 25 years. Admittedly the two co-accused alongwith the Petitioner who were also convicted for a similar sentence have been released on their categorization by the State Government as can be seen on the reading of two order dated 04.01.2021 and 04.08.2021. The Petitioner is also appointed as night watchman in jail which signifies that his conduct has been above board and thus there can be no adverse report against him.

9. Learned APP appearing on behalf of the Respondent - State does not dispute the fact that two co-convicts viz Gabriel and Bacchi have been categorized and ordered to be released by order dated

04.01.2021 and 04.08.2021 subject to the conditions of they have undergone actual imprisonment of 14 years and 26 years of imprisonment with remission, whichever is later. There is no dispute in respect of the case of the Petitioner in so far as meeting with the aforementioned condition in respect of the other two co-convicts in his case. A report dated 10.05.2022 has been placed on record which is prepared by the Superintendent of Kolhapur Central Jail, Kalamba Kolhapur. On perusal of the said report, it is seen that the Petitioner has undergone actual imprisonment of 26 years 7 months 22 days as on 10.05.2022 and total imprisonment of 29 years 5 months 21 days.

10. In view of the above discussion and findings the case of the Petitioner deserves to be considered in parity with the case of the other two co-convicts viz. Gabriel and Bacchi and twin orders passed by this Court on 04.01.2021 and 04.08.2021. Petitioner having met with the condition enumerated while releasing the other two co-convicts and complying with the condition in the guidelines of 2010 deserves to be released from imprisonment forthwith. Hence, we pass the following order:

ORDER

- (i) The Writ Petition is allowed;
- (ii) The order dated 09.07.2019 passed by Respondent

No.3 stands quashed and set aside;

- (iii) Respondents are directed to release the Petitioner - Mohd. Arshad Mohd. Tahir Shaikh if not required in any other case, on the same terms and conditions on which the co-convict Gabriel @ Baba Hana Moben has been ordered to be released by order dated 04.01.2021;
- (iv) Writ Petition stands disposed of accordingly.

[MILIND N. JADHAV, J.]

[S. S. SHINDE, J.]

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AJAY TRAMBAK
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