

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

CRIMINAL WRIT PETITION NO. 1234 OF 2017

Mohammad Istaq @ Bablu
Mahammad Yakub Patel, (C-10102)
Age 24, Occ-Nil,
R/o Village Gujri, Tq. Biloli, Dist. Nanded
At present : Central Prison, Nashik Road,
Nashik.

... PETITIONER

VERSUS

- 1] The State of Maharashtra
through its Secretary, Home Department
Mantralaya, Mumbai – 400 032.
- 2] The Divisional Commissioner of Nashik.
- 3] The Deputy Inspector General of Prisons,
Aurangabad Division, District Aurangabad.
- 4] The Superintendent of Central Prison,
Nashik Road, Nashik.

.. RESPONDENTS

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Adv.Mr.D.P.Sathe (Appointed) for petitioner
Mr.V.M.Kagne, 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.]

Rule. Rule made returnable forthwith. Heard finally with

consent of the counsel appearing for the parties.

2] This Writ Petition under Article 226 of the Constitution of India takes exception to the impugned order dated 5/12/2016 passed by respondent no.2.

3] Learned counsel appearing for the petitioner invited our attention to the fact that the petitioner applied for emergency parole invoking Rule 19 (1) of the Maharashtra Prison (Mumbai Furlough and Parole) (Amendment) Rules 2016, as amended by issuing Notification on 26/8/2016 by Home Department, Government of Maharashtra, and submits that the Notification dated 26/8/2016, of which reference has been made in the impugned order, is not applicable to the petitioner's case inasmuch as the petitioner filed the application on 4/4/2016 and that too for seeking emergency parole. In short, submission is that for emergency parole, irrespective of conviction under any particular offence, of which reference has been made in the said notification thereby keeping restrain over release on furlough/parole, emergency parole can be granted, keeping in view the provision of Rules 19 (1) of aforementioned Rules.

4] On the other hand, learned APP appearing for the State on instructions fairly states that the Notification dated 26/8/2016, on which reliance has been placed in the impugned order by respondent no.2, is not applicable in the case of the petitioner inasmuch as the petitioner filed the application to release him on emergency parole, prior to the issuance of aforesaid Notification on 4/6/2016.

5] We have given anxious consideration to the submissions of the counsel appearing for the petitioner and learned APP appearing for the respondent State. We have carefully perused the impugned

order. It appears that respondent no.2 relied upon the Notification dated 26/8/2016 issued by Home Department, Government of Maharashtra, and rejected application of the petitioner on the ground that, he is convicted for the offence punishable u/s 376 of IPC and also Sections 5 and 6 of the Prevention of Children from Sexual Offences Act 2012 (for short POCSO Act). In the first place, said Notification would not have been applied in the case of the petitioner since petitioner filed application prior to issuance of said Notification. The Division Bench at Principal Seat in the case of Suahsh Hiranman Bhosle V/s State of Maharashtra and another reported in 2015 (1) Mh.L.J. (Cri) 664 has taken a view that the policy/guidelines/rules in force on the date of filing the application would govern the adjudication of application for parole or furlough as the case may be.

6] In the present case, since the petitioner applied for emergency parole and not for releasing him on regular furlough/parole, in our opinion, merely because the petitioner is convicted for the offence punishable under Sections 5 and 6 of the POCSO Act, is no ground to reject his application for emergency parole. In that view of the matter, the impugned order is quashed and set aside. The petitioner is granted liberty to file application afresh accompanied with fresh medical certificate/report, in respect of illness of his mother. In case such application. with medical certificate/report is filed, the respondent no.2 to decide the said application as expeditiously as possible, however, within two weeks from filing such application, Needless to observe that, since we have granted liberty to the petitioner to apply for emergency parole, the respondent no.2 shall not reject his application for emergency parole relying upon the aforementioned Notification dated 26/8/2016.

7] Writ Petition is disposed of on above terms. Rule made

absolute in above terms.

8] We appreciate the sincere efforts taken by Advocate Mr.D.A.Sathe, appointed to represent the cause of the petitioner. Since Mr.D.A.Sathe, Advocate is appointed to represent the cause of petitioner, his 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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