

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

CRIMINAL WRIT PETITION NO. 986 OF 2017

Umakant Vasantryao Kumbhare @ Borikar
Convict No. C/10321,
Age : Major, Occ : Nil,
C/o Nashik Road, Central Prison,
Nashik.

PETITIONER

-VERSUS-

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

RESPONDENTS

...

Mr. Sanket N. Suryawanshi, advocate for
Petitioner (appointed).
Ms. S.S. Raut, APP for Respondents / State.

...

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

DATE : 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 prayers :-

"b) Quash and set aside the impugned order passed by respondent No.2 at Annexure C dated 03.09.2016 and impugned order passed by respondent no.1 dated 31.03.2017 at Annexure "E" and for that purpose issue necessary orders;

c) By appropriate writ order or direction grant total 60 days of extension of parole (30 days each) applied for by the petitioner, vide extension application dated 2-07-2016 and 30-07-2016 and for that purpose issue necessary orders;

d) Quash and set aside the proposal of cancellation of 240 days remission in the case of petitioner for 60 days delay in reporting to the Jail and for that purpose issue necessary orders;

3. It is the case of the petitioner that, he is convict (C-10321) and undergoing imprisonment for life in Nashik Central Prison, Nashik. Since wife of the petitioner was ill, the petitioner filed application on 2nd March, 2016, praying therein for releasing him on parole for 30 days. The concerned authority granted the prayer of the petitioner to release him on parole for 30 days by an order dated 20th May, 2016. Pursuant to the order passed by the said authority, the petitioner was released on parole for 30 days on 20th June, 2016.

4. It is further the case of the petitioner that, the petitioner applied for extension of parole by filing another application on 2nd July, 2016 with necessary documents including the medical certificate of his wife. Since the period of 30 days came

to an end on 20th June, 2016, the petitioner was required to report back to the Jail and accordingly, he reported back on 21st July, 2016. On 30th July, 2016, the petitioner made second application for extension of parole. However, respondent no.2 by his order dated 3rd September, 2016 rejected the said application by relying upon the notification issued by the Home Department, Government of Maharashtra dated 26th August, 2016. Being aggrieved by the said order, the petitioner preferred the appeal before respondent no.2 on 17th September, 2016. However, by order dated 31st March, 2017, the appeal filed by the petitioner came to be rejected. Hence this Petition.

5. The learned counsel appearing for the petitioner submits that, the petitioner did file the application for extension of parole on 2nd July, 2016, and on 30th July,

2016 respectively, the aforementioned notification on which the reliance was placed by respondent no.2 to reject the application of the petitioner, was brought into force on 26th August, 2016. It is submitted that, since the applications filed by the petitioner for extension of parole were before issuance of the Notification dated 26th August, 2016 by the Home Department, the said applications of the petitioner would govern by the relevant provisions/relevant rules, which were in force prior to issuance of the Notification by the Home Department, on 26th August, 2016. Therefore, the learned counsel appearing for the petitioner submits that, the impugned order deserves to be quashed and set aside and the Petition deserves to be allowed.

6. On the other hand, the learned A.P.P. appearing for the respondent/State, on instructions received from the respondent

authorities, makes a statement that, the respondent authorities are ready to reconsider the application of the petitioner for extension of parole, keeping in view the relevant rules, which were in force at the relevant time when the applications were filed by the petitioner and necessarily by ignoring the Notification issued by the Department of Home, Government of Maharashtra on 26th August, 2016.

7. In the light of the submission made across the Bar and the statement made on instructions by the learned A.P.P., the impugned order is quashed and set aside. Respondent No.2 is directed to reconsider the prayer of the petitioner for extension of parole treating his applications prior to issuance of the aforementioned Notification and by ignoring the said Notification, and taking into consideration the relevant

rules/procedures, which were in force/operation on 2nd July, 2016 and 30th July, 2016 respectively. Respondent No.2 to take decision afresh, as expeditiously as possible, and preferably on or before 28th August, 2017 and communicate the said decision to the petitioner.

8. With the above observations, the Petition stands disposed of.

9. The parties shall act upon authenticated copy of this order.

10. We appreciate the sincere efforts taken by Mr. Sanket N. Suryawanshi, learned counsel in promptly filing the Petition and rendering able assistance during the course of hearing of the Petition. Since Mr. Sanket N. Suryawanshi, 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

SGA