

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1201 OF 2017

Shri Ashok s/o Shahdeo Shinde,
(Convict No. C-10732)

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai-32,
- 2) The Divisional Commissioner,
Nashik Road Central Prison,
Nashik, Dist-Nashik (Maharashtra)

...RESPONDENTS

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Mr. Shantanu A. Deshpande Advocate appointed
for Petitioner.

Mr. A.B. Girase, Public Prosecutor for
Respondent Nos.1 and 2.

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

DATE OF RESERVING JUDGMENT : 10TH OCTOBER, 2017.

DATE OF PRONOUNCING JUDGMENT: 13TH OCTOBER, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition takes exception to the order dated 8th March 2017 passed by the Divisional Commissioner, Nashik thereby rejecting the request of the Petitioner to release him on parole and the order dated 14th June, 2017 passed by the Additional Secretary, State of Maharashtra thereby rejecting the appeal filed by the Petitioner challenging the order passed by the Divisional Commissioner, Nashik.

3. It is the case of the Petitioner herein that he applied for furlough, however, by the impugned order dated 8th March, 2017, his application has been rejected. The appeal filed by the Petitioner has been rejected by order dated

14th June, 2017. In the impugned order passed by the appellate authority, it is observed that the medical certificate annexed by the Petitioner along with the appeal regarding the ailment of his mother was issued ten months back and the Petitioner has not placed on record the medical papers regarding the treatment given to his mother and the tests conducted during the intervening period. It is further mentioned in the order that as the appeal filed by the Petitioner challenging the conviction and sentence, is pending before the High Court, in view of the Notification dated 26th August, 2016 issued by the Home Department, State of Maharashtra, parole cannot be granted to the Petitioner.

4. There is no denial to the assertion of the Petitioner that the Petitioner was earlier released on furlough and reported back to the jail authorities after expiry of the furlough leave. Learned counsel for the Petitioner submits that

earlier when the Petitioner was released on parole/furlough, he did not misuse the liberty granted to him. Learned counsel further submitted that merely because appeal filed by the petitioner against conviction and sentence is pending, is no ground to deny him the furlough in view of the orders passed by the Division Bench of the Bombay High Court, Bench at Nagpur, in Criminal Writ Petition No.196 of 2017 and Criminal Writ Petition No.97 of 2017 [Arun s/o Gulab Gawli and another vs. D.I.G.(Prisons) (East) Nagpur and another], and Criminal Writ Petition No.462 of 2017 [Abdul Rajjak Sheikh Abdul Nabi Shah vs. Divisional Commissioner, Nagpur and others].

5. Learned Public Prosecutor, relying upon the affidavit-in-reply filed by Naib Tahsildar working in the office of the Divisional Commissioner, Nashik and also relevant rules, submits that the prayer of the Petitioner to release him on parole has been rightly turned down

by the Respondent authority. He further invites our attention to the reasons assigned by the Respondent authority while rejecting the application of the Petitioner to release him on furlough leave.

6. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner and learned Public Prosecutor appearing for the State. Upon careful perusal of the impugned order passed by the appellate authority, it is mentioned that the medical certificate annexed by the Petitioner along with the appeal regarding the ailment of his mother is issued ten months back and the Petitioner has not placed on record the medical papers regarding the treatment given to his mother and the tests conducted during the intervening period. It is further mentioned in the impugned order that as the appeal filed by the Petitioner challenging the conviction and sentence, is pending before the

High Court, in view of the Notification dated 26th August, 2016 issued by the Home Department, State of Maharashtra, parole cannot be granted to the Petitioner.

7. So far as the first ground is concerned, the Petitioner can be asked to submit latest medical certificate/report in respect of ailment of his mother along with the reports of the test conducted, if any. So far as the ground of pendency of the appeal filed by the Petitioner against conviction and sentence is concerned, the said ground stated in the impugned order is not sustainable. Merely because appeal filed by the Petitioner challenging his conviction and sentence is pending before the High Court is no ground to deny him the parole/furlough in view of the orders passed by the Division Bench of the Bombay High Court, Bench at Nagpur, in Criminal Writ Petition No.196 of 2017 and Criminal Writ Petition No.97 of 2017 [Arun s/o Gulab Gawli and another vs. D.I.G.

(Prisons) (East) Nagpur and another], and Criminal Writ Petition No.462 of 2017 [Abdul Rajjak Sheikh Abdul Nabi Shah vs. Divisional Commissioner, Nagpur and others].

8. In the light of above, impugned orders are quashed and set aside. The Petitioner to file fresh application with Respondent authorities, accompanied with latest medical certificate/report in respect of ailment of his mother. Upon filing such application, we direct the Respondent authorities to decide the same as expeditiously as possible, however within TWO WEEKS from the date of filing such application, without raising the same objections/grounds, which have been raised in the impugned orders.

9. Rule made absolute in above terms. The Writ Petitions stands disposed of, accordingly.

10. We appreciate the sincere efforts taken

by learned counsel Mr. Shantanu A. Deshpande in promptly preparing the memo of the Petition, filing the same within time and extending able assistance during the course of hearing of the Petition so as to reach to the correct conclusion. Since, Mr. Shantanu A. Deshpande, 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.

[MANGESH S. PATIL, J.]

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[S.S. SHINDE, J.]