

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

CRIMINAL WRIT PETITION NO.1046 OF 2021

Shaikh Ali s/o. Shaikh Umar (C-6537),
Age : 52 years, Occ. Convict,
r/o. Room No.492, Wahed Chawl,
Nirmal Nagar, Bandra East, Mumbai
(Undergoing his sentence at
Aurangabad Central Jail)

..Petitioner

Vs.

1. The State of Maharashtra,
Through Superintendent of Jail,
Central Prison, Aurangabad

2. State of Maharashtra,
Through Secretary,
Home Department (Prison),
Mumbai 400 005

..Respondents

Mr.R.A.Jaiswal, Advocate for petitioner
Mr.M.M.Nerlikar, APP for respondents

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

PER COURT :-

With the consent of learned counsel for the parties, heard
finally at the stage of admission.

2. Heard Mr.Jaiswal, learned counsel for the petitioner and learned APP for the respondents. We have perused the record.

3. The petitioner herein has challenged the order dated 04.08.2009 passed by respondent no.2, whereby the State Government, in exercise of the powers under Sections 432 and 433-A of the Code of Criminal Procedure, has remitted the remaining portion of the sentence of imprisonment of life, which is in excess of 60 years of total imprisonment including all remissions, subject to the completion of actual imprisonment of 14 years and subject to the condition of the petitioner's good behavior and conduct in the prison till the time of his release. The petitioner is also declined the benefit of the open prison.

4. By judgment dated 07.06.2007, the petitioner has been convicted for committing the offences under Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA'). He has been held guilty of having actively participated in Shekhadi landings and transportation of arms, ammunition and explosives smuggled by Tiger Memon and other co-conspirators for commission of terrorist acts; having attended conspiratorial meetings at the residence of the co-conspirators where the plans of committing

terrorists acts were discussed and chalked out; and further planting R.D.X. in motor vehicles at various places for committing terrorist acts and causing several bomb blasts in the city of Mumbai, in which 645 people were injured and 232 people died. By the said judgment, the petitioner has been sentenced to undergo maximum imprisonment for life with payment of fine of Rs.25,000/- for the offence under Section 3(3) of the TADA under Section 120-B of the Indian Penal Code. He has also been sentenced to undergo rigorous imprisonment for 7 years to 14 years with total fine of Rs.1,50,000/- for the other offences.

5. Upon completion of total 14 years of actual imprisonment, the respondent no.2 considered the application of the petitioner for premature release and by order dated 04.08.2009, remitted the remaining portion of the sentence of imprisonment for life, which is in excess of 60 years of a total imprisonment including all remissions. The petitioner claims that he ought to have been placed either in clause 4(c) of the year 1992 guidelines or under clause 5(c) of the guidelines of the year 2008, which provides for period of imprisonment of 30 years including remissions. It is alleged that no reasons have been assigned to direct the petitioner to undergo imprisonment of 60 years with remissions for the purpose

of premature release. It is, therefore, contended that the order suffers from non-application of mind.

6. Smt.Aruna Mugutrao, Superintendent of Central Prison, Aurangabad, has filed her affidavit. She has stated that category 4(c) of 1992 guidelines as well as category 5(c) of 2008 guidelines would apply when murder has been committed in pursuance of a political philosophy. It is stated that the petitioner herein was involved in causing series of bomb blasts at several places and hence, the said guidelines would not be applicable. She has stated that considering the gravity of the offence and social impact of premature release, the State Government, in exercise of discretionary powers under Section 432 of Cr.P.C., remitted the remaining portion of the sentence of imprisonment of life, which is in excess of 60 years of total imprisonment including all remissions.

7. Learned counsel for the petitioner submits that the State Government ought to have placed the petitioner in category 4(c) of the Guidelines of the year 1992 or under the category 5(c) of the Guidelines of the year 2008. He has relied on a judgment of the Hon'ble Supreme Court in the case of **State of Haryana and ors. Vs. Jagdish**, AIR 2010 SC 1690, to contend that the petitioner is entitled

to get benefit of the guidelines, which are beneficial to him. He has also relied on the decision of Bombay High Court in the case of **Nishan Singh Jaimal Singh Sohel Vs. The State of Maharashtra and ors. (Criminal Writ Petition No.6 of 2011)**, wherein the Division Bench of this Court directed the authorities to reconsider the case of the petitioner therein, keeping in mind the guidelines of the year 1992 being favourable to him in comparison with any other guidelines. Learned counsel for the petitioner has also referred to the judgment of the Bombay High Court in the case of **Mohd. Salim Mira Mohiddin Shaikh Vs. The State of Maharashtra and anr. (Criminal Writ Petition No.3136 of 2011)**, and sought to circumvent the said decision by contending that it did not consider the Apex Court decision in the case of **Jagdish** (supra).

8. Learned counsel for the petitioner states that the petitioner has already undergone 28 years and 6 months' actual imprisonment and including remission, he has undergone 34 years of imprisonment. Learned counsel for the petitioner states that earlier, the State Government had taken a decision on 06.06.2009, to remit the remaining portion of sentence of imprisonment, which is in excess of 50 years of imprisonment.

Learned counsel submits that there was no reason to deviate from the said decision and to remit the remaining sentence of imprisonment of life, which is in excess of 60 years.

9. Learned APP states that in the case of **Mohd. Salim Mira Mohiddin Shaikh** (supra), the Division Bench of this Court distinguished the decision in the case of **Nishan Singh** (supra) and considering the gravity of the offence, observed that the State Government has exercised the discretion judiciously and rejected a similar plea raised by the co-accused. Learned APP further submits that the decision in the case of **Jagdish** (supra) is not applicable to the facts of the present case. He states that considering the nature and gravity of the offence, the State Government, in exercise of the powers under Section 432(1) of the Cr.P.C., has carved out a separate category instead of applying the guidelines.

10. Having perused the record and upon considering the submissions advanced by learned counsel for the parties, we are of the considered view that the case of the petitioner is squarely covered by the decision in the case of **Mohd. Salim Mira Mohiddin Shaikh** (supra). Said Mohd. Salim Mira Mohiddin Shaikh, who was a co-accused, was convicted by the same judgment for causing series

of bomb blasts in the city of Mumbai. He too was sentenced to undergo life imprisonment for the offence under Section 3(3) of the TADA in addition to the imprisonment and fine in respect of the other offences. In this case too, a similar order was passed on 06.06.2009 by the State Government, wherein it was directed that the Inspector General of Prison should decide on premature release of the petitioner upon completion of 50 years of the actual imprisonment or 65 years of age, whichever is earlier. Subsequently, upon considering the request of pre-mature release, the State Government passed order dated 04.09.2009 and remitted the remaining portion of sentence of imprisonment in excess of 60 years of total imprisonment including all remissions. The said order was challenged by the co-accused in the said petition on similar grounds. It was contended that his case was covered under clause 4(c) of the Guidelines dated 11.05.1992. Reliance was also placed on the decision in the case of **Nishan Singh** (supra). The Division Bench of this Court observed that :-

14. The reliance placed on the Judgment of this Court in the case of **Nishan Singh** (supra) will not help the petitioner because the petitioner in the said case was not held guilty in the case of serial bomb blasts of March, 1993. The affidavits filed on the record and recitals in the order dated 4th September, 2009 show that the drastic nature of the offence

involved has been taken into consideration by the State Government in as much as offence in the present case involved Bomb Blasts at 12 different important places in the city of Mumbai on the same day in which 645 people were injured and 232 people died.

15. It is pertinent to note that by the impugned order, the power to remit the sentence under Section 432(1) of the said Code has been exercised. This is a discretionary power vesting in the State Government. Clause 4(c) of guidelines essentially applies when Murder has been committed in pursuance of a political philosophy. Merely because in some other case where the convict was convicted under TADA Act, clause 4(c) of the guidelines dated 11th May, 1992 was applied, is no ground to apply the said clause to the case of the petitioner. The case of the petitioner stands on a different footing and hence, there is no question of discrimination. After considering all the relevant aspects, a discretionary power has been exercised by the State Government.”

11. As noted above, the petitioner herein is involved in series of bomb blasts, wherein 645 people were injured and 232 people died. In such circumstances, the petitioner could not be given benefit of clause 4(c) of the guidelines of the year 1992 or clause 5(c) of the guidelines of the year 2008, which essentially relate to murder committed in pursuance of a political philosophy. Consequently, the decision of the Apex

Court in the case of **Jagdish** (supra) is not applicable to the facts of the case. Considering the gravity of the offence involving threat to the country, the State Government has exercised its discretion under Section 432(1) of Cr.P.C. and remitted the remaining portion of imprisonment of life, which is in excess of 60 years of total imprisonment including all remissions and further directed that the petitioner will not be entitled to transfer to open prison. The State Government has exercised the discretion judiciously and we do not find any reason to interfere with the same.

12. Under the circumstances, no case is made out to exercise the power under Article 226 of the Constitution of India. Hence, the petition is dismissed.

[R.M. JOSHI, J.]

[SMT. ANUJA PRABHUDESSAI, J.]

KBP