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

CRIMINAL WRIT PETITION NO. 1042 OF 2017

Subhash Rupla Koli (through jail)
Convict No.3644, Age 62 years
Nashik road Central Prison,
Nashik .. Petitioner

Versus

1. The State of Maharashtra,
through the Secretary,
Home Department,
Mantralaya Mumbai

2. The Divisional Commissioner,
Nashik

3. The Superintendent of Police,
Dhule

4. The Superintendent,
Nashik Road Central Prison,
Nashik ..Respondents

Mr B.S. Dhawale, Advocate (appointed) for petitioner
Mr S.P. Sonpawale, A.P.P. for respondents

**CORAM : S.S. SHINDE AND
A.M. DHAVALE, JJ**

DATE : 20th December 2017

ORAL JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule made returnable forthwith. With the consent of parties, petition is taken up for final disposal at admission stage.

2. The petitioner, who is a jail inmate assails the order of refusal of parole to him passed by the Divisional Commissioner, Nashik dated 3.9.2016 and the order of the appellate Court dated 30.3.2017.

3. The petitioner was convicted under Sections 302, 147, 148 read with Sec.149 of Indian Penal Code for imprisonment for life and is in

Central Jail, Nashik road, Nashik. He has undergone imprisonment of fifteen years. Petitioner was released on parole for thirty days on 7.6.2016. He sought extension of thirty days, as the illness of his son continued and he was released on parole on 8.7.2016 for thirty days. On 16.7.2016, he applied for further extension of thirty days, as his son was suffering from renal calculi. His application was not decided till his first extension was over on 6.8.2016. He claimed that he under bona fide belief assumed that his second extension would be allowed, but it came to be rejected on 6.9.2016. It was rejected on the ground that no extension was permissible as per notification dated 26.8.2016. The petitioner preferred appeal on 30.3.2017 which came to be dismissed by the State by order dated 30.3.2017. The petitioner claims that Superintendent of Police, Dhule had submitted report of no objection for extension of parole leave. The medical certificate of his son was not considered. The notification dated 26.8.2016 was not applicable when his application was moved on 16.7.2016. He seeks quashing of orders dated 3.9.2016 and 30.3.2017 and directions to the respondents to sanction the second parole.

4. Heard learned Advocate Mr B.S. Dhawale, appointed for the petitioner and learned A.P.P. Mr Sonpawale for the State

5. Mr Dhawale argued the case as per the pleadings and relied on the judgment delivered by us in **Ahishrao Venkatrao Phad Vs. State, Criminal Writ Petition no.904 of 2017** decided on **14.9.2017.**

6. Learned A.P.P. argued that already 60 days parole was granted and there was no case made out for granting further extension. The order is passed after considering all the aspects and needs no interference.

7. The record shows that the petitioner produced medical certificate showing that his son Rangrao aged 39 years was suffering from Appendicitis from February 2016 and order of parole was passed by the Divisional Commissioner, Nashik on 24.5.2016 for thirty days. The petitioner was actually released on 7.6.2016. Then, he applied for extension of leave and produced certificate dated 14.6.2016 which shows that Rangrao was suffering from renal calculi and needed treatment from higher center. It seems that first extension of thirty days was granted from 8.7.2016 to 6.8.2016. The petitioner was expected to return on 7.8.2016.

8. It is not disputed that the application for second extension was moved on 16.7.2016 and thereafter, the notification dated 26.8.2016 curtailing the parole period was issued. In similar facts in **Manoj Parshuram Dhankar Vs. The State of Maharashtra - Criminal Writ Petition No.2872 of 2016 decided on 6.9.2016 (Smt.V.K. Tahilramani and Mrs Mridula Bhatkar, JJ)** it is held that “the provisions of amended Rules dated 1.12.2015 would be applicable w.e.f. From that date and the crucial date is the date of application.” We therefore, find that the application could not have been rejected on the ground that by virtue of notification dated 26.8.2016, the petitioner was not entitled for second extension. The order passed by

the Divisional Commissioner, Nashik dated 3.9.2016 shows that this is the only ground on which the second extension was rejected and the merits were not considered.

9. We do find that grant of parole leave can be only for genuine ground of illness of closed relatives and first and second extension can be in very serious cases. Whether there were such serious circumstances or not for grant of second extension is to be decided by the competent authority namely Divisional Commissioner, Nashik.. It is to his subjective satisfaction. We do not want to interfere with his discretion. The impugned order dated 3.9.2016 was also rejected by Deputy Secretary, Maharashtra State in which some more grounds are given. However, we find that here also the effect of notification dated 26.8.2016 is considered to hold that the petitioner was not entitled for second extension. We find that this is not a correct view and deserves to be set aside. However, it is necessary that the application should be reconsidered on its own merits by the Divisional Commissioner, Nashik. Hence, the order :

- ORDER -

(1) The Criminal Writ Petition is allowed. The impugned order of Divisional Commissioner, Nashik dated 3.9.2016 and the order dated 30.3.2017 passed by the Under Secretary, Home Department, Maharashtra State, Mumbai are set aside.

(2) The Divisional Commissioner, Nashik is directed to reconsider the application of the petitioner for second extension dated 16.7.2016

on its own merits, as expeditiously as possible, preferably within a period of two months from the receipt of the order.

(3) We appreciate the valuable assistance rendered by Mr B.S. Dhawale, appointed at State expenses. His fees is quantified at Rs.2,500/-.

(4) Rule is made absolute in above terms with no order as to costs.

(A.M. DHAVALE, J.) **(S.S. SHINDE, J.)**

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