

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO. 880 OF 2017**

Adbul Rouf Abdul Samad
(Convict No. 8246)
Age : 28 years, Occ : Nil,
R/o Nashik Road, Central Prison,
Nashik.

PETITIONER

-VERSUS-

1. The State of Maharashtra,
Through Home Department,
Through its Chief Secretary
2. The Divisional Commissioner,
Divisional Commissioner Office,
Nashik Road, Nashik.
3. The Superintendent of Prison,
Nashik Road, Central Prison,
Nashik.

RESPONDENTS

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Mr. Yogesh Jadhav, advocate for Petitioner
(appointed).

Mr. S.B. Pulkundwar, APP for Respondents /
State.

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

Reserved on : 01.08.2017
Pronounced on : 04.08.2017

JUDGMENT: (Per S.S.Shinde, J.):

Rule. Rule made returnable

forthwith, and heard finally with the consent of the parties.

2. This Petition is filed with the following prayer :-

"C. By issuing appropriate writ order or direction, the respondent no.2 may kindly be directed to release the petitioner on parole and quash and set aside the order dated 09.03.2017 passed by the respondent no.2."

3. The learned counsel appearing for the petitioner submits that, the petitioner's grand-mother is ailing and there is nobody in the family to look after her. The Government Notification dated 23rd February, 2012, of which a reference is made in the impugned order, cannot be made applicable in the case of the petitioner in view of the judgment of this Court in the case of **Balu V/s The State**

of Maharashtra¹. He, relying upon the judgment of the Division Bench of Bombay High Court bench at Nagpur in the case of **Munjulabai W/o Kisna Gulabe V/s State of Maharashtra²,** submits that, the rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959 has been interpreted by the High Court and the view is taken that, the prisoner would be entitled to be released on parole on account of attending the marriage of his nearest relatives. The learned counsel appearing for the petitioner also pressed into service the judgment of the Bombay High Court at Principal Seat in the case of **Subhash Hiralal Bhosale V/s State of Maharashtra (in Criminal Writ Petition No. 4187/2012 dated 04.09.2013),** and submits that, in the said judgment, it is held by the High Court that, the parole and furlough rules are part of the penal and prison system

1 2014 AllMR (Cri) 2413

2 2002(3) Mh.L.J. 226

with a view to humanize the prison system. These rules enable the prisoner to obtain his release and to return to the outside world for a short prescribed period. The objects of such a release of prisoner can be read from para no.101 of the report submitted by the All India Jail Manual Committee as also the objects mentioned in Model Prison Manual. Therefore, relying upon the pleadings in the petition, grounds taken therein and the relevant rules, the learned counsel appearing for the petitioner submits that, the Petition may be allowed.

4. On the other hand, the learned A.P.P. appearing for the respondent/State, relying upon the affidavit in reply filed on behalf of respondent no.1, submits that, the petitioner is a prisoner undergoing sentence of life imprisonment and he is in Central Jail, Nashik Road, Nashik. He submits that,

the convict can be released on parole taking recourse to Rule 19 of the Rule of 1959, only in case there is a serious ailment in respect of relatives, which are mentioned in the said Rules. He further submits that, as per the amendment of said Rule 19, the directions can be issued to release the convict on parole in cases of serious illness or death of nearest relatives such as father, mother, brother, sister, spouse, children or marriage of brother, sister and children of the prisoner or pregnant women prisoner for delivery (except high security risk prisoner) or in case of natural calamities such as house collapse, flood, fire and earthquake. There is no provision in the said rule to release the convicts if his grand-mother is suffering from ailment. Therefore, the respondents have rightly rejected the application of the petitioner for releasing him on parole leave.

5. We have considered the submissions of the learned counsel appearing for the petitioner and the learned A.P.P. appearing for respondent/State. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, annexures thereto, reply filed by the respondent and the relevant Rules and also the Notification dated 23rd February, 2012 issued by the Home Department, Mantralaya, Mumbai.

6. Whether the said amendment brought to the the Prisons (Bombay Furlough and Parole) Rules, 1959 by the said Notification can be made applicable in the facts of the present case; said issue raised is no longer *res integra*, and is answered by the authoritative pronouncement of the Division Bench of Bombay High Court in the case of **Subhash Hiralal Bhosale (supra)**. In the said judgment, the view is taken that, the date on

which the application is filed by the convict is the relevant date and the Government policy/rules, which are in force on the said date would govern the field and consequently an adjudication of the application of the convict.

7. In the facts of the present case, as submitted by the learned A.P.P. appearing for the respondent/State that, the convict can be released on parole taking recourse to Rule 19 of the said Rules only in case there is a serious ailment in respect of relatives, which are mentioned in the said Rule. On careful perusal of the said Rules, "grand-mother" is not mentioned in the category of nearest relatives.

8. In that view of the matter, we do not see any reason to interfere in the impugned order. Hence the Petition is devoid of any merits and the same stands rejected.

However, we grant liberty to the petitioner to apply afresh for parole or furlough, as the case may be, before the concerned respondent authority. In case of filing such an application by the petitioner, the concerned authority to take decision on the said application, as expeditiously as possible, however, not later than three weeks from the date of filing such application, on its own merits.

9. Since, Mr. Yogesh Jadhav, the learned counsel is appointed to prosecute the cause of the petitioner, his fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE

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