

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3223 OF 2017**

Shri. Sujit Vitthal Sutar]
Aged 36 years Occ: Business]
Resident of Sutar Tower, Sector 20,]
Plot No.511, Airoli, Navi Mumbai]
At present Undergoing the sentence]
imposed upon him at Nasik Road]
Central Prison].. Petitioner

Vs.

1. The Commissioner of Police]
Navi Mumbai, Dist. Thane]
]]
2. The Dy. Inspector General of]
Prisons, Central Region,]
Aurangabad]
]]
3. Superintendent of Prison,]
Nashik Road Central Prison,]
Nashik]
]]
4. The State of Maharashtra].. Respondents

....
Mr. Rahul Arote Advocate for the Petitioner
Mr. Arfan Sait A.P.P. for the State
....

**CORAM : SMT.V.K.TAHILRAMANI AND
SHRI.M.S.KARNIK, JJ.
DATED : OCTOBER 05, 2017**

ORAL JUDGMENT [PER SMT. V.K.TAHILRAMANI, J.]:

1 Heard both sides.

2 The petitioner preferred an application for parole on 16.5.2016 on the ground of illness of his mother. The said application was rejected by order dated 20.3.2017. Being aggrieved thereby, the petitioner preferred an appeal. The appeal was dismissed by order dated 30.6.2017, hence, this petition.

3 It is stated that when the petitioner was released on furlough, he reported back on 13.12.2016, hence, as per Notification dated 26.8.2016, unless and until the period of six months has elapsed from the date when the prisoner has surrendered back to the prison, parole cannot be granted.

4 As stated earlier, on 13.12.2016 the petitioner surrendered back to the prison after he was released on furlough and he preferred his application for parole on 16.4.2016, however, it is noticed that the order dismissing the appeal preferred by the petitioner is based on entirely different grounds. The appellate order states that the medical certificate of the mother is more than 11 months old, hence, it was not possible to know the present stage of health and the seriousness of her illness. In addition, it is stated that when the petitioner was released on furlough in the year 2016, he

was arrested and brought back to the prison by the police 24 days earlier to the day when the petitioner was due to surrender as he had not followed the condition of reporting to the police station. As far as this ground is concerned, the learned counsel for the petitioner submitted that in fact, the petitioner was ill and the petitioner was admitted in the hospital, hence, it was not possible for him to report to the police station. The learned counsel for the petitioner submitted that as the petitioner did not report to the police station as per the conditions on which he was released on furlough, he was arrested by the police and brought back to the prison. He further submitted that it was not possible for the petitioner to report to the police station as the petitioner was ill and was admitted in the hospital and he had relied on medical certificate to support his contention. The medical certificate issued by a Govt. Hospital does support the case of the petitioner.

5 As stated earlier, the order of rejection and appellate order are on entirely different grounds. The orders are not in consonance with each other. Looking to the fact that it is the case of the petitioner that he was admitted in hospital and

hence, he could not report to the police station as per the condition imposed on him when he was released on furlough, we are of the opinion that both the orders deserve to be set aside. Hence, both the orders are set aside. The petitioner is permitted to submit a fresh medical certificate of his mother so also, his medical certificate and medical papers to support his contention that he was admitted in the hospital and therefore, he could not report to the police station. The authorities to take into consideration all the facts including the latest medical certificate of the mother of the petitioner and the fact that the petitioner could not attend the police station as he was ill and he was admitted in the hospital and after taking into consideration all these facts, the authorities to decide the application of the petitioner for parole afresh within a period of six weeks from the date of receipt of the fresh medical certificate.

6 In view of the above, petition is allowed and is disposed of accordingly. Rule is made absolute in above terms.

[M.S.KARNIK, J.]

[SMT.V.K.TAHILRAMANI, J.]