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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**INTERIM APPLICATION NO. 1648 OF 2024**  
**IN**  
**CRIMINAL APPEAL NO. 470 OF 2018**

|                                 |                |
|---------------------------------|----------------|
| Sadaphal Hariram Yadav          | ...Applicant   |
| Versus                          |                |
| The State of Maharashtra & Ors. | ...Respondents |

Mr. Swaraj Sable a/w Mr. Yuvraj Tidke i/b Mr. Ayush Pasbola for the Applicant.

Ms. Rutuja Ambekar, A.P.P for the Respondent-State.

Mr. Hrishikesh Chavan for the Respondent Nos.2 and 3.

**CORAM : REVATI MOHITE DERE &**  
**MANJUSHA DESHPANDE, JJ.**  
**DATE : 9<sup>th</sup> MAY, 2024**

**P.C. :**

1. By this interim application, the applicant seeks stay of the impugned Judgment and Order dated 23<sup>rd</sup> March, 2018, passed by the learned Additional Sessions Judge, Thane, in Sessions Case No. 571 of

2014, only to the extent it directs the applicant to suffer life imprisonment ‘**(till the end of his life)**’.

2. Relevant part of the order (only the bold portion) of which stay is sought, is as under;

“2. The accused No.4 Sadaphal Hariram Yadav is sentenced to suffer life imprisonment **(till the end of his life)** and to pay fine of Rs.10,000/- (Rupees Ten Thousand Only) for the offence punishable under section 302 of Indian Penal Code, in default of payment of fine he shall suffer simple imprisonment for the period of one year.”  
(only the bold portion)

3. Learned Counsel for the applicant submits that the said order to the extent i.e. the applicant is sentenced to suffer life imprisonment ‘**(till the end of his life)**’ (bold portion), is contrary to the judgment of the Apex Court in the case of *Vikas Chaudhary v/s The State of Delhi*<sup>1</sup> as well as *Union of India v/s Sriharan @ Murugan*<sup>2</sup>.

4. Perused the papers. The applicant alongwith the others

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1 2023 SCC OnLine SC 472

2 (2016) 7 SCC 1

vide aforesaid Judgment and Order, has been convicted for the offences punishable under Sections 302, 201, 498A, 323 of the Indian Penal Code. For the offence punishable under Section 302 of the Indian Penal Code, the applicant has been sentenced to suffer life imprisonment ‘till the end of his life’ alongwith fine.

5. The Constitutional Bench of the Apex Court in ***Sriharan's*** case, in para 104 observed as under;

*"104. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other Court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court."*

6. Similarly, the Apex Court in the case of ***Vikas Chaudhary (Supra)***, relying on the Constitutional Bench of ***Sriharan (Supra)*** in para 18, has observed as under;

*"18. It is hence clear that the trial courts, are foreclosed from imposing such a modified or specific term sentence, or life death penalty. The court, when trying an offence punishable by death penalty or life imprisonment, has merely these two options. While the principles evolved in Sriharan (Supra) are clear, there are nevertheless issues which still remain unexplored and unresolved. Whenever the state proposes and urges for imposition of death sentence, it has to, per force provide material to facilitate the court to carry out the exercise of balancing the aggravating factors with the mitigating circumstances - the test propounded in Bachan Singh and examined in many cases; the recent trend being that the reformatory element acquires equal attention. The obligation to carry out this balancing interest is upon the courts imposing the sentence in the first instance, i.e. the trial courts; the prosecution (per Bachan Singh) is also under an obligation to show that the mitigating circumstances are absent especially that there are no chances of reformation of the accused. Since this exercise is mandated whenever a heinous capital crime is committed, at the stage of conviction, the court has no idea that the prosecution may urge for capital sentence. When that stage occurs, and the prosecution seeks a capital sentence. When that stage occurs, and the prosecution seeks a capital sentence, the court has to carry out the exercise of conducting a review of aggravating circumstances (which are already on the record, being factors that lead to the conviction of the accused) and balancing the mitigating circumstances (which are not matters of the record and have to be adduced by the prosecution and the accused)."*

7. It is thus clear, that the trial Court is foreclosed from imposing such a modified or specific term of sentence for life

imprisonment till the end of the prisoner's life.

8. Learned APP does not dispute the said legal position.

9. From the aforesaid judgments, it is clear that the trial Court is foreclosed from imposing such a modified or specific term of sentence for life imprisonment '**till the end of the convict's life**'.

10. In view of the aforesaid and having regard to the Constitutional Bench Judgment of the Apex Court in the case of Sriharan (Supra) and Vikas Chaudhary (Supra), the impugned order dated 23<sup>rd</sup> March, 2018, passed by the learned Additional Sessions Judge, Thane, in Sessions Case No. 571 of 2014, only the italic and bold portion of clause 2 of the said order i.e. '**till the end of his life**', is stayed, pending the hearing and final disposal of the applicant's appeal.

11. The application is allowed and is accordingly disposed of.

12.           Needless to state, that since we have stayed the italic and bold portion of clause 2 of the said judgment and order dated 23<sup>rd</sup> March, 2018, it is now open for the appropriate authority to consider any application of the applicant seeking furlough, parole and remission, on its own merits, in accordance with law.

13.           All concerned to act on the authenticated copy of the order.

**MANJUSHA DESHPANDE, J.**

**REVATI MOHITE DERE, J.**