

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.994 OF 2021

Sardar Shahvali Khan
Convict No.6608,
Age : 65 years, Occ. Nil,
r/o. Goawala Chawl,
Room No.10/11, LBS Road,
Kurla West, Mumbai -70,
at present in Central Prison,
Aurangabad

..Petitioner

Vs.

1. The State of Maharashtra,
Through Under Secretary,
Home Department,
Mantralaya, Mumbai
2. The Inspector General of Prison/
Additional General of Prison,
Maharashtra State, Pune
3. The Superintendent of General Prison,
Aurangabad

..Respondents

Mrs.B.B.Gunjal, Advocate for petitioner
Mr.M.M.Nerlikar, APP for respondent

**CORAM : SMT. ANUJA PRABHUDESSAI
AND R.M.JOSHI, JJ.
DATE : JANUARY 23, 2023**

PER COURT:-

Rule. Rule is made returnable forthwith and with the
consent of learned counsel for the parties, taken up for final disposal.

2. The petitioner has been convicted by the designated Court (Under TADA (P) Act, 1987) at Greater Bombay in Sessions Case B.B.C. No.1 of 1993 for committing offences under Terrorist and Disruptive Activities (Prevention) Act, 1987 and sentenced to suffer imprisonment for life under Section 3(3) of TADA and Section 120-B of Indian Penal Code with fine of Rs.50,000/-.

3. It is stated that the petitioner has undergone 29 years of imprisonment including remission and considering his conduct in the prison, the jail authorities had sought opinion of the TADA Court on the point of pre-mature release of the petitioner. The said proposal has been rejected by the State Government vide order dated 06.07.2021. Being aggrieved by that order, present petition has been filed.

4. Learned counsel for the petitioner has brought to our notice that the co-accused - Mohd. Salim Mira Mohiddin Shaikh and Shaikh Ali s/o. Shaikh Umar have been granted remission of the remaining portion of sentence of imprisonment for life in excess of 60 years of total imprisonment including all remission. She submits that no reasons have been assigned for rejecting the proposal of the petitioner herein for pre-mature release.

5. Per contra, learned APP has referred to the affidavit filed by Smt.Aruna Mugutrao, Superintendent of Central Prison, Aurangabad, to contend that the petitioner is involved in serious offence, which posed serious threats to the country. Learned APP has also invited our attention to the opinion of the Presiding Judge, who opined that release of the petitioner by remitting the remaining period of imprisonment, would amount to granting unwarranted leniency. It is submitted that considering the judgment of the full Bench in **Criminal Writ Petition No.273 of 2019 (Yovehel s/o. Vijaykumar Gouri Vs. State of Maharashtra)**, wherein it has been held that the opinion given by the Presiding Judge of the Court in terms of provisions of Section 432(2) of Cr.P.C., is binding on the authority, the Government has taken a decision to reject the proposal of the petitioner.

6. We have perused the record and considered the submissions advanced by learned counsel for the parties.

7. The record reveals that the State Government has rejected the proposal of the petitioner for pre-mature release, mainly on the ground that the petitioner was involved in serious

terrorist activities of bomb blasts in the city of Mumbai, wherein several people lost their lives and several others were seriously injured. It is held that showing leniency in such case, would encourage terrorist activities.

8. As noted above, the State Government has remitted the remaining portion of sentence of imprisonment for life in excess of 60 years of total imprisonment, as regards the co-accused, who were involved in committing similar crimes. Though it is stated in the affidavit that the decision is based on the opinion given by the Presiding Officer, we do not find any such reason in the order dated 06.07.2021. The law is well settled that the validity of an order has to be judged by the reasons stated in the order and the infirmity arising out of absence of reasons cannot be cured by giving explanation or fresh reasons in the subsequent affidavit.

9. It is true that Section 432(1) of Cr.P.C. confers discretionary powers on the State Government to take decision in the matter of pre-mature release of prisoner. Suffice it to say that the discretionary powers need to be exercised judiciously. The State Government has, in the cases of the co-accused, remitted the sentence of imprisonment for life, which is in excess of 60 years,

whereas, the proposal for pre-mature release of the petitioner has been rejected without assigning any tangible reason for taking a different view. This reflects non-application of mind as well as arbitrary exercise of discretion.

10. Hence, the petition is allowed. The impugned order is set aside. The State Government to reconsider the case of the petitioner for premature release in accordance with law. Appropriate decision shall be taken as expeditiously as possible and in any event, within a period of three months from the date on which this order is uploaded. Rule made absolute in the aforesaid terms.

[R.M. JOSHI, J.]

[SMT. ANUJA PRABHUDESSAI, J.]

KBP