

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

CRIMINAL WRIT PETITION 1419 OF 2017

Santoshkumar Satish Bhushan Bariyar
Age:40 Years, Occ.: Nil
R/o District Open Jail, Paithan
Taluka-Paithan,
District-Aurangabad.

PETITIONER

Versus

- 1] The State of Maharashtra,
Through Secretary
Home Department
Mantralaya, Mumbai-32
- 2] Additional Director General of Police
And Inspector General of Prisons
Maharashtra State,
Pune
- 3] The Divisional Commissioner
Aurangabad Divisional
Auragnabad.
- 4] Superintendent,
Paithan District Open Jail
Paithan, Taluka-Paithan,
District-Aurangabad.

RESPONDENTS

[Respondent Nos.1 to 4 copies
to be served on Public Prosecutor
High Court of Judicature of Bombay
Bench at Aurangabad.]

Mrs.R.P.Gour h/f Ameya N. Sabnis, Advocate for Petitioner
Mrs.V.N.Patil Jadhav, AGP for Respondents

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

DATE : 12/10/2017

ORAL JUDGMENT (PER S.S.SHINDE,J.) :

1] Rule. Rule is made returnable forthwith. Heard finally with the consent of parties.

2] This Petition takes exception to the order dated 28/11/2016 passed by the Divisional Commissioner and also the order dated 17/2/2017 passed by respondent no.1 thereby rejecting the application of the petitioner for grant of parole.

3] Learned counsel appearing for the petitioner invites our attention to the pleadings in the petition, grounds taken therein and also reasons assigned in the impugned order, and submits that the reasons assigned in the impugned order are not sustainable, in view of the fact that the petitioner, when he was released earlier on furlough five times and two times on parole, promptly and within time reported back to the jail authorities. He did not misuse the liberty granted to him. It is further submitted that, merely because the petitioner is convict for the offence punishable under Sections 302, 364-A read with Section 120-B of IPC, is no ground to reject his application to release him on furlough relying upon the Notification dated 26/8/2016 issued by the Home Department, Government of

Maharashtra, thereby bringing amendment to the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959. It is further submitted that in view of the recent judgment of the Supreme Court in the case of Asfaq V/s State of Rajasthan and others in Civil Appeal No.10464/2017 decided on 11/9/2017, and in particular observations made by the Supreme Court in Paragraphs no. 20 and 21 of the said judgment, the application of the petitioner with prayer to release him on furlough ought to have been favourably considered. It is submitted that the very object and purpose of granting furlough/parole would get defeated and frustrated, if the aforementioned Notification is allowed to continue and operate. Therefore, learned counsel appearing for the petitioner submits that Petition deserves to be allowed.

4] On the other hand, learned APP appearing for the State relies upon judgment of the Division Bench in the case of Sharad Devaram Shelake V/s State of Maharashtra reported in 2016(4) Mh.L.J.228 and submits that in the said case, there was challenge to the aforementioned Notification, and said challenge has been turned down by the Division Bench (Coram : Smt.V.K.Tahilramani and Smt.Anuja Prabhudesai,JJ.) at principal seat. It is submitted that since the grounds taken in this Petition and issues raised are no longer res-integra and answered by authoritative pronouncements of the Bombay High Court at Principal Seat , in the case of Sharad Devaram Shelake (supra), therefore, the Petition deserves no consideration.

5] We have given anxious consideration to the submissions of the counsel appearing for the petitioner and learned APP appearing for

the State. With their able assistance, perused the pleadings in the Petition, grounds taken therein, Annexures thereto and also the judgment of the Division Bench at principal seat in the case of Sharad Shelake (supra) and also of the Supreme Court in the case of Asfaq (supra). Upon perusal of the order passed by respondent no.2, which was confirmed by respondent no.3, it appears that the application of the petitioner, placing reliance upon aforementioned Notification dated 26/8/2016 was wrongly rejected by the respondent authorities. Admittedly, the petitioner is convict for the offence punishable under Section 364-A of IPC, and upon careful perusal of the aforementioned Notification, it is clearly mentioned that, if the convict is convicted for the offence punishable under certain offences which are mentioned in the said Notification, such convicts would not be entitled to be released on furlough or parole as the case may be. It is true that application filed by the petitioner was prior to coming into force the aforementioned Notification. Respondent no.3 and also respondent no.1 while passing the impugned orders have not kept in view that the petitioners application was pending for a considerable period. Respondent no.1 has confirmed order passed by respondent no.2 and in addition to reasons assigned by respondent no.3 in the impugned order, it is observed that the medical certificate produced by petitioner is dated 23/3/2016 and therefore, the prayer of the petitioner to release him on furlough on the ground of ailment of his mother cannot be favourably considered.

6] Upon careful perusal of the copies of documents placed on record and in particular, copy of the application addressed to the Divisional Commissioner, Aurangabad Division, Aurangabad by the petitioner on 22/2/2016, it is abundantly clear that the Notification

on which reliance has been placed by respondent no.3 and respondent no.1 in the impugned order so as to reject the application filed by the petitioner to release him on furlough came into force w.e.f. 26/8/2016. When the petitioner applied on 22/2/2016, the said notification was not in force. The Division Bench of this Court in the case of Subhash Hiralal Bhosale V/s State of Maharashtra and others reported in 2015 (1) Mh.L.J.(Cri) 664 has held that the relevant date is the date of application for furlough and not the date of conviction. Keeping in view the law laid down in the case of Subhash Bhosale, the application filed by petitioner on 22/2/2016 ought to have been decided in the light of relevant policy/rules which were in force on the date of filing said application. In short, the Notification dated 26/8/2016 of which reference has been made hereinabove should not have been applied in the case of the petitioner keeping in view the date of application.

7] In this view of the matter, in our opinion, ends of justice would be met in case respondent no.3 is directed to reconsider the prayer of the petitioner to release him on parole keeping in view the date of application i.e. 22/2/2016 filed by the petitioner, ignoring the Notification issued by the Home Department, Government of Maharashtra on 26/8/2016.

8] So far additional reasons assigned by the respondent no.1 in the impugned order that the medical certificate about the illness of his mother is concerned, the petitioner would be at liberty to file fresh certificate/medical report about the illness suffered by the mother of the petitioner with the respondent no.3 authority. The respondent no.3 to take into consideration medical certificate dated 12/5/2017

issued by Dr.Jaykant and in addition to it, the liberty to the petitioner to place on record fresh medical certificate, fresh medical report in respect of health condition of the petitioner's mother. Such exercise has to be done by the petitioner within three weeks from today. In the light of above, impugned orders are quashed and set aside. Respondent no.3 is directed to reconsider the prayer of the petitioner to release him on furlough keeping in view the contents of the application filed by the petitioner on 22/2/2016 (Exh.D page 20) and decide the same in the light of the policy/rules prevailing on 22/2/2016 and take decision by ignoring subsequent Notification dated 26/8/2016, as expeditiously as possible, however, within two weeks from filing fresh medical certificate/medical report by the petitioner.

9] With the above observations, Petition is partly allowed. Rule made absolute in above terms. Petition stands disposed of accordingly.

(MANGESH S. PATIL,J.)

(S.S.SHINDE ,J.)

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