



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1789 OF 2024

Mohd. Moin s/o Faridulla Qureshi
Age: 48 years, Occu. Prisoner,
Convict No. 7786, Central Prison Harsool,
Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Bombay -32.
2. The Inspector General of Prison
Maharashtra State
Office of 2nd Floor. Old Central
Administrative Building Pune -1.
3. The Deputy Inspector General of Prison,
Central Prison Harsool.
Aurangabad.
4. The Superintendent of Prison,
Central Prison Harsool,
Aurangabad.

.. Respondents

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Mr. M. S. Choudhari, Advocate for the petitioner.
Mr. S. A. Gaikwad, APP for respondent No.4/State.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

**RESERVED ON : 07 APRIL 2025
PRONOUNCED ON : 30 APRIL 2025**

JUDGMENT (Per Smt. Vibha Kankanwadi, J.) :-

. **Rule.** Rule made returnable forthwith. The petition is heard finally
with the consent of the learned Advocates for the parties.

2. The petitioner, who is a convict, challenges the order dated 25.06.2024 passed by respondent No.3 and the order dated 03.09.2024 passed by respondent No.2 thereby confirming the order passed by respondent No.3, refusing to grant furlough leave to the petitioner. The petitioner then prays for his release on furlough leave for 28 days.

3. Heard learned Advocate Mr. M. S. Choudhari for the petitioner and learned APP Mr. S. A. Gaikwad for respondents/State.

4. The petitioner convict is undergoing imprisonment for life in connection with Bombay Bomb Blast Case No.01 of 1993 by the Designated Court (under TADA), Greater Bombay by judgment dated 07.06.2007. In short, the petitioner convict was one of the accused in Bombay Bomb Blast case 1993. He had applied for furlough leave on 05.04.2024, however, the said application came to be rejected by respondent No.3 on 25.06.2024. Then the petitioner had preferred the appeal before respondent No.2, who had dismissed the appeal and confirmed the order of respondent No.3 by order dated 03.09.2024. The learned Advocate for the petitioner submits that in the past, on various occasions since 2009, the applicant was released on parole and furlough. Another co-accused – Sardar Shahvali Khan was also released similarly. In fact, the order of granting furlough leave also challenged before the Hon'ble Supreme Court, but the Supreme Court had not

entertained the said petition by the State Government. The record would show that on all the occasions, the applicant had surrendered himself to the jail authority in time. Only once, he had returned after a delay of one day. Now, the State Government says that Rule 4 (4), 4 (13) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 (hereinafter referred to as the "Furlough and Parole Rules") have been amended on 16.04.2018 thereby changing the Rule that the convicts under Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the "TADA Act") are not entitled to be released on parole or furlough. The said rule cannot be made applicable retrospectively as the conviction of the petitioner is prior to the amendment.

5. The affidavit-in-reply on behalf of respondent Nos.3 and 4 filed by Mr. Dattatray Ganpat Gawade, the Superintendent of Chhatrapati Sambhajinagar Central Prison, whereupon he points out the amended Rules 4 (4) and 4 (13) of the Furlough and Parole Rules, which states that when the prisoners release is not recommended in the Police Commissionerate area by the Assistant Commissioner of Police and elsewhere, by Deputy Superintendent of Police on the grounds of public peace and tranquility and those who are sentenced for offences such as terrorist crimes, mutiny against state, kidnapping for ransom, then such facts are not eligible for furlough leave. In case of petitioner, there is an

adverse report by Assistant Commissioner of Police, Kherwadi Division, Mumbai and the petitioner is convicted for the offence under Section 3(3) of the TADA Act and under Section 120-B of Indian Penal Code and has been sentenced to suffer rigorous imprisonment for life. Further, he has been convicted under Section 3(3) of the TADA Act and sentenced to suffer rigorous imprisonment for 12 years. Further, he has been convicted for the offence punishable under Section 3(2)(i)(ii) of TADA Act read with Section 149 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life. Thereafter, he has been convicted separately for offences punishable under Section 148 of Indian Penal Code, under Section 302 read with Section 149 of Indian Penal Code, under Section 307 read with Section 149 of Indian Penal Code, under Section 324 read with Section 149 of Indian Penal Code, under Section 436 read with Section 149 of Indian Penal Code and under Section 5 of TADA Act, where the sentence is for rigorous imprisonment for 10 years and also he has been convicted under Sections 3 and 7 of Explosives Substance Act. Learned APP also relies on the decision of the Coordinate Bench of this Court in ***Sardar s/o Shahvali Khan Vs. The State of Maharashtra and others, [Criminal Writ Petition No.2093 of 2019 with Criminal Writ Petition No.389 of 2020 decided on 10.01.2024]*** wherein by taking note of the decision in ***Bashir Ahmed Usman Gani Kariullah Vs. State of Maharashtra and Ors., [Criminal***

Writ Petition No.3988 of 2017 decided on 07.08.2018], it was held that for Rule 4 (13) of the Furlough and Parole Rules, the date of application for furlough leave would be crucial date and not the date of conviction and, therefore, the present petitioner, who is the co-accused, should also receive the same treatment.

6. The first and the foremost fact to be noted is that the jail record would certainly show that on several occasions since 2009, the present petitioner was released on parole and furlough. On 03.08.2018, he was granted parole/furlough leave on 18.08.2018 to 03.10.2018. Thereafter, on 23.10.2023, he was granted parole/furlough leave between on 06.11.2023 to 05.12.2023 and he had surrendered in time. These two decisions appear to have come after the Furlough and Parole Rules came into effect in on 16.04.2018. However, when the Coordinate Bench has taken note of the earlier decisions of the Coordinate Benches at Principal Seat, Bench at Nagpur, then on the similar point, this Court cannot take different view. In **Bashir Ahmed (Supra)**, the Bench had considered the decision in **Asfaq Vs. State of Rajasthan and Ors., [AIR 2017 Supreme Court 4986]** and other decisions have also been taken note of, especially, the decision in **Jafar s/o Abdul Haq Shaikh Vs. The State of Maharashtra and Ors., [Criminal Writ Petition No.1293 of 2017]** wherein for convict under TADA Act, furlough leave was granted, but in view of the decision of the Hon'ble Supreme Court in

Asfaq (Supra); it was held in **Bashir Ahmed (Supra)** that the accused convicted in Bombay Blast Case under TADA Act is not eligible for furlough leave. In another case relied by the learned APP in **Mo. Hasan Mehndi Hasan Sheikh Vs. State of Maharashtra and another, [Criminal Writ Petition No.649 of 2022 decided on 02.12.2022]**, it has been held by the Coordinate Bench at Nagpur that Rule 4 (13) stood amended in 2018, was held to be creating a bar upon the prisoners, who are convicted for terrorist crime. It appears that by way of another Writ Petition No.1119 of 2019, Bashir Ahmed Usman Gani Kairulla had challenged the refusal of his furlough leave. The said petition was rejected. In **Niyaz s/o Ahmed Shaikh Vs. State of Maharashtra and others, Criminal Writ Petition No.1561 of 2022** decided by the Coordinate Bench of this Court on 03.05.2023 again the rules were considered and various decisions were considered i.e. **Bashir Ahmed (Supra), Zeeshan Abdul Mallik Khot Vs. State of Maharashtra and Others**, [Criminal Writ Petition No.399 of 2021 decided on 17.09.2021], **Smt. Rubina Suleman Vs. State of Maharashtra**, [Criminal Writ Petition No.4017 of 2016 decided at Principal Seat on 22.12.2016] and **Kishor @ Prakash Lalsed Sadmek Vs. Deputy Inspector General of Prison (East Region) Nagpur and another**, [Criminal Writ Petition No.1023 of 2017 decided at Nagpur Bench on 01.03.2018], to consider that there is a consistent view taken about enforceability and applicability

of the statutory bar created by way of amendment. Under such circumstance, we are also of the opinion that since now there is a bar in view of the amendment in the Rules, the rejection of furlough leave by respondent No.3 on 25.06.2024 and the appeal confirming the same on 03.09.2024 by respondent No.2 requires no interference.

7. The writ petition stands dismissed.

8. Rule is discharged.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm