

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1646 OF 2024

Shabbir Shaikh Gafoor Shaikh @

Shabbir Shah Gafoor Shah] .. Petitioner

vs.

State of Maharashtra & Anr.] .. Respondents

Mr.Sushan Mhatre (Appointed), for the Petitioner.

Ms.M.M. Deshmukh, APP for the State.

CORAM : BHARATI DANGRE,
MANJUSHA DESHPANDE, JJ

DATE : 19th AUGUST, 2024.

P.C.

1] The Petitioner-Convict having been sentenced to suffer life imprisonment in Sessions Case No.102/1996, has been categorized in Clause 4(d) of the Revised Guidelines dated 15.03.2010, for premature release under the “14 Year Rule” of the prisoners serving life sentence.

He has filed the present Writ Petition, seeking quashment of the impugned order dated 12.04.2023 and seeking a direction to reconsider his case under 2010 Guidelines.

2] Responding to the Petition, the Special Inspector General of Police (Prisons) Nashik Region, has filed an Affidavit, wherein, it is categorically stated that the conviction and sentence imposed upon the Petitioner is confirmed by the High Court when the Appeal No.733/1988 lodged by him is dismissed on 19.04.1999. It is informed that the Petitioner had undergone actual imprisonment of 17 years, 6 months and 2 days and 18 years, 8 months and 15 days of imprisonment, including the remission till 31.05.2024.

The Affidavit has justified classification in category 4(d) of the 2010 Guidelines, which prescribe period of imprisonment to be undergone to be of 24 years including period of remission in case of “murder committed by more than one person/group of persons”.

3] The learned counsel for the Petitioner appointed through legal aid has made a feeble attempt to categorize him under clause 3(b), which prescribe period of imprisonment to be undergone as 22 years in case if the crime is committed with premeditation, either individually or by a gang.

4] We have perused the impugned Judgment, where no doubt there is reference to some previous enmity and the motive has also come on record, but since it is not established that the crime was committed

with premeditation, by a gang, in our considered opinion, his categorization under Clause 4(d) is appropriate and justiciable.

5] The Affidavit before us has also set out that the Petitioner has absconded when he was released on furlough leave by a period of 10 years and 3 months and has surrendered late by a period of 10 years 3 months and 7 days i.e. he enjoyed an overstay of 3697 days.

Had it not been the case, the petitioner, may be, considering his remission, been entitled for his release, but now because of his overstay for a period of 3697 days, he is not entitled for his premature release, as he has not completed the sentence of life imprisonment of 24 years, his act being categorized in category in Clause 4(d) of the Policy of 2010.

Resultantly, finding no merit and substance in the Petition, the same is dismissed.

6] We would like to place on record appreciation for the learned counsel Mr. Sushan Mhatre, who has represented the Petitioner, on being appointed through legal aid. His remuneration shall be paid within a period of six weeks from today.

[MANJUSHA DESHPANDE, J]

[BHARATI DANGRE, J]