

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4660 OF 2021**

Kamal Sundardas Bathija

....Petitioner

Versus

The State of Maharashtra and ors.

....Respondents

Mr. Mathews Nedumpara i/b. Amritpal Singh Khalsa, advocate for the petitioner.

Mr. J. P. Yagnik, APP for the State.

**CORAM : PRASANNA B. VARALE &
SURENDRA P. TAVADE, JJ.**

DATE : 18th FEBRUARY, 2022.

P.C. :

1. Heard Mr. Nedumpara, learned counsel for the petitioner.
2. Perusal of the petition shows that FIR No.89 of 1990 was registered at Vithalwadi Police Station against the accused persons at the instance of the petitioner for commission of offence punishable under Sections 302, 120-B, 353, 148 and 149 of the Indian Penal Code, 1860 read with Sections 3 and 25 of the Indian Arms Act. The petitioner was also one of the eye witnesses to the incident. By conducting a full fledged trial, learned Judge, Sessions Court at Kalyan, vide judgment and order dated 3rd December, 2013 in Sessions Case No.218 of 1999 awarded life-imprisonment to the accused person – Papu Kalani, Baba Gabriel, Bacchi

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Pandey and Moh.Arshad Tahir Shaikh. The accused persons are suffering their imprisonment and are lodged in the prison. The petitioner is before this Court with assumption that in case respondent No.10 approaches the State for grant of remission or release, the respondent – State, in general, and respondent No.7, in particular, may pass an order of release of respondent No.10 as respondent No.10 was active in political life. It is also submitted in the petition that the State ought to have granted an opportunity of hearing to the petitioner and on that submission prayer clause (b) is couched.

3. Considering these aspects, at the very outset, we are of the clear opinion that this Court cannot entertain the petition. Firstly, the petition proceeds on assumption and presumption and the principal prayer thus is couched on these assumption and it reads as under :

“a) declare that the probable release of Respondent no. 10 on remission of the sentence awarded to him by the Sessions Court in Case No.218/1999, which was affirmed by this Hon'ble Court and the Supreme Court on 05.05.2015, is solely motivated by extraneous, irrelevant, ulterior and narrow political reasons and that such release would pose an imminent and real threat to the very life and liberties of the Petitioner, his family members, so too, a threat to the peaceful life of the people of Ulhasnagar, for if the sentence is remitted he will indulge in extortion, murder and even dacoity;”

At the cost of repetition, we state it is only the assumption of the petitioner that the respondent – State may release respondent No.10. When the event has not at all happened, this Court is not entitled to entertain a petition on the basis of apprehension of the petitioner that a certain event would take place.

Secondly there is nothing in the petition to show as to whether in the relevant provisions of law in general and, in particular, Prisons (Bombay Furlough and Parole) Rules or any Rules in respect of remission, there is a requirement of giving an opportunity of hearing to the complainant.

Considering these aspects, we are unable to entertain this petition. The petition is devoid of merits and is, accordingly, dismissed.

4. We make it clear that, in case, the petitioner is aggrieved by any order, which may be passed by the State or respondent No.7, the petitioner may avail appropriate remedy, if so advised.

(SURENDRA P. TAVADE, J.)

(PRASANNA B. VARALE, J.)