

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 743 OF 2023

Aliya Suleman Memon wife of Saddam ... Petitioner
Husain Mohd. Yunus Khan

V/s.

State of Maharashtra and Ors. ... Respondents

Ms. Farhana Shah for petitioner.

Mr. Y.M. Nakhwa – APP for the State.

**CORAM : SUNIL B. SHUKRE &
ABHAY S. WAGHWASE, J.J.**

DATED : MARCH 9, 2023.

PC. :

. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by
consent of the learned counsel for the parties.

3. The petitioner, who is the daughter of Rubina Suleman
Memon, who has been convicted for committing a bomb blast
(Mumbai Bomb Blast Case), is seeking grant of regular Parole leave to
Rubina Suleman Memon for one month on the ground that her
presence is required for helping out the petitioner's daughter, in order
to go through pregnancy period smoothly.

4. The application filed by the petitioner in this regard has been rejected by the competent authority. Copy of the order dated 8th March 2023, rejecting Parole application of the mother of the petitioner, is placed on record and marked as 'A' for the purpose of identification. This order shows that the application has been rejected as the convict is not eligible for grant of regular Parole in terms of Rule 4(13) of The Prison Rules, 1959.

5. So far as the provisions made in Rule 4(13) of the Prison Rules, 1959 are concerned, we find no infirmity in the order rejecting application of the convict for grant of regular Parole. However, the learned counsel for the petitioner submits that this Court has sufficient powers under Article 226 of the Constitution of India to make some exception to the applicable rules and therefore she urges that mother of the petitioner be granted regular Parole in exercise of extra ordinary jurisdiction by this Court. We would have agreed with the submission of learned counsel for the petitioner had it been within the permissible scope of extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The extra ordinary nature of jurisdiction enables this Court to do justice between the parties by issuing writs and directions of such nature as are not contrary to or inconsistent

with any law and which go to supplement or strengthen any existing law. If there are any gaps in the existing law, they can always be filled up by this Court by invoking its jurisdiction under Article 226 of the Constitution of India. In other words, when the law is silent on any aspect of the matter, the extra ordinary nature of jurisdiction of this Court can be exercised in order to enable the Court to grant the relief suitably. But, when the law is specific and prohibits a person from seeking benefit of regular Parole, this Court, by exercising its power under Article 226 of the Constitution of India, cannot issue any direction which is contrary to the express provision of law. This is the reason why we say that our hands are tied in the present case and we cannot go beyond the law.

6. As regards the direction issued by this Court in Criminal Writ Petition No. 7123 of 2020 dated 31st December 2020 filed by the mother of the petitioner, whereby regular Parole, from 6th January 2021 to 11th January 2021, was granted to the mother of the petitioner for the purpose of attending marriage of her daughter, we find that the order was made on the basis of concession made in the police record and not on any legal point. Para 5 of the said order takes note of what was stated in the police report dated 28.12.2020. The police report

revealed that the petitioner-convict had been granted two days Parole leave to attend the wedding of her daughter, subject to payment of Police Bandobast charges prior to such release. It was this concession that appears to have weighed with the Co-ordinate Division Bench of this Court when it granted regular Parole under Police Bandobast to mother of the petitioner. The effect of the order dated 31st December 2020 was that it only extended the regular Parole already granted by police for some more days. In the present case, the Competent Authority has not granted any regular Parole even for a single day to the mother of the petitioner. There is no thread of regular Parole provided by the police here to enable this Court to pick up and extend it further for fulfilling the wish of the petitioner. As such, we are of the view that no assistance could be sought by the petitioner from the order passed by this Court on 31th December 2020 in Criminal Writ Petition No. 7123 of 2020.

7. In the result, the petition stands dismissed.

8. Rule is discharged.

(ABHAY S. WAGHWASE, J)

(SUNIL B. SHUKRE , J)