

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

CRIMINAL WRIT PETITION NO.3353 OF 2016

Mohd. Azan Aslam Butt,
Aged 42 years, Occu.Tourist,
R/o.A-2, 103 SRA Building,
Lohiya Nagar, Milan Subway Road,
Vile Parle West, Mumbai 400 056.
At present undergoing sentence
at Nashik Central Prison

... **Petitioner**

V/s.

1. The Divisional Commissioner,
Nashik Division, Nashik.

2 The Jail Superintendent
Parole & Parole Department,
Nashik Road Central Prison,
Nashik.

3 The Senior Inspector of Police,
Shivaji Nagar Police Station,
Ambernath East, District Thane.

... **Respondents**

.....

Mr.Rahul Arote, Advocate for the Petitioner.
Mr.Arfa Sait, APP for the Respondent/State.

....

**CORAM : SMT.V.K.TAHILRAMANI &
A. M. BADAR JJ.**

DATED : 7th DECEMBER 2016.

ORAL JUDGMENT : (Per V. K. TAHILRAMANI J.)

1 Rule.

2 Rule is made returnable forthwith and the matter is heard
finally.

3 Heard both sides.

4 The prayer of the petitioner is for extension of parole leave. The petitioner preferred an application for parole on 10/02/2016. This application was granted by order dated 30/05/2016. Pursuant to the said order, the petitioner was released on parole on 31/05/2016 for 30 days on certain terms and conditions. The said period was extended for 30 days on same terms and conditions. The case of the petitioner is that he preferred another application for extension of parole leave. But the parole leave was not extended. Hence, this petition.

5 We are of the opinion that the petitioner has not approached this Court with clean hands. Hence, we are not inclined to grant the relief sought by the petitioner.

6 When the petitioner was granted parole, condition was imposed on him that during the period that he is on parole, he shall stay at the address mentioned and provided by him and shall not leave the jurisdiction of Shivaji Nagar Police Station, Ambernath (East) without prior permission of the Police Inspector of the said police station. The second condition imposed on the petitioner was that he shall report daily to Shivaji Nagar Police Station, Ambernath (East) during the period that he is on parole.

7 However attendance register of Ambernath police station shows that petitioner attended the police station from 01/06/2016 to 19/07/2016 and thereafter he did not attend the said police station. In this connection, it is the case of the petitioner that during the period he was parole he was attending the police station and thereafter he informed the police station that he is going to Panchgani in relation to the admission of his son in the boarding school, hence it is not possible for him to attend police station between 28/07/2016 to 30/07/2016. This was informed to the police station by letter dated 27/07/2010 and acknowledgment has been obtained by him regarding the receipt of the said letter in Shivaji Nagar Police station. It is further case of the petitioner that he had informed by letter 12/06/2016 and 13/07/2016 that he will not attend the police station on 13/06/2016 and 14/07/2016. The letters dated 12/06/2016 and 13/07/2016 and 27/07/2016 are relied upon by the petitioner.

8 In reply the learned APP relied upon the affidavit of Police Inspector Shri. Patil attached to Shivaji Nagar police station. This affidavit shows that none of these 3 letters were received by the police station. To show that the petitioner attended the police station on 21/07/2016, 23/07/2016, 27/07/2016 and that he gave letter dated

27/07/2016 to the police station, the petitioner relied upon the acknowledgment appearing on the copies of personal attendance diary entries dated 21/07/2016, 23/07/2016 and 27/07/2016 and also copy of the dated dated 27/07/2016 all containing signature which is purportedly of police head constable/1432 Shri.Y.R.Nangare. The affidavit of PI Patil shows that the said Police Head Constable/1442 Shri Nangare was on his weekly off on 20/07/2016 and was assigned night duty on 21/07/2016 at the police station and as such he came to attend his duty at night around 9.00 p.m. but at around 9.30 p.m. he was informed about his transfer to Vitthalwadi Police Station from Shivaji Nagar Police Station and he was immediately relieved on 21/07/2016. Further he had taken a holiday on 22/07/2016 and he joined duty with Vitthalwadi Police Station on 23/07/2016 at 11.35 p.m. and on the same day at 12.45 hrs P.H.C. Nangare was assigned *nakabandi* duty under API Khairnar of Vitthalwadi Police Station. Further as per the duty allotment chart of Vitthalwadi Police Station dated 27/07/2016, on that day P.H.C. Nangare was assigned duty with Ulhasnagar Control Room. PI Patil has further stated that personal attendance diary entries dated 21/07/2016, 23/07/2016 and 27/07/2016 and the letter dated 27/07/2016 produced and relied upon by the petitioner is forged and fabricated as the said P.H.C.

Nangare, whose signature is seen on the said acknowledgments was never on duty at Shivaji Nagar Police Station on the relevant dates as he had been relieved on 21/07/2016 itself and had joined duty with the Vitthalwadi Police Station on 23/07/2016. Further a statement of the said P.H.C. Nangare was recorded on 12/10/2016 after he was shown the above said personal attendance diary entries of the petitioner and also the letter dated 27/07/2016, produced and relied upon by the petitioner and annexed as annexures in the present petition, P.H.C. Nangare has denied that he has ever signed on the said personal attendance diary entries dated 21/07/2016, 23/07/2016 and 27/07/2016 and also denied having received or making an endorsement by way of acknowledgment on the letter dated 27/07/2016.

9 It is the case of the petitioner that he attended the said police station on 20/07/2016, 25/07/2016 and 26/07/2016 and he has handed over letter dated 13/07/2016 to the police station wherein he has stated that he cannot attend the police station the next day. In support thereof the petitioner has relied upon acknowledgments in his personal attendance diary and acknowledgment on copy of letter dated 13/07/2016. These acknowledgments contain signature which was purportedly of PHC 1062 Shri.K.S.Khobhargade. PI Patil in his affidavit

has stated that Police Head Constable Shri K.S.Khobhargade was on his weekly off on 20/07/2016 and as such he was never present on 20/07/2016 at 11.15 a.m. at Shivaji Nagar police station to give acknowledgment at 11.15 a.m. As per the duty allotment chart of Shivaji Nagar Police Station, P.H.C. Khobhargade was assigned night duty on 24/07/2016 at 9.00 p.m. till 9.00 a.m. on 25/07/2016 and as he had left the police station at around 9.00 a.m. on 25/07/2016, he was never present at the police station on 25/07/2016 at 12.10 p.m. to give acknowledgment at 12.10 p.m. P.I. Patil has further stated that as per the duty allotment chart of Shivaji Nagar Police Station P.H.C. Khobhargade was assigned night duty on 25/07/2016 at 9.00 p.m. till 9.00 a.m. on 26/07/2016 and as he had left the police station at around 9.00 a.m. on 26/07/2016, he was never present at the police station on 26/07/2016 at 1.10 p.m. to give acknowledgment at 1.10 p.m. PI Patil has stated that the statement of the said P.H.C. Khobhargade was recorded on 12/10/2016 after he was shown the copies of the personal attendance diary entries dated 20/07/2016, 25/07/2016 and 26/07/2016 and also the copy of the letter dated 13/07/2016 as produced, annexed and relied upon by the petitioner. P.H.C. Khobhargade has denied that he has ever signed on the said personal attendance diary entries dated 20/07/2016, 25/07/2016 and

26/07/2016 of the petitioner and has also further denied having received or making an endorsement by way of acknowledgment of the letter dated 13/07/2016.

10 It is further noted that during the hearing of this Criminal Writ Petition before this Court on 17/10/2016 when it was brought to the notice of this Court as regards the authenticity of the letters dated 12/06/2016, 13/07/2016 and 27/07/2016 and with the permission of this Court the originals of the above dated letters which were in the custody of the petitioner were received from the advocate of the petitioner, the above said letter dated 13/07/2016 containing the original endorsement/acknowledgment purportedly containing the signature of P.H.C. Khobhargade was shown to P.H.C. Khobhargade and his statement dated 18/10/2016 was recorded wherein he has denied making any signature on the said letter or receiving the said letter on 13/07/2016. Similarly, the original endorsement purportedly to be of PHC Nangare was shown to him and he has denied making the said endorsement. His statement to that effect has been recorded.

11 It is further case of the petitioner that he attended the police station on 22/07/2016 and 24/07/2016 and he has also handed

over a copy of the letter dated 12/06/2016, whereby he had informed that he cannot attend the police station on 13/06/2016. The petitioner has relied upon acknowledgment in his personal attendance diary and acknowledgment on copy of letter dated 12/07/2016 purportedly containing the signature of Assistant Police Sub-Inspector Shri.Sangale. In this connection, PI Patil in his affidavit has stated that ASI Shri.Sangle as per the duty allotment chart of Shivaji Nagar Police Station was assigned night duty on 21/07/2016 at 9.00 p.m. till 9.00 a.m. on 22/07/2016 and as he had left the police station at around 9.00 a.m. on 22/07/2016, he was never present at the police station on 22/07/2016 at 9.50 a.m. to give acknowledgment at that time. Further as per the duty allotment chart of the said police station ASI Sangale was assigned night duty on 23/07/2016 at 9.00 p.m. till 9.00 a.m. on 24/07/2016 and as he had left the police station at around 9.00 a.m. on 24/07/2016, he was not present at the police station on 24/07/2016 at 1.20 p.m. to give acknowledgment at 1.20 p.m. PI Patil has further stated that the letter dated 12/06/2016 produced and relied upon by the petitioner is forged and fabricated as the said ASI Shri. Sangale whose signature is purportedly seen by way of acknowledgment was assigned lockup duty on 11/06/2016 at 9.00 p.m. at Shivaji Nagar Police station as per the duty allotment chart and he

had left the police station at around 2.00 p.m. on 12/06/2016 after giving charge to ASI J.B.Satpute. Hence, though he was present at the police station from 9.00 p.m. on 11/06/2016 till 2.00 p.m. on 12/06/2016, he was never assigned the charge of the S.H.O., who is delegated for marking attendance and keeping records of attendance register. Further the statement of ASI Shri.Sangale was recorded on 11/10/2016 after he was shown the copies of the personal attendance diary entries dated 22/07/2016 and 24/07/2016 and also the copy of the letter dated 12/06/2016 as produced, relied and annexed in the present Criminal Writ Petition by the petitioner. ASI Sangale has denied that he has ever signed on the said personal attendance diary entries dated 22/07/2016 and 24/07/2016 of the petitioner and has also further denied having received or making an endorsement on the acknowledgment of the letter dated 12/06/2016.

12 It may also be noted that the petitioner has been convicted in Crime No.585 of 2005 Oshiwara Police Station which is under Section 365, 364, 302 read with Section 201 of the Indian Penal and under Arms Act. The said case is numbered as Sessions Case No.43 of 2006. In the said, case he was granted bail on 02/06/2006. Thereafter he has involved in seven cases, the details of which are as under :

Sr. No	Police Station	Crime Registration No. and Sections
1	Kherwadi Police Station, Mumbai	I 42/08, under section 465, 468, 471, 420 read with Section 34 of the IPC.
2	Santacruz Police Station, Mumbai	I 117/10, under Sections 447, 427 of the IPC.
3	Santacruz Police Station, Mumbai	I 395/13, UNDER Sections 324, 323, 504, 506 read with Section 34 of the IPC.
4	Porhorim Police Station, Goa	I 125/13, under Sections 467, 420, 120(b) of the IPC.
5	Santacruz Police Station, Mumbai	I 27/14, under Section 420 of the IPC with 12(1) of the Passport Act. (To make fake passport from Mumbai, Hyderabad and Nagpur.)
6	Santacruz Police Station, Mumbai	I 39/15, under Section 506(ii) read with Section 34 of the IPC.
7	Shivaji Nagar Police Station, Thane, Ambernath (East)	I 14/15, under Section 224 of the IPC.

13 The case of the petitioner is that the respondent No.3 acted highhandedly and detained him illegally at police station for about 18 hours without giving any valid and cogent reason. Respondent No.3 also did not take care to inform his family members and his relatives about his detention. As far as this contention is concerned, it has been replied by PI Patil attached to Shivaji Nagar police station, who is respondent No.3. He has stated that on 30/07/2016 at about 1.00 p.m. the Deputy Commissioner of Police (Crime), Mumbai telephonically

contacted him and informed him that the parole leave of the petitioner has expired and he has no further extension of the parole leave, as such, the petitioner was illegally staying outside the jail and hence directed that the petitioner be taken into custody. Staff was deputed to verify the address of the petitioner, however he was not found there and when he was contacted on his available mobile number, he stated that he had come to Panchgani Dist.Satara for the admission of his son in the hostel. Thereafter, the petitioner along with his family member attended the police station on 31/07/2016 at about 6.00 p.m. He was informed that he has violated the terms and conditions of the order dated 30/05/2016 whereby the petitioner was granted parole. The petitioner admitted the fact that without informing and taking prior permission of the in-charge Police Inspector of the police station, he has gone to Panchgani. At that time, petitioner was also informed that his parole leave had expired, as such he was staying out of jail illegally and he was directed to furnish the order of extension of his parole leave. However, the petitioner admitted that his parole leave had expired and though he had preferred an application for extension of his parole leave for another 30 days, the same had not yet been decided. The petitioner also admitted that he attended the police station only till 19/07/2016. Thereafter, at about 8.45 on 31/07/2016 a police team comprising of

Assistant Police Sub-Inspector Bagal alongwith PC/Varkhande, PC/Lokhande of Shivaji Nagar Police Station took charge of the petitioner to produce him before the Superintendent, Nashik Road Central Jail, Nashik. The police team alongwith the petitioner had reached the Nashik Road Central Prison, Nashik early morning on 01/08/2016 but since the Superintendent Nashik Road Central Prison was unavailable as also since no senior prison official was present, the jail guards refused to take the petitioner and the police team inside the jail premises and hence the police team accompanying the petitioner was forced to wait outside the Nashik Road Central Prison till the arrival of the Superintendent and other senior jail officers of the prison and after their arrival the formalities were completed and the petitioner came to be taken into custody by Nashik Road Central Prison at about 12.25 hrs on 01/108/2016. The petitioner's wife and family members were informed about the fact. It is to be noted that there are no allegations of any torture or ill-treatment by the petitioner in relation to any of the authorities.

14 Nowhere do the furlough or parole rules lay down that in case the prisoner's application is not decided by the authorities then in such a scenario the prisoner can remain outside illegally till the decision

of the prisoner's application for parole extension nor does it convey a right on the prisoner to stay outside illegally pending its decision as the grant of parole is entirely the sole discretion of the competent authority and the prisoner can never claim parole or extension of parole as a matter of right.

15 In this view of the matter, we find no merit in the contentions raised by the petitioner and considering the facts narrated above, we are not inclined to grant the relief sought by the petitioner.

16 Accordingly, Rule is discharged.

(A. M. BADAR J.)

(SMT. V. K. TAHILRAMANI J.)