



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

**CRIMINAL WRIT PETITION NO. 2093 OF 2019
WITH
CRIMINAL WRIT PETITION NO. 389 OF 2020**

Sardar s/o Shahvali Khan

...Petitioner

Versus

1. The State Of Maharashtra
Through its Principal Secretary,
Home Department,
Maharashtra State,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Commissioner Office, Delhi Gate,
Aurangabad.
3. The Superintendent of Prison
Central Prison Harsool,
Aurangabad.

...Respondents

...

Advocate for Petitioner : Mr. Choudhary M.S.
Addl.PP for Respondents/State : Mr. M.M. Nerlikar

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 10 JANUARY 2024

PER COURT :

- . Heard both the sides finally.
2. The petitioner's request for parole and furlough leave has been

rejected by the impugned orders by resorting to Rule 4(13) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

3. The learned Advocate for the petitioner submits that in spite of the fact that this rule has been on the statute book, this Court has granted previously parole leave to the petitioner and one another convict under the Terrorist and Disruptive Activities (Prevention) Act (TADA Act) offence, namely, Moin. He would submit that the order for granting furlough leave was also challenged before the Supreme Court, which has turned down the challenge. He would therefore submit that since the petitioner was convicted prior to rule 4(13) of the Rules was brought on the statute book, the policy as was prevalent on the date of his conviction would be applicable.

4. Per contra, the learned APP submits that though the issue as regards applicability of the Rule 4(13) qua the date of conviction or the date of application was referred to the full bench in the petitioner's earlier proceeding bearing Writ Petition No.649/2022, however subsequently, that writ petition was withdrawn and the reference remained unanswered.

5. However, the learned APP further points out that the issue has already been considered by the division benches of this Court in the matter of Bashir Ahmed Usman Gani Kairullah Vs. State of Maharashtra and not one occasion but on two occasions (Writ No.1119/2019 and Writ Petition no.2093/2019), who was also a convict in the same

offence under the TADA act i.e. in the matter of Subhash Hiralal Bhosle Vs. State of Maharashtra in Cri.Writ Petition No.4187/2012 and Santosh Namdeo Bhukan Vs. State of Maharashtra in Cri.Writ Petition No.3325/2014 two other division benches have applied rule 4(13) holding that the date of application for furlough leave would be crucial date for applicability of the rules and not the date of conviction.

6. Pertinently, in the matter of Bashir Ahmed (supra) in Writ Petition No.1119/2019, which is also referred to in the impugned order in Criminal Writ Petition No.2093/2019, it was specifically observed that the co-ordinate division benches of this Court [Aurangabad Bench] had granted parole leave to the petitioner therein i.e. Moin and the present petitioner on the ground of parity and expressly refused to follow those decisions while dismissing Writ Petition No.1119/2019 of Bashir Ahmed.

7. Consequently, when various division benches of this Court have already taken a view that the date of application for parole or furlough leave would be the date to be taken into account for applying the rules and not the date of conviction, the impugned orders refusing to grant furlough/parole leave to the petitioner by referring to rule 4(13) of rules, being a convict for an offence under TADA Act, cannot be said to be illegal.

8. Pertinently, in the matter of Bashir Ahmed (Writ Petition

No.1119/2019), this Court has expressly recorded the reasons as to why the benefit of the observations in the matter of Ashfaq Vs. State of Rajasthan, 2017(15) SCC 55, could not be pressed into service.

9. As is pointed out, even in the recent past the division benches in the matters of Mo. Hasan Mehndi Hasan Sheikh Vs. State of Maharashtra and another in Cri. Writ Petition No.649/2022 decided on 02/12/2022 and Aliya Suleman Memon wife of Saddam Husain Mohd. Yunus Khan Vs. State of Maharashtra and Ors. in Cri.Writ Petition No.743/2023 vide order dated 09/03/2023, who were also convicts of the same crime, have confirmed the orders refusing to grant furlough or parole leave on the ground of prohibition contained in Rule 4(13) of the Rules.

10. In the light of above, both the writ petitions are dismissed.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

Najeeb.