

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO.1497 OF 2016**

Balaji S/o Maroti Londhe
Age : 31 years, Occ : Nil,
R/o Presently in Central Prison,
Nashik, Tq. & Dist. Nashik.

PETITIONER**VERSUS**

1. The State of Maharashtra,
Through it's Secretary,
Home Department, Mantralaya,
Mumbai.
2. The Divisional Commissioner,
General Administration Department,
Nashik Road, Nashik,
Tq. & Dist. Nashik.
3. The Superintendent of Prison
Central Prison, Nashik,
Dist. Nashik.

..RESPONDENTS**...**

Mr. S.R. Shirsat, Advocate for the
petitioner (appointed).
Mr.P.G. Borade, APP for Respondent-State.

**CORAM : S.S. SHINDE &
P.R. BORA, JJ.**

RESERVED ON : 22nd December, 2016**PRONOUNCED ON : 23rd December, 2016.**

JUDGMENT (S.S. SHINDE, J)

Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. The brief facts leading for filing this Criminal Writ Petition are as under:-

The petitioner is convicted and sentenced for life imprisonment. Presently the petitioner is in Central Prison, Nashik. The petitioner submitted application along with necessary documents on 25th April, 2016 before the Respondent No.3 and prayed for grant of parole leave on the ground of serious illness of his mother. Thereafter, after verifying all the record and facts of the case, the Respondent No.2 was pleased to allow the proposal of the petitioner on 25th August, 2016 and directed the Respondent No.3 to release the petitioner on parole leave on the terms and conditions mentioned in the order. The Respondent No.1 issued Government Notification dated 26th August, 2016, thereby amending the Prison Act, 1894 and substituted some clauses. The petitioner was not released

as per order dated 25th August, 2016 passed by the Respondent No.2, in view of newly amended clause No.5(C)(ii) vide Notification dated 26th August, 2016, therefore, he requested the Respondent No.3 to forward his request for granting extension.

The Respondent No.3 forwarded the representation dated 19th September, 2016 submitted by the petitioner to the respondent No.2 and sought necessary orders. It is specifically mentioned in the said letter that, the petitioner could not be released due to newly substituted clause No.5(C)(ii) of the Notification and lastly requested to pass appropriate orders. Again on 3rd October, 2016, the Respondent No.3 sent reminder letter and requested the respondent No.2 to pass appropriate order on the representation of the petitioner, as the period of sanctioned leave was already lapsed. Therefore, it would be necessary to grant extension and pass the appropriate order. On 4th October, 2016, the Respondent No.2 without considering the date of earlier order i.e. 25th August, 2016 and the date of issuance of notification i.e. on 26th August, 2016, was pleased to reject the request of the

petitioner by giving retrospective effect to the said notification, though there was no provision to give retrospective effect to the said notification.

3. The learned counsel appearing for the petitioner submits that, the Respondent No.2 erred while giving retrospective effect to the Government Notification dated 26th August, 2016 issued by Home Department, Government of Maharashtra. Therefore, the action of the Respondent No.2 is not only illegal but also causing great injustice to the petitioner. The learned counsel further submits that, the Respondent No.2 erred while observing that, the petitioner is not eligible to grant parole leave as per clause No.5(C)(ii) of the Government Notification dated 26th August, 2016. It is submitted that, the Respondent No.3 vide reminder letter dated 3rd October, 2016 specifically brought to the notice of the Respondent No.2 that, the petitioner has completed 6 months period of actual imprisonment to be counted from his last return from parole as prescribed in clause 5(C)(ii) of the said Notification. It is submitted that, the decision of the Respondent No.2 to give retrospective effect

to the Government Notification dated 26th August, 2016 is contrary to the judgment of the Division Bench of the Bombay High Court at Principal Seat in the case of **Subhash Hiralal Bhosale V/s State of Maharashtra and anr.**¹. It is submitted that, the date on which the petitioner applied for parole leave is the relevant date. At the relevant date, when the petitioner applied and his application was considered, the Notification referred in the impugned order was not issued by the State Government. In fact the said Notification came to be issued on 26th August, 2016. In the present case, after considering the record of the petitioner and proposal, the Divisional Commissioner passed the detailed order on 25th August, 2016 (Exhibit-A Page 13) and granted parole leave of 30 days on condition stipulated in the said order. It is submitted that, the very same authority reviewed the earlier order and relying upon the Notification dated 26th August, 2016, more specifically, the Rule 5(C)(ii) of the said Notification, rejected the prayer of the petitioner for extension of parole leave. Therefore, the learned counsel appearing for the petitioner relying upon the pleadings in

1 2013(4) Bom.C.R. (Cri.)318

the Petition and annexures thereto, submits that, the Petition may be allowed.

4. On the other hand, the learned A.P.P. appearing for the Respondent/State submits that, in case the petitioner files the fresh application, his prayer for releasing him on parole leave can be considered.

5. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned A.P.P. appearing for the Respondent/State. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto and the reply filed by the Respondent.

6. In fact the prayer of the petitioner for extension of parole leave should relate back to the date of application filed by him for releasing him on parole leave in view of the judgment of the Division Bench in the case of **Subhash Hiralal Bhosale (Supra)**. In the said judgment in para 21, it is observed that, it is not the date on which the petitioner was convicted and sentenced which

is relevant but the date on which he applied for furlough leave. The furlough leave provisions will apply when the petitioner is undergoing sentence and applies for leave. It is further observed that, the Notification/Rules, which are in force on the date of filing such application will govern the prayers in the said application.

7. In the facts of the present case, it appears that the petitioner applied for extension of parole leave prior to issuance of Notification dated 26th August, 2016. In that view of the matter, the Notification/Rules which were in force on the date of application filed by the petitioner were relevant and the Respondent No.2 was not correct in placing the reliance on the Notification issued by the Government of Maharashtra, Department of Home on 26th August, 2016 (Rule 5(C)(ii) therein).

8. In the light of the discussion hereinabove, we quash and set aside the order dated 4th October, 2016 passed by the Respondent No.2. The order dated 25th August, 2016 passed by the Respondent No.2 stands restored. Accordingly we direct the

Respondents to act upon the said order forthwith and on fulfillment of condition in the said order release the petitioner on parole leave for 30 days.

9. The Petition is allowed in the above terms and the same stands disposed of.

10. Rule is made absolute in the above terms.

(P.R. BORA, J.)

(S.S. SHINDE, J.)