

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

CRIMINAL WRIT PETITION NO.238 OF 2015

(Anis Kha Dilawar Kha vs. The Divisional Commissioner and another)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri R.D. Dhande, Advocate for petitioner.

Shri R.S. Nayak, Additional Public Prosecutor for
respondents.

CORAM : B.P. DHARMADHIKARI AND
 P.N. DESHMUKH, JJ.

DATED : JUNE 10, 2015

Heard Shri Dhande, learned Counsel for
petitioner, and Shri Nayak, learned Additional Public
Prosecutor for respondents. Perused reply as also
report produced by the learned Additional Public
Prosecutor.

Parole leave on the ground of serious
ailment of mother (senior citizen) of petitioner has
been denied by impugned order dated 21/2/2015
passed by respondent no.1. Shri Dhande, learned

Counsel for petitioner, submits that only reason given is not supplying copy of medical certificate by the petitioner. According to him, that is not the requirement in law and in any case, after enquiry into the request made by petitioner, necessary medical certificate has also come on record. He submits that as ailment is serious, petitioner is required to be released on parole leave. He further argues that instances of absconding given in the impugned order and pressed into service in reply are irrelevant as prayer is for grant of parole leave. He invites our attention to Rule 4(10) of the Prisons (Bombay Furlough and Parole) Rules, 1959 to demonstrate that such abscondence or arrest is relevant only for the purpose of grant of furlough and not parole.

Shri Nayak, learned Additional Public Prosecutor for respondents, has apart from reply, invited our attention to the fact that in the Police report dated 21/1/2015 where the fact of illness of mother has been mentioned, age of mother of petitioner is shown to be 97 years. He has shown from records a certificate dated 20/1/2015 issued by

Dr. Rajendra Gothi, Gothi Hospital, Nandura where age of mother of petitioner is shown as 62 years and ailment mentioned is chronic appendicitis with anaemia. The said certificate is not produced on record along with reply by respondents. The certificate produced on record is dated 12/12/2014 and it is Annexure `A' with criminal writ petition. There the same Doctor has mentioned the age of mother of petitioner to be 62 years and has shown ailment as chronic arthritis with anaemia.

In latter certificate, arthritis has not been mentioned and in earlier certificate, appendicitis has not been reflected. Shri Dhande has pointed out that in absence of latter certificate on record, he is not in a position to assist the Court in this connection.

The Doctor has issued certificate, which shows some ailment and he has mentioned age of mother of petitioner as 62 years. The petitioner has only pointed out that she is senior citizen. The Police verification report dated 21/1/2015 mentions age of mother of petitioner to be 97 years and nature of illness has not been specifically reflected therein. However, the certificate issued by Dr. Gothi of Gothi

Hospital, Nandura appears in paragraph 5 thereof.

In this situation, it is apparent that if mother of petitioner is old and suffering from a serious ailment, request of petitioner needs to be considered in accordance with law. The question, which is relevant under Rule 4(10) of the Prisons (Bombay Furlough and Parole) Rules, 1959, may not be relevant if illness is of serious nature. However, as we find that material on record is insufficient to conclude either-way, we direct respondent no.1 to pass a fresh order on request of petitioner within a period of four weeks from today.

With the above direction and keeping all contentions open, we dispose of the criminal writ petition. No order as to costs.

Copy of this order be given to the learned Additional Public Prosecutor for respondents.

JUDGE

JUDGE

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