

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4613 OF 2017

Kamal Sundardas Bathija .. Petitioner

Vs.

The Chief Secretary, State of Mah.
Mantralaya, Mumbai and Ors. .. Respondents

....

Mr. Subhash Jha Advocate along with Ms. Sanjana Pardeshi, Mr. Siddhant Jha and Ms. Ankita Pawar i/b Law Global for Petitioner

Mr. Deepak Thakare Public Prosecutor along with Mr. Arfan Sait A.P.P. for Respondent Nos. 1 to 5 and 7.

Mr. N.N. Gawankar along with Mr. Manas N. Gawankar i/b Mr. V.H. Narvekar Advocate for Respondent No.6

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**CORAM : SMT.V.K.TAHILRAMANI AND
M.S.KARNIK, JJ.**

DATED : NOVEMBER 13, 2017

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

1 Heard the learned counsel for the petitioner, learned Chief Public Prosecutor for Respondent Nos. 1 to 5 and 7 and Mr. Gawankar, the learned counsel for respondent no.6.

2 Rule. By consent, Rule is made returnable forthwith and by consent, the matter is heard finally.

3 The petitioner has challenged the order whereby parole was granted to respondent no.6 for a period of 17 days to attend the marriage of daughter of respondent no.6. The said order is dated 9.11.2017.

4 Mr. Jha, the learned counsel for the petitioner has placed reliance on the Notification dated 26.8.2016 and contended that parole could not at all have been granted to the respondent no.6. He placed reliance on clause 3 (a) of the Notification whereby Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 was amended. He pointed out clause 3(a) of the Notification dated 26.8.2016. The said clause reads as under:

“3. In Rule 4 of the Principal Rules-

(a) for the words “The following categories of prisoners shall not be considered for release on furlough” the words, “ All Indian prisoners except from

following categories whose annual conduct reports are good shall be eligible for furlough” shall be substituted.”

Thereafter Mr. Jha placed reliance on Sub-clause (2) of Clause 5 of the said Notification which reads as under:

“5. For the Rule 19 of the Principal Rule, following rules shall be substituted, namely:-

19. When a prisoner may be released on parole -

(1)

(a).....

(b)

(c).....

(B)(a)

(b)

(2) Regular parole - All prisoners eligible for furlough shall be eligible for regular parole.

In view of the above, Mr. Jha submitted that all those who cannot be released on furlough cannot also be released on parole.

5 Mr. Jha then placed reliance on clause 3(14) of the Notification dated 26.8.2016. Sub-clause (14) states that those who are sentenced for life imprisonment “till death”, cannot be granted furlough. Mr. Jha contended that in the present case, respondent no. 6 has been convicted and sentenced for life imprisonment “till death”, therefore, he could not have been granted furlough, in which case, respondent no. 6 also cannot be granted parole.

6 In order to examine the correctness of the contention of Mr. Jha that respondent no. 6 was sentenced to life imprisonment “till death”, we have perused the judgment and order whereby respondent no. 6 has been convicted and sentenced by the Sessions Court. By judgment and order dated 3.12.2013, the learned Adhoc Additional Sessions Judge, Kalyan convicted and sentenced the respondent no.6 under Section 120-B read with Section 302 of IPC in Sessions Case No. 218 of 1999. The said judgment has been annexed by the petitioner to the present petition at Exh. A. The operative part of the said judgment whereby respondent no.6 has been convicted and

sentenced by the Sessions Court, reads as under:

“ 1) Accused no.1 Suresh @ Pappu Budharmal Kalani is hereby convicted for having committed an offence punishable under Section 120-B read with Section 302 of IPC and is sentenced to undergo life imprisonment and to pay fine of Rs.5000/- (Rupees Five Thousand only) i/d to suffer R.I. for six months”.

7 The judgment in the Sessions case does not state that the respondent no. 6 has been sentenced for life imprisonment “till death”. Thereafter Mr. Jha placed reliance on the judgment of this Court whereby the appeal of respondent no. 6 came to be dismissed. The said judgment has been annexed as Exh. B to this petition. Respondent no. 6 had preferred Criminal Appeal No. 1309 of 2013 against the judgment and order of the Sessions Court dated 3.12.2013. The said appeal came to be dismissed. Paragraph 115 of the said judgment reads as under:

“115. As a result of the above discussion, this criminal appeal fails and it is dismissed.”

8 Mr. Jha then placed reliance on paragraph 116 of the said decision, the relevant portion of which reads that “the life convict has to undergo custody for his entire life span and has no right to get released after 14 or 20 years of imprisonment. His custody is for indefinite period” and contended that this shows that respondent no. 6 has been sentenced for life imprisonment **“till death”**. However, in the very same paragraph just above the quoted portion, it is observed by this Court that powers of remission or commutation of sentence are distinctly conferred in the State by Code of Criminal Procedure and their applicability is not necessarily dependent upon what has been stated or held in judgments in a Sessions case. This is the power of the appropriate Government and which can be exercised by it. Thereafter in paragraph 116, what was held by the Supreme Court in **Sangeet Vs. State of Haryana, AIR 2013 SC 447**, has been culled out by this Court, which reads as under:

“an order giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is

in effect an injunction against the appropriate Government from exercising its power of remission for the specific period. This is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of sentence. Similarly a convict cannot be told that he cannot apply for a remission in his sentence, whatever be the reason”.

9 However, in regard to the above observations relied upon by Mr. Jha in paragraph 116, this Court has further observed that remission meant is notional and therefore, for his early release specific order under the relevant provisions of Code of Criminal Procedure need to be passed. This is just a general observation made by this Court in paragraph 116 and it in no way, has altered the sentence imposed on respondent no.6 by the Sessions Court. This is very clear from paragraph 117 of the judgment of this Court whereby the appeal of the respondent no.6 came to be dismissed. In paragraph 116 it is stated as under:

“Hence, we do not see how the conviction and sentence as handed down can be said to be vitiated when the guilt of the accused has been brought home.”

10 There are cases where the judgment itself shows that the accused is sentenced to life imprisonment till death, or it states that the accused is sentenced to imprisonment for the remainder of his life but the present case is not such a case. In cases where sentence is of life imprisonment, when the convict completes about 12 years of actual imprisonment, his case is referred to the Government for premature release under Section 433 of the Code of Criminal Procedure. The State then takes all factors into consideration and categorizes the case of the accused and decides when he is to be prematurely released as per the guidelines formulated by the Government. Thus, when the sentence states life imprisonment, it does not mean that the accused will remain in prison till his death.

11 As observed earlier, the Sessions Court only stated that respondent no.6 is sentenced to undergo life

imprisonment. The judgment nowhere states that respondent no.6 is sentenced for life imprisonment till death. In the appeal this Court has not altered the sentence from life imprisonment to life imprisonment till death. This Court in para 17 of the judgment whereby the appeal of Respondent no.6 came to be dismissed has, infact confirmed the conviction and sentence as awarded by the trial Court. Therefore, clause 3(14) of the Notification dated 26.8.2016 cannot be made applicable to the present case.

12 Thereafter Mr. Jha submitted that in view of the Notification dated 26.8.2016 parole could not have been granted to the petitioner. Firstly, he placed reliance on clause 5 of the said Notification whereby Rule 19 of The Prisons (Bombay Furlough and Parole) Rules 1959 was amended. He pointed out that no doubt parole can be granted for the marriage of son, daughter, brother or sister of the prisoner, however, the said parole can only be granted for seven days and in the present case, parole has been granted for 17 days. The amendment which is relied upon by Mr. Jha is in relation to emergency parole. It sets out the grounds when emergency parole can be

granted and one of the grounds is marriage of son, daughter, brother or sister. No doubt it stipulates that emergency parole can be granted only for seven days and no extension can be granted in case of emergency parole, however, Mr. Thakare, the learned Chief Public Prosecutor pointed out that respondent no.6 had not applied for emergency parole and in fact, he had applied for regular parole and respondent no.6 has been granted regular parole.

13 Mr. Thakare submitted that no doubt the original Rule for parole i.e. Rule 19 did not contemplate grant of parole for marriage of son, daughter, brother or sister, however, by Notification dated 23.2.2012, Rule 19 was amended and it also provided for parole on the ground of marriage of brother, sister and children of the prisoner. Thus, it is seen that under Rule 19 regular parole can also be granted on account of marriage of the child of the prisoner. Thus, the respondent no.6 was well within his rights to apply for regular parole on the ground of marriage of his daughter which was to take place on 12.11.2017. Thus, this is not a case of emergency parole but a case of regular parole, hence, parole could have been granted

for 45 days on account of marriage of the daughter of respondent no.6 which can be extended once in three years by 15 days. However, in the present case, the respondent no.6 had himself applied for parole only for 17 days, hence, parole was granted only for 17 days instead of regular parole for 45 days.

14 We have gone through the police report which was relied upon by the authorities while granting parole. The police report infact shows that the marriage of the daughter of respondent no.6 has been fixed and it is to take place on 12.11.2017 at Powai, Mumbai. Police report clearly states that the reason given by respondent no.6 for seeking parole, is true. The authorities while granting parole have imposed many conditions on respondent no.6 during the period he is on parole. It is also seen that the sureties have undertaken to see that the respondent no. 6 will report back to the prison on the due date. In the present case, the prison record shows that the conduct of respondent no.6 in prison is good. Thus, none of the grounds raised by Mr. Jha are such so as to set aside the order granting parole to respondent no.6, hence, we are not inclined to

interfere in the order granting parole to the respondent no.6.
Hence, Rule is discharged. Petition is dismissed.

[M.S.KARNIK, J.]

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

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