

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1433 OF 2016

Prakash Ramsing Daude,
Age. Major, Occu. Nil,
R/o. At present Central Prison,
Aurangabad, Dist. Aurangabad.

....Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai-31.
2. The Divisional Commissioner,
Aurangabad.
3. Superintendent of Prison,
Central Prison, Aurangabad,
Dist. Aurangabad.

....Respondents

.....
Advocate for Petitioner: Ms. Sarita Gaikwad
APP for Respondent/State: Mr. S.G. Karlekar
.....

**CORAM : S. S. SHINDE AND
V. K. JADHAV, JJ.**

DATED: 21st NOVEMBER, 2016

JUDGMENT (PER S.S. SHINDE, J.):-

1. Heard.
2. Rule. Rule returnable forthwith. Heard finally, by consent of parties.

3. This petition seeks direction to respondent authorities to release the petitioner forthwith on parole on the ground of death of his son Sandeep.

4. The petitioner herein filed the application to the Superintendent of Central Jail, Aurangabad taking recourse to Rule 18 of the Prisons (Bombay Furlough and Parole) Rules 1959 on the ground that his son viz. Sandeep, died on 8.10.2016. Learned counsel appearing for the Petitioner invited our attention to the provisions of Rules 18 and 19 of the Prisons (Bombay Furlough and Parole) Rules 1959, and submitted that, the reason assigned in the impugned communication, rejecting the request of the petitioner to release him on parole, is unsustainable. In as much as, no time limit is provided in the said Rule that an application requesting to release on parole be entertained and convict be released within stipulated period from the date of death of nearest relatives. It is further submitted that son of the petitioner, Sandeep died on 8.10.2016, and the petitioner immediately filed the application seeking recourse to the provisions of Rule 18 of said Rules, on 14.10.2016. As a matter of fact, after enquiry, the competent authority passed an order on 17.10.2016, thereby allowing the request of the petitioner to release him on parole for 7 days. When the petitioner went to the competent authority with surety, the authority refused to release the petitioner on parole on the

ground that 10 days time is elapsed from the death of son of the petitioner, therefore, the petitioner cannot be released on parole. Learned counsel appearing for the petitioner, in support of her contentions that no time limit is prescribed under the scheme of Rules 18 and 19 of said Rules for release of convict on parole on the ground of death of his nearest relative, placed reliance on unreported judgment of this Court in ***Criminal Writ Petition No. 680 of 2016 (Rameshwar Shivram Jadhav vs. The State of Maharashtra)*** dated on **14.06.2016**.

5. On the other hand, learned A.P.P. appearing for the respondent authorities submits that the reasons given by the respondent authorities are justified and legally sustainable, therefore, the prayer to release the petitioner on parole may not be entertained. However, during the course of hearing, learned A.P.P., on instructions, submits that on earlier three occasions, the Petitioner was released on parole. When the Petitioner was released on parole, he reported back to jail authorities within time.

6. Upon hearing counsel appearing for the petitioner and the learned A.P.P. appearing for the respondents and on careful perusal of the provisions of Rules 18 and 19 of Bombay Furlough and Parole Rules, it is abundantly clear that there is no time limit stipulated in

said Rules stating that in case of acceding to the prayers/request of the convict to release him on parole on the ground of death of his close relative, the convict can not be released after expiry of 10 days from the death of nearest relative. Upon perusal of sub Rule (2) of Rule 18 of the aforesaid Rules, it is crystal clear that the Superintendent of Prison shall also be the competent authority to release a convicted prisoner on parole for the period not exceeding 15 days, in case of death of his close relation i.e. father, mother, brother, sister, spouse or child of the prisoner. In the present case, it is not disputed by the respondents that Sandeep, son of the petitioner, died on 8.10.2016. It also appears from the reasons assigned by the competent authority that delay caused in taking decision and release of the petitioner, was due to not receiving the police report till 17.10.2016. The provisions of Rule 19 are very clear, wherein it is provided that, in case parole is to be granted on the ground stated in Sub- Rule (2) of Rule 18 of the said Rules, on the ground of death of nearest relative of the convict, in that case police report is not necessary. In that view of the matter and keeping in view observations of Division Bench of this Court, in the case of **Rameshwar Shivram Jadhav vs. The State of Maharashtra** (supra) and in particular para 4 thereof, we are of the opinion that the petition deserves to be allowed.

7. In the light of discussion in foregoing paragraphs, we direct respondent No.3 to release the petitioner on parole forthwith for 7 days on usual conditions, as stipulated in the Rules and the procedure laid down. Writ petition is allowed to the above extent. Rule is made absolute in the above terms. Writ petition is disposed of.

8. Registry to issue authenticated copy of this judgment/order to the requesting party.

9. Learned A.P.P. assures that, he will communicate this order to the concerned Superintendent of Central Prison, forthwith.

10. Ms. Sarita Gaikwad, advocate, appointed as amicus curiae to prosecute the cause of the petitioner, has rendered able assistance to the Court. Fees be paid to her as per the schedule maintained by the High Court, Legal Services Sub Committee, Aurangabad.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

rlj/