

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

CRIMINAL WRIT PETITION NO.1008 OF 2017

Sharad @ Sharadchandra S/o Nimba Patil,
Age – 35 years, sentence – Life Conviction
Convict No.8604,
Nashik Road Central Prison, Nashik. ... **Petitioner**

Versus

1. The State of Maharashtra
Through Home Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Nashik Division, Nashik. ... **Respondents**

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Mr. Suniket A. Kulkarni, Advocate for Petitioner
(Appointed)
Mr. D.R.Kale, APP for Respondents - State

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**CORAM : S.S.SHINDE AND
MANGESH S. PATIL, JJ.**

**RESERVED ON : 01st November, 2017
PRONOUNCED ON : 10th November, 2017**

JUDGMENT : (Per Mangesh S. Patil, J.) :-

Rule. The Rule is made returnable forthwith.
With the consent of both the sides the matter is heard
finally.

2. The petitioner, who is suffering a sentence of imprisonment as a life convict and lodged in Central Prison at Nashik, forwarded a letter to the Registry, which has been treated as a Writ Petition and Advocate Mr. Suniket A. Kulkarni has been appointed to represent his cause.

3. We have heard the learned Advocate for the petitioner and the learned APP and we have also perused the papers annexed with the petition and the affidavit-in-reply of Respondent No.2 with annexures including the impugned orders.

4. Shortly stated the facts leading to the filing of this Writ Petition are to the effect that while under going the sentence, the petitioner applied for a parole under Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (herein after referred to as the 'Prisons Rules'). He was initially granted a parole for 30 days with effect from 04.06.2016. On 19.06.2016, he applied to Respondent No.2 / Divisional Commissioner, Nashik

Division for extension of parole for a further period of 30 days. Respondent No.2 duly extended the parole by 30 days as prayed for. Since the mother of the petitioner was ill and was advised rest, on 14.07.2016 he again applied for a further extension of parole by 30 days. The first period of extension of 30 days was to come to an end on 04.08.2016. He was under the impression that even his second request for extension must have been allowed since on previous three occasions he was similarly granted 90 days of parole in the year 2011, 2013 and 2014-15. He, accordingly, after expiry of 90 days duly surrendered back to the Jail on 03.09.2016. However, Respondent No.2, on the same day passed an order on his application dated 14.07.2016 and rejected his request for extension of parole on the ground that under the Prisons Rules, which were amended w.e.f. 26.08.2016, a prisoner is entitled to a maximum of 45 days of parole in a year and which can be extended upto 60 days once in a period of three years only under exceptional circumstances. The appeal preferred by the petitioner to the Home Department of the Government of

Maharashtra was also dismissed on 31.03.2017. In view of such state of affairs, the Superintendent of Jail issued a notice to the petitioner calling upon him to show cause as to why his remission of 150 days should not be deducted by way of punishment. The petitioner has therefore sought an appropriate writ with following prayer in Clause-B.

“By issuing a writ of certiorari or any other appropriate writ or order or directions in the like nature, the order dated 31.03.2017 passed by the Government of Maharashtra thereby confirming the order passed by Divisional Commissioner Nashik, dated 03.09.2016, thereby refusing to grant extension of parole for the period of 04.08.2016 to 02.09.2016 may kindly be quashed and set aside, and the application of the petitioner dated 14.07.2016 for extension of parole may kindly be allowed.”

5. The affidavit-in-reply filed on behalf of Respondent No.2 supports the impugned orders.

6. The learned Advocate for the petitioner, in consonance with the averments in the petition submitted that there was no ground to refuse the extension of parole by 30 days when the petitioner had moved the application for that purpose on 14.07.2016. Respondent No.2 as also the Home Department of the

Government of Maharashtra were in error in applying the amended Prisons Rules when in fact the application for extension was moved before the Rules were amended. Thus, according to the learned Advocate, the impugned order suffers from grave error and illegality.

7. The learned APP strongly supported the impugned order.

8. There is no dispute about the fact that the application for extension was moved by the petitioner on 14.07.2016. There is also no dispute that the Prisons Rules were amended with effect from 26.08.2016. There is similarly no dispute that under the unamended Prisons Rules, a prisoner was eligible for a maximum period including extension of a parole for 90 days which has been brought down to 60 days by virtue of the amendment dated 26.08.2016. There is no dispute that the first extension which was granted to him was to come to an end on 04.08.2016 and therefore, even before expiry of such extension he had moved the application

for further / last extension on 14.07.2016. Considering the fact that the Prisons Rules are not merely procedural Rules but also include substantive rights of prisoners to be released on furlough and parole, the petitioner was entitled to be governed by the Prisons Rules as those where in force either on the date on which he moved the application i.e. 14.07.2016 or the date on which his last extension was to begin after expiry of the first extension on 04.08.2016. In any case, the right to get an extension which was vesting in the petitioner had crystalized and should have been determined latest by 04.08.2016. In other words, his entitlement to such extension should have been legally considered as per the Prisons Rules, which were in force when such right had accrued to him and stood crystalized on 04.08.2016.

9. However, it is apparent that his application was not promptly considered by Respondent No.2 and by the impugned order, he rejected the request by applying the Law / Prisons Rules, which stood amended and were in

force on 03.09.2016. In this manner, Respondent No.2 has committed a gross error in law in considering the request of the petitioner for extension by applying amended Prisons Rules instead of applying the rules as they were in force on 04.08.2016. Similarly, even the Home Department of the Government of Maharashtra has fallen in grave error in overlooking this aspect of the matter.

10. It is to be remembered that the petitioner must have been under a legitimate expectation in view of the previous experience of getting a parole extended upto 90 days on as many as three occasions that even this time around his request would be favourably considered in due course of time. As has been rightly submitted by the learned Advocate for the petitioner had his application been considered promptly and would have rejected for some other valid reason, that would have enabled him to surrender to the Jail promptly as he has done on 03.09.2016.

11. Be that as it may, it is apparent that by the impugned order the petitioner has been deprived of a right which had accrued to him to get extension of parole. We, therefore, find no hesitation in concluding that the impugned order suffers from illegality and is liable to be quashed and set aside as prayed for.

12. Hence the petition is allowed. The Rule is made absolute in terms of prayer Clause-B.

13. Since, Mr. Suniket A. Kulkarni, the learned counsel is appointed to prosecute the cause of the petitioner, he would be entitled for the fees, as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

(MANGESH S. PATIL, J.)

(S.S.SHINDE, J.)

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