

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2399 OF 2022

Arun S/o Uddhav Bahir ... Petitioner.
(Brother of Somnath Uddhav Bahir)
V/s.
The State of Maharashtra and Ors. ... Respondents.

Mr. Rupesh A. Jaiswal, Advocate for Petitioner.

Mrs. Sangeeta D. Shinde, APP-State.

CORAM : NITIN JAMDAR AND
ARUN R. PEDNEKER, JJ.

DATE : 22 July 2022.

P.C. :

1. Heard learned counsel for the parties. Taken up for disposal.
2. The petitioner has challenged the order dated 6 August 2021 passed by Respondent No.2 rejecting the Application of the Petitioner's brother, the convict Somnath Bahir to be released on furlough leave and the order dated 18 November 2021 rejecting the Appeal passed by the Respondent No.1.

3. The impugned orders are based on the ground that when the Petitioner was released on furlough on 10 May 2018, he committed two offences. The offences are referred in the appellate order. First is an N.C Complaint No. 1569 of 2020 under Sections 504, 506 of the Indian Penal Code. Second is under Sections 498 A, 323, 504, 506 which was based on the complaint made by the convict's wife.

4. The learned counsel for the Petitioner has drawn our attention to order passed by the Judicial Magistrate, Karmala dated 22 January 2021 acquitting the Petitioner from the case No. 24 of 2021 under Sections 498A, 323, 504 and 506 of the Indian Penal Code. He has also drawn our attention to the affidavit filed by the convict's wife stating that the N.C complaint was made on misunderstanding and she does not have any complaint and they have settled their disputes. The affidavit is dated 15 November 2021.

5. It appears that the order of the acquittal was not be before the Appellate Authority when the Appellate Authority passed the order. The affidavit of wife of the convict is also subsequent to the order of the Appellate Authority. Considering these facts and that as two documents referred to above have material bearing on the grounds given in the impugned order, we are of the opinion that the Authority should consider the Application of the Petitioner in light of these developments.

6. Accordingly, the impugned orders dated 6 August 2021 and 18 November 2021 are quashed and set aside. The Application of the Petitioner will be considered by the Authority as per the law and what is observed above within a period of four weeks and the order will be communicated to the Petitioner.

7. The Writ Petition is disposed of in above terms.

(ARUN R. PEDNEKER, J.)

(NITIN JAMDAR, J.)