

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

CRIMINAL WRIT PETITION NO.1397 OF 2017

Baburao Marotrao Dakhore,
Age – 53 years, convicted for 10 years
of imprisonment and from last 2 years
and 7 months undergoing the
Sentence – Convict No.C9960,
Nashik Road Central Prison, Nashik. ... **Petitioner**

Versus

1. The State of Maharashtra
Through Ministry of Home Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Nashik Road Central Prison,
Nashik.
3. The Superintendent,
Nashik Road Central Prison,
Nashik. ... **Respondents**

...
Mr. Nikhil Jaiswal, Advocate for Petitioner (Appointed)
Mr. A.R.Kale, APP for Respondents - State
...

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

**RESERVED ON : 31st October, 2017
PRONOUNCED ON : 03rd November, 2017**

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

Rule. The Rule is made returnable forthwith. Heard finally by consent of learned advocate for the petitioner and the learned APP.

2. Being aggrieved by the rejection of emergency parole under Rule 19(1) of the Prisons (Bombay Furlough and Parole) Rules, 1959, (herein after the 'Rules'), the petitioner has preferred this Writ Petition.

3. The petitioner having been convicted for the offences punishable under Section 376(2)(H)(I)(N) of the Indian Penal Code as well as for the offence punishable under Section 4 read with Section 3 of the Protection of Children from Sexual Offences Act by the Learned Sessions Court, Hingoli, is suffering imprisonment for a period of 10 years and fine of Rs.25,000/- in default to suffer further R.I. for one year. He is in jail since 29.04.2015.

4. Unfortunately his father died on 17.07.2016 and therefore, he applied for emergency parole as well as regular parole under the provisions of the Rules. Respondent No.3 rejected the application and the appeal preferred before Respondent No.2 has also been dismissed on 18.04.2017 on the ground that by virtue of Government Notification dated 26.08.2016 amending various provisions of the Rules, since the petitioner is suffering sentence for sexual offence against child he is not entitled to parole.

5. According to the learned Advocate for the petitioner, this amendment in the Rules exclusively relates to the provisions which are applicable to furlough, whereas the petitioner has been seeking a parole and his case is not covered by it. Infact the Respondents have not decided the petitioner's application promptly and thereby committed gross impropriety.

6. The learned APP submitted that not only Rule 4

has been amended, which is applicable to furlough, simultaneously Rule 19, which is applicable to parole has also been extensively amended and therefore, it cannot be said that the amendments carried out in these Rules in the year 2016 are not applicable to the petitioner's case. Since by virtue of such amendment, the prisoners involved in sexual offences against minor are not entitled to a furlough, the petitioner is not entitled to be released on parole as well in view of the amended Sub Rule 2 of Rule 19.

7. We have perused the papers and the impugned order. There is no dispute about the fact that the petitioner is suffering imprisonment inter alia for an offence punishable under Section 4 read with Section 3 of the POCSO Act. Therefore, the only question is as to whether such a prisoner is entitled to be released on parole.

8. In order to appreciate the controversy, it is necessary to note amended Rule 4 and particularly the

relevant provision :

Rule 4 :- When prisoners shall not be granted furlough -

The following categories of prisoners shall not be considered for release on furlough :-

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9)
- (10)
- (11)
- (12)
- (13)
- (14)
- (15)
- (16)
- (17)
- (18) Those involved in sexual offences against minor and human trafficking.

Rule 19 :- When a prisoner may be released on parole.

- (1) **Emergency Parole.-**
- (A) All convicted prisoners may be eligible for emergency parole for following reasons -
 - (a) Death of parental grandfather or grandmother/father/mother/spouse/son/daughter/brother/sister ;
 - (b)
 - (c)
- (B)

- (2) **Regular Parole.-**
- All Prisoners eligible for furlough shall be eligible for regular parole.
- (A)
- (B)
- (C)

9. It is to be borne in mind that this amendment has come into effect on 26.08.2016. Since the application

for release on parole was moved after coming into force of such amendment the petitioner's case would certainly be governed by the amended provisions.

10. As is clear from the wording of Sub Rule 1 of Rule 19, all convicted prisoners are eligible for emergency parole for the reasons mentioned therein like death or illness of parents, for marriage of son, daughter, brother, sister etc. Whereas, regular parole under Sub Rule 2 of Rule 19 declares that all prisoners eligible for furlough shall be eligible for regular parole and the subsequent clauses regulate the provisions relating to the regular parole. It is thus, apparent that all convicted persons are entitled to emergency parole. However, for being entitled to regular parole, the prisoner must be entitled to a furlough. It is, therefore, a pre-requisite for release of a prisoner on regular parole that he should be entitled to a furlough under Rule 4. Therefore, the submission of the learned Advocate for the petitioner that the amended rules only govern grant of furlough and does not regulate parole is incorrect.

11. Coming to the facts of case in hand, admittedly the petitioner has been convicted for sexual offence against minor punishable under the POCSO Act. Therefore, by virtue of the amended clause 18 of Rule 4, the petitioner is not entitled to a furlough and consequently he is also not entitled to a regular parole. However, he was entitled to an emergency parole under the amended Rules (supra) which is available to all convicts irrespective of the fact as to whether he is entitled to a furlough or otherwise.

12. It is necessary to note that the petitioner's father has died on 17.07.2016 as is apparent from the death certificate annexed with the petition and consequently, the element of emergency required for considering entitlement to parole has been lost due to passage of time. It would now be only academic to consider, if the petitioner could have been released on emergency parole when he had applied first after demise of his father. Be that as it may, the fact remains that as on today this

ground is not available to consider the request of the petitioner to be released on emergency parole and the impugned orders in the peculiar facts and the circumstances cannot be faulted with.

13. We appreciate the sincere efforts taken by the Advocate Mr. Nikhil Jaiswal, who promptly prepared the petition and rendered able assistance during the course of the hearing of the petition. Since Mr. Nikhil Jaiswal, 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.

14. In the circumstances, the petition is liable to be dismissed. The petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.) (S.S.SHINDE, J.)

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vmk/-