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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.649/2022

Mo. Hasan Mehndi Hasan Sheikh,
age 54 Yrs., Occ. Convict Prisoner at
Central Jail, Amravati, R/o Room No.3 &
4, 4th Floor, B-Wing, Hajra Manson,
Kausa Mumbra, Thane at present Prisoner
No.C-4717 undergoing Life Imprisonment
at Central Jail, Amravati. ... Petitioner .

- Versus -

1. State of Maharashtra,
through Divisional Commissioner,
Amravati Division, Amravati.

2. Jail Superintendent,
Central Jail, Amravati. ... Respondents.

Mrs. Soniya Gajbhiye, Advocate (appointed) for the Petitioner.
Mr. I.J. Damle, A.P.P. for Respondent Nos.1 and 2.

CORAM : SUNIL B. SHUKRE AND
M. W. CHANDWANI, JJ.
DATE : 2.12.2022

ORAL JUDGMENT (Per Sunil B. Shukre, J.)

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

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2. The petitioner has been convicted for various offences including the one under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short "TADA"). The petitioner is now seeking his release on regular parole for the purpose of seeing his ailing wife. An application was also filed by the petitioner seeking his release on regular parole but it was rejected by respondent No.2 on the ground that the petitioner is not eligible for grant of regular parole in terms of rule 4(13) read with rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short "Rules of 1959").

3. Learned counsel for the petitioner submits that the Apex Court in the case of *Asfaq V/s. State of Rajasthan and others* reported in **(2017) 15 SCC 55** has considered this aspect and held that even if a convict is found to be guilty under the provisions of TADA, the conviction by itself would not disqualify him from seeking his release on regular parole.

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4. We have gone through the judgment of the Supreme Court in the case of Asfaq (supra) and we find that the facts of that case are quite different from the facts of this case at least in one sense. Of course, in that case Asfaq was a prisoner who was convicted under the provisions of TADA, the same conviction as has been awarded to the petitioner herein, but, Asfaq was a prisoner who was not governed by the guidelines and the provisions stated in the Rules of 1959 governing prisoners in the State of Maharashtra. In this judgment, the Apex Court has acknowledged the fact that many State Governments have formulated the guidelines on parole in order to bring out objectivity in the decision making and to decide as to whether parole needs to be granted in a particular case or not. It has also noted that such a decision in those cases is taken in accordance with the guidelines framed. It then follows a decision which is to be taken in the present case would be guided by the provisions made in the Rules of 1959 applicable to the convicts in the State of Maharashtra. Such was not the case before the Supreme Court

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in the case of Asfaq (supra). In Asfaq (Supra) it was also found that the Advisory Board had rejected the regular parole application of Asfaq on the ground that he was a convict under TADA, a serious and heinous crime, but the Supreme Court found that on such a sole consideration, Asfaq could not have been denied benefit of regular parole. In the present case, however, there is a specific provision under the Rules of 1959 which is rule 4(13), which disqualifies a convict under TADA from getting benefit of regular parole. This provision was not under consideration of the Supreme Court and, therefore, in our respectful submission, the petitioner can get no assistance from the case of Asfaq (supra).

5. Asfaq's case has been followed in another case of Abre Rehmat Ansari V/s. State of Rajasthan and others, Writ Petition (Criminal) No.284/2018 which also arose from State of Rajasthan and, therefore, this case would, in our humble opinion, render no assistance to the petitioner.

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6. So, we have to examine the issue involved in this case on the touchstone of the eligibility criteria prescribed in the Rules of 1959 for grant of regular parole. Under rule 19(3) of the Rules of 1959, all prisoners eligible for furlough have been made eligible for regular parole. Eligibility of prisoners for release on furlough is determined by rule 4. For the purpose of this petition rule 4(13) is relevant, which reads thus:-

> *"rule 4(13) Who is sentenced for offences such as terrorist crimes, mutiny against state, kidnapping for ransom (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section)."*

7. So, it is clear that there is a bar placed upon the prisoners who are convicted for, inter alia, terrorist crime, TADA is about terrorist crime, for being released on regular parole. The petitioner is convicted under TADA and, therefore, he would not be eligible for grant of regular parole under rule 19(3) of the Rules of 1959.

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8. Learned counsel for the petitioner submits that the bar so created upon prisoners convicted for a TADA offence is unreasonable and frustrates the object for which such benefits, privileges and concessions like furlough and regular parole are granted. Relying upon the case of Asfaq (supra) she submits that the most relevant consideration for release of a prisoner either on furlough or regular parole is a promise of reform shown by the prisoner and not whether the prisoner is of recidivist tendency. The argument cannot be considered in the present case there being no challenge made to the authority or otherwise of the relevant rules. This can be considered in some other appropriate case. In the present case, we are not inclined to make any interference. The petition stands dismissed. Rule is discharged. Remuneration be paid to the learned appointed counsel as per rules.

(M. W. CHANDWANI, J.) (SUNIL B. SHUKRE, J.)

Tambaskar.