

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

CRIMINAL WRIT PETITION NO. 1233 OF 2017

Siddhu @ Siddhodhan Vajjnath Vaywale
Age 29, Occ-Prisoner
R/o Central Prison, Nasik
Tq. & Dist.Nashik.

... PETITIONER

VERSUS

- 1] The State of Maharashtra
through Secretary, Home Department
Mantralaya, Mumbai.
- 2] The Divisional Commissioner
(Nasik Division Nasik).
- 3] The Superintendent of Prison,
Central Prison, Nasik
(Copy to be served on Public Prosecutor
High Court Bench at Aurangabad)

.. RESPONDENTS

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Adv.Firdose Shaikh (Appointed) for petitioner
Mr.M.M.Nerlikar,APP for respondent State.

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

DATE : 06/10/2017

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

Learned APP has instructions to appear for all the respondents. Hence service is complete.

2] Rule. Rule made returnable forthwith. Heard finally with consent of the counsel appearing for the parties.

3] The petitioner is undergoing imprisonment for the offences punishable under Sections 302 read with 149 of the Indian Penal Code in the Central Jail at Nasik, Nasik Road. He applied for parole to the Deputy Inspector General (Prisons), Nasik on 21/4/2017. After the receipt of application, respondent no.2 has rejected the application filed by the applicant on 13/4/2017.

4] Being aggrieved by the order passed by the Divisional Commissioner, Nasik Division, Nasik, this Writ Petition is filed under Article 226 of the Constitution of India by the petitioner.

5] Learned counsel appearing for the petitioner invites our attention to the reasons assigned in the impugned order and submits that for unsustainable reasons, application of the petitioner to release him on parole has been rejected. It is submitted that one Mr.Santosh Madhav Dhutraj who was co-accused in Crime No.210/10 has absconded from the jail and therefore, the application filed by the petitioner for parole has been rejected. It is submitted that even respondent no.2-authority did not wait for the receipt of the police report and hurriedly proceeded to reject the application of the petitioner. It is submitted that when the petitioner was released on parole on earlier occasions, he reported back on completion of parole period to the jail authorities. Learned counsel appearing for the petitioner in support of her contention that when the application is filed for parole on the ground of ailment of the close relative i.e. father, mother etc. such application deserves to be favourably considered, has placed reliance on the reported judgment of the Bombay High Court Bench at Goa in the case of Miss Komal Singh

and another V/s Inspector General, Prisons reported in 2014 All MR (Cri) 2165 and in particular paragraphs 9 to 13 thereof

6] On the other hand, learned APP appearing for the State relying upon the reasons assigned in the impugned order and also instructions received from the competent authority, submits that since application of the petitioner for parole was not favourably recommended by the Superintendent of Nasik jail and also co-accused has been absconding and therefore, the application of the petitioner for parole has rightly been turned down by the respondent no.2.

7] We have considered the submissions of the counsel appearing for the petitioner and learned APP appearing for the State. We have carefully gone through the grounds taken in the Petition and also the reasons assigned by respondent no.2 in the impugned order. Contention of the counsel appearing for the petitioner that when the petitioner was earlier released on parole, he reported back within time, has not been disputed by the learned APP. Merely because co-accused viz. Santosh Madhav Dhutraj has absconded, cannot be a ground to reject the application of the petitioner for parole. The respondent no.2 ought to have kept in view the record of the petitioner. It appears that even respondent no.2 did not wait till the report from the S.D.P.O. Vasmat is received. Therefore, for more than one reasons, the impugned order is not sustainable. Hence the impugned order is quashed and set aside.

8] We grant liberty to the petitioner to apply afresh. Upon filing such application accompanied with fresh medical certificate, the respondent 2 to decide such application as expeditiously as possible, however, within two weeks from filing such application on the basis of

police report already received on 4/5/2017, and communicate the said decision to the petitioner.

8] Writ Petition stands disposed of. Rule made absolute in above terms.

9] We appreciate the sincere efforts taken by Advocate Firdose Shaikh appointed to represent the cause of the petitioner, in properly preparing Memo of the Petition and filing the same within time, and also extending the able assistance during the course of hearing of this Writ Petition. Since Ms.Firdose Shaikh, Advocate is appointed to represent the cause of petitioner, her fees be paid as per the Schedule of Fees mentioned by the High Court Legal Services Sub Committee, Aurangabad.

(MANGESH S. PATIL,J.)

(S.S.SHINDE,J.)

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