

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 0234 of 2018

District : Aurangabad

Vijaykumar Shrirang Jadhav (C-31),
Central Prison, Aurangabad.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Divisional Commissioner,
Nashik.

2. The State of Maharashtra,
Through Superintendent,
Open Prison, Visapur.

.. Respondents.

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*Mr. Rupesh A. Jaiswal, Advocate, for the
petitioner.*

*Mr. S.W. Munde, Addl. Public Prosecutor, for
respondent nos.01 and 02.*

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**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 14TH MARCH 2018

ORAL JUDGMENT [Per Prasanna B. Varale, J.] :

Heard learned Counsel for the petitioner and
the learned Addl. Public Prosecutor for the
respondents.

02. By the present petition, the petitioner - convict no. C-31 is challenging the order dated 21.12.2017, passed by respondent no.01 i.e. Divisional Commissioner, Nashik Division, Nashik, thereby rejecting application made by the petitioner seeking furlough leave.

03. Learned Counsel for the petitioner invited our attention to the impugned order. The order clearly show that the ground raised for seeking benefit of parole leave was of serious ailment of the mother of the petitioner, Smt. Chandrabhaga Shrirang Jadhav. The medical certificate is also placed on record. The certificate is issued by a private physician namely, Dr. Ishwar Chhajed. The certificate clearly show that the patient namely, Smt. Chandrabhaga Jadhav is suffering from breast cancer. She is advised to take rest and prolonged treatment.

04. The application is rejected on the ground that there is an adverse police report. The order states that as the other co-accused one Ravi Sitaram Naidu was released by grant of the leave and he is absconding, as well, another co-accused Vilas Sitaram Shinde, who was also released on leave and was absconding, there is an apprehension that if the petitioner is released, he may also abscond and would not report the prison authorities. There is nothing placed on record to show that on what material this

opinion is formed by the authorities. Merely because the co-accused were released on leave and they were absconding, cannot be a reason to reject the prayer of the petitioner outrightly. The authorities are not only expected but are duty bound to apply their mind to each of the case coming before them and on assessment of the material, pass appropriate orders. The course adopted by the authority seems to be a mechanical application of mind. The authorities cannot take a decision on a whole sole consideration of the matter. The order clearly reflects that it is such a course adopted by the authority.

05. One more interest fact which cannot be lost sight of, is that the petitioner is a prisoner in open prison, meaning thereby, while transferring the petitioner from a prison to an open prison, is on consideration of the material including good behaviour of the petitioner - prisoner. Taking into consideration all these facts, we are of the opinion that the order impugned in the petition is clearly unsustainable and is required to be quashed and set aside.

06. In the result, the criminal writ petition is allowed.

The impugned order dated 21.12.2017, passed by respondent no.01 i.e. Divisional Commissioner, Nashik Division, Nashik, is quashed and set aside. The petitioner - convict is directed to be released on

parole leave as per entitlement under the Prisons (Bombay Furlough & Parole) Rules, 1959, as expeditiously as possible, after complying necessary formalities.

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

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