

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 665 OF 2017

Kisan s/o. Soma Rathod (C-8098) .. Petitioner
Age. 38 years,
Central Prison, Aurangabad.

Versus

1. The State of Maharashtra .. Respondents
Through Divisional Commissioner,
Aurangabad.
2. The State of Maharashtra
Through Superintendent Central Prison,
Aurangabad.

Mr. Rupesh A. Jaiswal, Advocate for the petitioner.
Ms. S. S. Raut, A.P.P. for respondent Nos. 1 and 2.

**CORAM : S.S.SHINDE &
S.M.GAVHANE, JJ.**

**RESERVED ON : 26.07.2017
PRONOUNCED ON : 10.08.2017**

J U D G M E N T [PER : S.M. GAVHANE, J.] :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. The petitioner – a life convict, who is undergoing sentence in Aurangabad Central Prison, has filed this petition under Article 226 of the Constitution of India and claimed relief in terms of prayer clause (B), which is reproduced as under :-

“B] To quash and set aside order of Respondent No.1 dated 21.02.2017 and thereby direct Respondent No.1 to release Petitioner on Parole Leave for 30 days on execution of Personal (P.R.) Bond and, (S.B.) Bond with Guarantor and or,”

3. The petitioner's case is that he was convicted by the Sessions Judge, Mumbai for the offence punishable under section 302 of the Indian Penal Code by judgment and order dated 18.08.2007. He was an under-trial prisoner since 23.10.1998, till he has been convicted by the Trial Court. He applied to respondent No.2 – the Superintendent, Central Prison, Aurangabad to release him on parole. The said application was forwarded by the

respondent No.2 to the respondent No.1 – the Divisional Commissioner, Aurangabad. By impugned order dated 21.02.2017, the respondent No.1 rejected said application on the ground that there is possibility of committing serious crime by the petitioner on his releasing on parole.

4. Aggrieved by the aforesaid order, the petitioner has filed the present writ petition on the grounds that there was no reason to give negative police report against him. There is no material to show that he would commit offence, if released on parole. He has not committed any offence when he was previously released on parole. Therefore, report of the police authorities in this respect is without any basis. Earlier on one occasion he was released on parole in the year 2013, he surrendered one day after the expiry of the said period. The respondent No.1 failed to consider that, mother of the petitioner is suffering from post menopausal uterine bleeding and she needs to be operated on urgent basis.

The respondent No.1 has not properly appreciated the relevant rules and particularly Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959.

5. On the respondent's behalf an affidavit of Vijay s/o. Sahebrao Raut, who is working as a Tahsildar in the office of respondent No.1, is filed. In the said affidavit, he has stated that the Superintendent, Central Prison, Aurangabad had submitted proposal to sanction parole to the petitioner in the office of the respondent No.1. In pursuance of the said proposal a report was called from the Office of Assistant Commissioner of Police, Mumbai Division, who submitted report after enquiry mentioning that Agripada Police Station has submitted a report that if the petitioner is granted parole, there is possibility of committing serious crime by him. As such, strong objection was taken to release the petitioner on parole by the Assistant Commissioner of Police, Mumbai. So also, it is stated that there would be election of Municipal Corporation, Mumbai in February,

2017 and therefore also the Assistant Commissioner of Police, Mumbai had objected to grant parole to the petitioner. Considering the report of the Assistant Commissioner of Police, Mumbai Division, respondent No.1 rejected the petitioner's application on 21.02.2017. Contending that there is no merit in the petition, the respondents have claimed to dismiss the same.

6. Learned Counsel appearing for the petitioner made submissions in the light of grounds referred to above in the petition and more particularly he submitted that there is no material to show that the petitioner would commit serious offence in-case he is granted parole and as such there is no basis to the report of the Assistant Commissioner of Police, Mumbai Division, objecting to grant parole application of the petitioner. Merely because respondent No.2 – Superintendent, Central Prison, Aurangabad has not recommended to grant parole to the petitioner is not a ground to reject the petitioner's application for parole. Learned Counsel further submitted

that respondent No.1 has not considered medical certificate of the mother of the petitioner dated 26.09.2016. Thus, the learned Counsel for the petitioner has prayed to allow the writ petition and direct the respondents to grant parole to the petitioner and release him forthwith.

7. To support his submissions, learned Counsel for the petitioner has relied upon ratio laid down in the case of Mohammed Parvez Zulfikar Qureshi Vs. State of Maharashtra & Ors., 2010 ALL MR (Cri) 574. In the said case the petitioner was earlier released on furlough and he surrendered himself to the Prison Authority after completion of said furlough. It was held that there is no substance in the apprehension posed in the alleged adverse police report and consequently rejection of parole of the petitioner was held not proper. The impugned order was set aside and the petitioner was ordered to be released on parole.

8. On the other hand, learned APP for the respondents submits that there is possibility of committing serious crime by the petitioner in-case he is granted parole, as mentioned in the report of the Assistant Commissioner of Police, Mumbai Division, as stated in the affidavit-in-reply and thus she has claimed to dismiss the petition stating that there is no merit in it.

9. We have carefully considered the submissions made by the learned Counsel appearing for the petitioner and the learned A.P.P. appearing for the respondents. Besides, we have carefully perused the impugned order passed by the respondent No.1, copy of medical certificate of mother of the petitioner and the affidavit in reply submitted on behalf of the respondents. There is no dispute that the petitioner is a life convict for the offence punishable under section 302 of the Indian Penal Code as per order dated 18.08.2007. Since 23.10.1998 till the date of subject application for

parole, he was released on parole only on one occasion in the year 2013, and he reported to the jail authority one day after expiry of period of parole. Thus, it is not the case that when the petitioner was released on parole, prior to the present application claiming 30 days' parole, he did not report to the jail authority in time or there was inordinate delay in reporting to the jail authority after the period of parole was expired.

10. The petitioner had claimed 30 day's parole and the application in this respect was forwarded to the respondent No.1 by the respondent No.2 for sanctioning the same. The said application was rejected by respondent No.1 by order dated 21.02.2017. The said impugned order [Exh."A"] passed by the respondent No.1 shows that application for parole of the petitioner was rejected mainly on two grounds. First ground is, that the possibility of committing serious crime by the petitioner cannot be denied, if he is granted parole, as the said possibility is mentioned in the report of the Assistant

Commissioner of Police, Mumbai Division and second ground is, that in the report of the respondent No.2 – Superintendent, Central Prison, Aurangabad, said respondent has not recommended to sanction the parole to the petitioner. The report/letter of the Assistant Commissioner of Police, Mumbai Division is not produced on record by the respondents to show how and on what basis the Assistant Commissioner of Police, Mumbai Division has expressed the possibility of committing serious crime by the petitioner, in-case he is released on parole. So also, no independent material is produced by the respondents to accept their contentions that there is possibility of committing serious crime by the petitioner, in-case of releasing him on parole. On the contrary, after release on parole in the year 2013, the petitioner reported to jail authority only one day after expiry of the period of parole. This shows that there was no inordinate delay on the part of the petitioner in reporting to the jail authority after expiry of the parole. Moreover, it is not the case of the respondents

that when the petitioner was released on parole in the year 2013, he committed any offence. Thus, there is absolutely no evidence to show that there is substance in the possibility expressed by the respondents that the petitioner would commit serious crime, in-case he is released on parole. Similarly, as regards second ground of rejecting the petitioner's application of releasing him on parole, there is no material to show that there is any base for not recommending the case of the petitioner to grant parole while forwarding his application for said leave by respondent No.2 to respondent No.1. There is no material produced by the respondents to show that since when the petitioner is in jail, his behaviour in jail is not good or that there are complaints against him to the jail authority by other prisoners or others. Therefore, two grounds referred to above on the basis of which the respondent No.1 has rejected the petitioner's application for parole are not sustainable. In-fact, on considering the ground of illness of mother of the petitioner as stated in medical certificate dated 26.09.2016, which

states that she is suffering from Mereorrhagia (Heavy bleeding from uterus) i.e. post menopausal uterine bleeding since three months, issued by Dr.Mahendra Y. Sawant, the respondent No.1 should have considered the petitioner's application for parole.

11. For the reasons discussed above, we hold that the impugned order passed by respondent No.1 is not sustainable and the same is liable to be set aside. In the result, the following order is passed :-

(i) The writ petition is allowed.

(ii) The impugned order dated 21.02.2017 passed by respondent No.1, rejecting the petitioner's application for parole of 30 days is quashed and set aside.

(iii) The Respondent No.1-The Divisional Commissioner, Aurangabad is directed to release the petitioner on parole for a period of 30 (thirty) days from the day of his furnishing surety as per the existing rules and regulations in this respect and on completion of other procedural formalities, if any.

12. Rule is made absolute in above terms. The writ petition stands disposed of accordingly. There shall be no order as to costs.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]