

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.71 OF 2017

Fatima Fernandes (Prisoner No.03/13)
major of age, currently lodged at the Sub jail Sada
at Vasco, Goa. ... Petitioners

Versus

1. State of Goa
Through The Chief Secretary of Home Dept.
Alto, Porvorim, Bardez- Goa.
2. The Inspector General of Prisons
Collectorate, North Goa,
Panaji, Goa.
3. The Superintendent of Prisons,
Sub Jail Sada Vasco. ... Respondents.

Shri A. Gaokar, Advocate for the petitioner.

Shri P. Faldessai, Additional Public Prosecutor for the respondents.

**CORAM : F. M. REIS &
NUTAN D. SARDESSAI, JJ**

DATE : 25th April, 2017.

ORAL JUDGMENT : (Per NUTAN D. SARDESSAI, J.)

Heard Shri A. Gaokar, learned Advocate for the petitioner
and Shri P. Faldessai, learned Additional Public Prosecutor for
the respondents.

2. Rule.

3. Heard forthwith with the consent of the learned Advocate appearing for the respective parties. Shri P. Faldessai, learned Additional Public Prosecutor waives service on behalf of the respondents.

4. It was the case of the petitioner that she was undergoing life imprisonment for committing the offence punishable under Section 302 I.P.C. upon being convicted by the Additional Sessions Judge vide the order dated 09/03/2013 and the appeal preferred by her before this Court was admitted and pending for final disposal. She had applied for parole for 30 days on account of the sickness of her sister who was currently suffering from hypertension, depression and advised rest. The petitioner had care and compassion for her sister and in those circumstances had applied for her release on parole. The respondent no.2 by the order dated 09/12/2016 had rejected her application for parole on the ground that the enquiry was conducted by the Superintendent of Police, North and reported that she had been convicted in a murder case and there was every possibility of threatening and causing harm to the witnesses in case she was released on parole.

Her application for parole had been rejected without proper inquiry and total non-application of mind without verifying her past conduct and in an arbitrary fashion. She had been earlier granted furlough to visit her sister during which time she had neither violated the terms and conditions of the order nor played any mischief during the period of her release. Once again she was released on 30 days parole on 07/04/2016 and when again she had not violated any of the terms nor played any mischief or threatened or caused harm to witnesses or had caused nuisance or terror in the locality. She was constrained to file this petition to quash and set aside the order and as it was harsh apart from being being unjust, arbitrary, erroneous and contrary to law and the material on record.

5. Shri A. Gaokar, learned Advocate under the Legal Aid Scheme came to be heard on behalf of the petitioner who submitted that it was not a ground for rejection and when her earlier application for parole/furlough had been granted. Shri Faldessai, learned Additional Public Prosecutor for the respondents in fairness conceded that her request could be granted considering her background that she had earlier not

violated the terms of her release on furlough/parole.

6. We have heard Shri A. Gaokar, learned Advocate for the petitioner and Shri P. Faldessai, learned Additional Public Prosecutor for the respondents and besides perused the impugned order passed by the respondent no.2. It was contended by Shri Gaokar, learned Advocate for the petitioner in the course of his arguments that the application was moved by her in the last month seeking the same relief which he would withdraw as the present petition was being considered by this Court. We have examined the impugned order and the submissions of both the Advocate for the petitioner and learned Additional Public Prosecutor for the respondent- State. We, therefore, direct the respondent no.2 to consider her application within three weeks for her release on parole considering her past conduct and that she had been earlier released on furlough/ parole and in any event restricting the bond amount to ₹10,000/-. In the result, the petition is disposed off with the directions as before to the respondent no.2.

7. In the result, we pass following

ORDER

- i) The petition is disposed off accordingly with no order as to costs.
- ii) Rule is made absolute accordingly.

NUTAN D. SARDESSAI,J.

F. M. REIS,J.

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