

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 199 OF 2015.

Niyaz Ahmed Shaikh
Age 40 years. Occ. Prisoner,
R/o. M.K. Park, 5th Road,
Room No. 516, Naupada,
Bandra (East),
Mumbai -51
At present Prisoner No. C-6513
Central Prison Aurangabad.

.. PETITIONER

VERSUS

- 1] The State of Maharashtra
through its Secretary (Appeals & Security)
Home Department,
Mantralaya, Mumbai-32.
- 2] The Divisional Commissioner,
Aurangabad Division, Aurangabad.
- 3] The Jail Superintendent,
Central Jail, Aurangabad.

.. RESPONDENTS.

Mr. M.S. Chaudhari, Advocate for the petitioner.
Mrs. S.G. Chincholkar, APP for respondents.

CORAM : S.S. SHINDE & A.M. BADAR, JJ.
DATE : 26th FEBRUARY, 2015.

ORAL ORDER (PER A.M. BADAR) :

- 1] Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2] By this petition, the petitioner is praying for quashing and setting aside the order passed by the Divisional Commissioner, Aurangabad in Proceeding No.2014/Gen.Admn./Desk-1/PAR/CR-1, thereby rejecting the application of the petitioner for his release on parole.

3] Learned counsel for the petitioner contended that the petitioner is convicted of the offence punishable under Section 3(3) of the Terrorist and Disruptive Activities Act (TADA) and he is undergoing sentence of life imprisonment. According to him, on previous occasions, he availed furlough leave for 5 times and once he was released on parole. On all occasions, he returned to prison on due time. According to learned counsel for the petitioner, petitioner's wife is suffering from certain ailment and he as well as his wife submitted a joint application for releasing the petitioner on parole on atleast 3 occasions. On 15th December, 2014, respondent No.2 by the impugned order rejected the application for release of the petitioner on parole on the ground that surety sought to be furnished by the petitioner is not having any landed property and the proposed surety is not financially sound. This opinion, according to learned counsel for the petitioner, was formed on the basis of the report submitted by the Police. According to learned counsel for the petitioner, he proposed name of his real brother Tajmohammad Iqbal Shaikh as surety. On previous occasions, said Tajmohammad stood as surety for the petitioner for seeking parole as well as furlough.

4] Learned APP contended that as the Police Report is adverse and the proposed surety is not having landed property, the petitioner who is convicted in a Bomb Blast case, cannot be released on Parole.

5] Rule 19 of the Prison (Bombay Furlough & Parole) Rules, 1959 deals with the release of a prisoner on parole. In the matter of ***Manjulabai Gulabe vs. State of Maharashtra reported in 2002 All M.R.(Cri) 1720*** the Division Bench of this Court has held that the purpose of furlough and parole is to afford an opportunity to the prisoner to meet his his relatives and to take part in not only in moments of sorrow, illness or death, but even in moment of joy.

6] In the case in hand, it is not disputed that the wife of the petitioner/convict is suffering from some ailment and he is seeking parole on that ground. It is not the case of the respondents that the reason assigned by the petitioner for seeking parole is incorrect or false. Rejection of parole is only on the ground that surety is not financially sound and is not having landed property. Purpose of furnishing surety is to have an assurance that the prisoner will return back to the prison in due time. No objective assessment seems to have been done by the Police Department in furnishing a detailed report. The report is not with reason that proposed surety who is real brother of the petitioner/convict has no control over him or he will not be in a position to ensure that petitioner/convict will not return back to prison after availing parole leave.

7] We have perused the report submitted by Assistant Police Inspector, Nirmal Nagar Police Station, Bandra (East) annexed to the affidavit submitted by the respondents. In that report, it is observed by the said API that proposed surety is residing in Room No. 160, Kherwadi, Bandra East. The report also shows that proposed surety has furnished his Ration Card, Pan Card, Voters Identify Card, Electricity Bill etc. to show that he is residing in Room No. 160 Kherwadi, Bandra East. The Police Department has recorded statement of the proposed surety which shows that he is working in some private firm. This all goes to show that the proposed surety is deep roots in the society having permanent abode at Mumbai. Being real brother of the petitioner/convict, we are of the opinion that the proposed surety is in a position to assure return of the petitioner to the prison in due time. Moreover, the proposed surety was accepted by the respondents on earlier occasions. Hence, the reason so stated for rejecting the parole leave cannot be sustained and, therefore, the petition deserves to be allowed.

8] Hence, the following order :-

[a] The Criminal Writ Petition is allowed.

[b] Impugned order dated 15.12.2014 in proceeding No. 2014/Gen. Admn./Desk/ PAR/ CR-1, rejecting application of the petitioner for his release on parole is quashed and set aside.

[c] We direct that the petitioner be released on parole leave, if

there is no other impediment in releasing him, except on the ground assigned in the impugned order.

[d] Rule made absolute in above terms.

[e] Parties to act upon authenticated copy of this order.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-