

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL APPLICATION (MAIN) NO.37 OF
2017.

Jayesh Gurdas Naik, major of age,
House No.62, Cota, Balli, Quepem,
Goa, (currently lodged in custody at
the Central Jail, Colvale, though his
next friend Rashmi Rajan Naik, major
House No.24, Cotto Fatorpa, Fatorpa,
Goa.

..... Petitioner.

Versus

Inspector General, Prisons,
Inspectorate General of Prisons,
Government of Goa, 1st Floor, Old
Education Building, 18th June Road,
Panaji, Goa.

..... Respondent.

Shri R. Menezes, Advocate for the petitioner.

Shri S. R. Rivankar, Public Prosecutor for the respondent.

Coram:-F. M. REIS,
NUTAN D. SARDESSAI, JJ.

Date:-30th January, 2017.

ORAL JUDGMENT (Per Nutan D. Sardesai, J)

Heard Shri R. Menezes, learned Advocate for the
petitioner and Shri S. R. Rivankar, learned Public Prosecutor
for the respondent.

2. Rule.

3. Heard forthwith with the consent of the learned Counsel appearing for the parties.

4. The learned Public Prosecutor waives notice on behalf of the respondent.

5. Shri R. Menezes, learned Advocate for the petitioner has contended that the petitioner has made out a sufficient cause within the meaning of Rule 324 of the Goa Prisons Act, 2006 for his release on parole and therefore he had to be secured with the relief of quashing and setting aside the order passed by the respondent and direct that his application for release stands granted as prayed for. It was his contention further that he had applied for his release on parole for 30 days on the ground of his daughter's illness to enable him to attend on her and which was accompanied by the medical certificate. She was diagnosed with pneumonia with lower respiratory tract infection and was advised a month's rest and care by a loved one. His children being an ailing daughter and

a son were being cared for by his sister who lived with her mother in law, being a senior citizen and faced constraints in attending to an ailing child to the degree required in the case. The applicant had therefore to be released on parole to ensure that his ailing daughter got all the love and care she needed relieving his sister of the burden to meet the need thereof, at least for some time. Shri S. R. Rivankar, learned Public Prosecutor for the respondent fairly conceded to the grant of parole and as the ground on which it was rejected was not a valid one to do so.

6. Shri R. Menezes, learned Advocate for the petitioner relied in **Ms. Komal Singh Vs. Inspector General, Prisons, (2014 ALL MR (cri) 2165)** and in **Mrs. Cecilia Fernandes and another Vs. Inspector General, Prisons and another (Criminal Writ Petition No.8/2017)** to which one of us (Nutan. D. Sardessai, J) was a party to substantiate his case that his case qualified as an emergent one entitling him to the benefit of parole.

7. In **Komal Singh**(supra), a learned Single Judge of this Court had considered Rule 324 of the Goa Prisons Rules,

2006 which reads thus:-

“When parole to be granted:- Parole may be granted to a prisoner in the event of emergent situations like death or serious illness of father, mother, brother, sister, spouse and children and also marriage of brother, sister and children or any other sufficient cause.”

The amendment thereto in 2008 and particularly Sub Rule (2) of the Goa Prisons Rules, 2006 provides that parole can be granted for any other sufficient cause and is not limited to the marriage of the brother, sister and children which were earlier the emergent situations contemplated in Rule 324 of the Goa Prisons Rules, 2006 apart from the death or serious illness and held that as per the said amended Rule, parole can be granted to a prisoner inter alia for any sufficient cause and marriage of the relative mentioned therein. Further the provision does not specifically state that the emergent situation like serious illness is not one likely to result in death.

The learned Judge held at para 11 thus:-

“Thus, it is evident that emergent situation which is mentioned in Rule 324 of the Prison Rules does not mean that the sickness should be so serious as to be likely to cause death. In the present matter, admittedly the petitioner no.1 has undergone a major surgery for compound fracture of left leg and has been

advised to take complete bed rest at least for 45 days as from 10/02/2014 and she requires an attendant to take care of her. The petitioner no.2, the mother of the petitioner no.1 has stated on oath that on account of her age and physical constraints, she is not in a position to provide assistance, attendance or care that shall be required by the petitioner no.1, more particularly to take her to Goa Medical college Hospital for follow up treatment. Male person would be the best attendant, in such circumstances. It is pertinent to note that the Superintendent of Police, North Goa had reported to the respondent that the petitioner no.1 has sustained fracture injury to her leg due to the motor vehicle accident and there is no other male person to look after her and that the convict person was of a great help to take her for regular treatment at Goa Medical College and Hospital, Bambolim. The respondent has not given a single reason as to why the said report of the Superintendent of Police North Goa has not been considered."

8. In **Cecilia Fernandes** (supra), this Court had held that the expression "for any other sufficient cause" would take within its sweep the marriage of the prisoner to order his release on parole. Beside, the expression in Rule 324 is illustrative and not exhaustive while allowing the application

and directing the respondent to examine his request for parole in the light of the observations recorded in the order.

9. The petitioner had otherwise relied upon the medical certificate from which it is apparent that although the minor daughter of the prisoner had suffered from acute pneumonia with lower respiratory tract infection as early as November, 2016, she was nonetheless advised rest and treatment and care by a loved one for the recovery of her health to normalcy. The respondent had primarily considered the fact that the police report revealed that the minor daughter of the petitioner though sick was going to school everyday and in that background found that the requirement of Rule 324 of the Goa Prisoners Rules was not attracted and therefore did not find any emergent situation to release him on parole. The medical certificate produced on record amply demonstrates that though she was suffering from acute pneumonia with lower respiratory tract infection, she was nonetheless advised proper care and attention apart from rest by a loved one for the recovery of her health to normalcy.

10. There was no serious dispute at the instance of the

Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State that the petitioner was in custody for more than three years and that he was not enlarged on parole since then. We find on a consideration of the aspect of the matter in its proper perspective including the medical record that the impugned order is vitiated inasmuch as the respondent had taken a restricted/constructed view of the police report and denied the benefit of parole to the petitioner. We therefore, set aside the impugned order with a direction to the respondent to consider his application for parole in the light of the observations made herein above and in any event within two weeks from the date of the receipt of this Order.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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