

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Writ Petition No.605 of 2017
(Abdul Raheman s/o. Abdul Bashir .vs. State and another)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr.Nitesh Samundre, Advocate for the Petitioner.
Mr.P.S.Tembre, A.P.P. for the Respondent Nos. 1 and 2.

**CORAM : SMT. VASANTI A NAIK &
M. G. GIRATKAR, JJ.**

DATE : 18.8.2017.

By this Criminal Writ Petition, the petitioner challenges the order passed by the Divisional Commissioner, Nagpur, dt.10.11.2016 and seeks his release on parole leave for 30 days.

According to the petitioner, the wife of the petitioner is sought to be operated as she has developed fibroid in her uterus. The application of the petitioner for parole leave was rejected by the impugned order dated 10th November, 2016 on the ground that when the petitioner was earlier released on parole, he had absconded for a period of 15 years, 6 months and 26 days.

Mr.Nitesh Samundre, the learned Counsel for the petitioner states that the consideration for deciding a parole leave application and a furlough leave application would be different. It is stated that though a convict may

not be entitled to furlough leave for not surrendering on the due date of the expiry of the furlough leave or parole leave, the application for parole cannot be rejected on the said ground. The learned Counsel relied on the Judgment reported in 2013 ALL MR (Cri) 1279, Arun Shankar Ralmingam Naidu .vs. The State of Maharashtra and the Judgment of this Court in Criminal Writ Petition No.180 of 2013, dt.17.7.2013 to substantiate his submission that the application for parole leave cannot be rejected on the ground that the convict had not surrendered to the prison on the due date.

Mr.P.S.Tembre, the learned Additional Public Prosecutor appearing for the respondent has supported the order of the Divisional Commissioner. It is stated that the petitioner has overstayed the parole leave for a period of more than 15 years. It is stated that if the petitioner is released on parole leave on this occasion, he is likely to abscond. It is submitted that if the wife of the petitioner was required to undergo an emergency operation in the midst of the year 2016, it is difficult to digest that the wife of the petitioner is not operated till date. The learned Additional Public Prosecutor sought for dismissal of the Writ Petition.

On perusal of the impugned order as also the Judgments on which the learned Counsel for the petitioner relies, it appears that the relief sought by the petitioner cannot be granted. The learned Counsel for the petitioner has stated in the Court that the petitioner has four issues

and it appears that all the four issues of the petitioner are major. The petitioner's brother, who is ready to furnish surety or his wife could have also attended the wife of the petitioner after her operation. In the cases on which the petitioner has relied, there was no one to look after the ailing relative of the petitioner that had approached the Court. Also, in the instant case, we find that the petitioner had absconded for nearly 16 years and was required to be brought to the prison by the Police Authorities. Though the considerations while deciding the parole leave application and the furlough leave application are different, it is not necessary that every parole leave application should be allowed. Since in this case we find that the petitioner had absconded for a very long time i.e. nearly 16 years and there are other family members who can look after the wife of the petitioner if she is operated, the release sought by the petitioner on parole leave cannot be granted.

In the result, the Writ Petition fails and is dismissed. Order accordingly.

JUDGE

JUDGE

**jaiswal*