

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 683 OF 2018

Sudam Sarangdhar Rajguru(C-7890),
R/o At present Central Prison,
Aurangabad, Dist. Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
Home Department, Mantralaya,
Mumbai-32.
- 2) The Divisional Commissioner,
Aurangabad.
- 3) Superintendent of Prison,
Central Prison, Aurangabad.

...RESPONDENTS

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Ms. Sarita V. Gaikwad Advocate appointed for
Petitioner.

Mr. D.R. Kale, APP for Respondent Nos.1 to 3.

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**CORAM: S.S. SHINDE AND
V.K. JADHAV, JJ.**

DATE : 20TH JUNE, 2018.

ORAL JUDGMENT [PER S.S. SHINDE, J.]:

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition takes exception to the order dated 12th December, 2017 passed by the Divisional Commissioner, Aurangabad, thereby rejecting the request of the Petitioner to release him on parole.

3. It is the case of the Petitioner herein that he applied for parole, however, by the impugned order his application has been rejected only on the ground that, the appeal filed by the Petitioner challenging the conviction and sentence, is pending before the High Court, in view of the Notification dated 26th August, 2016 issued by the Home Department, State of Maharashtra, parole cannot be granted. Accordingly, by invoking the provisions of Rule

3(b) (11) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short "the Rules of 1959), the application of the Petitioner has been rejected.

4. There is no denial to the assertion of the Petitioner that the Petitioner was earlier released on parole and furlough and on each occasion the Petitioner reported back to the jail authorities within time. Learned counsel for the Petitioner submits that earlier when the Petitioner was released on parole/furlough, he did not misuse the liberty granted to him. Learned counsel further submitted that merely because appeal filed by the Petitioner against conviction and sentence is pending, is no ground to deny him the parole in view of the orders passed by the Division Bench of the Bombay High Court, Bench at Nagpur, in Criminal Writ Petition No.196 of 2017 and Criminal Writ Petition No.97 of 2017 [Arun s/o Gulab Gawli and another vs. D.I.G.(Prisons) (East)

Nagpur and another], and Criminal Writ Petition No.462 of 2017 [Abdul Rajjak Sheikh Abdul Nabi Shah vs. Divisional Commissioner, Nagpur and others].

5. Learned A.P.P. appearing for the State submits that, the Notification dated 26th August, 2016 to the extent of amending the provisions of Rule 3(b)(11) of the Prisons (Bombay Furlough and Parole) Rules, 1959, has been cancelled/withdrawn by the State Government by issuing recent Notification. Therefore, parole/furlough cannot be denied only on the ground that the appeal filed by such convict is pending in the Higher Courts.

6. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner and learned A.P.P. appearing for the State.

7. While rejecting the application of the

Petitioner to release him on parole, the Respondent Authorities have placed reliance on the amended provisions of Rule 3(b)(11) of the Rules of 1959. Rule 3(b)(11) of the Prisons (Bombay Furlough and Parole) Rules, 1959, amended as per the Notification dated 26th August, 2016, reads as under:

"(11) Whose appeal in conviction in Higher Court or any other cases filed against them either by Central Government or any of the State Governments in any of the Courts are pending and for which bail is not granted to him/her by the related Courts."

8. We have carefully considered the provisions of amended Rule 3(b)(11) of the Rules of 1959. Merely because appeal filed by the Petitioner challenging his conviction and sentence is pending before the Higher Courts is no ground to deny the parole/furlough in view of the orders passed by the Division Bench of the Bombay High Court, Bench at Nagpur in Criminal Writ Petition

No.196 of 2017 and Criminal Writ Petition No.97 of 2017 [Arun s/o Gulab Gawli and another vs. D.I.G. (Prisons) (East) Nagpur and another], and Criminal Writ Petition No.462 of 2017 [Abdul Rajjak Sheikh Abdul Nabi Shah vs. Divisional Commissioner, Nagpur and others], supra.

9. It is also important to note that, the State Government has issued recent Notification thereby cancelling/ withdrawing earlier Notification to the following extent :-

"(11) Whose appeal in conviction in Higher Court or any other cases filed against them either by Central Government or any of the State Governments in any of the Courts are pending and for which bail is not granted to him/her by the related Courts."

10. In the light of above, the impugned order is quashed and set aside. We direct the Respondents to examine entire earlier record of

the case of the Petitioner and release the Petitioner on parole, if otherwise he is eligible for the same, after completion of usual procedural formalities, and shall not deny the same on the grounds/objections mentioned in the impugned order.

11. Rule is made absolute in above terms. The Writ Petition stands disposed of, accordingly.

12. Since, Ms. Sarita V. Gaikwad, learned counsel is appointed to prosecute the cause of the petitioner, her fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

[V.K. JADHAV, J.]

[S.S. SHINDE, J.]

sga/-