

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

CRIMINAL WRIT PETITION NO.727 OF 2018

Ashish Venkatrao Phad [C-10398]
Age: 24 years,
R/o. Nashik Road Central Prison,
Nashik.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai – 400 032.
2. Divisional Commissioner,
Nashik Division, Dist. Nashik.
3. The State of Maharashtra
Through Additional Director
General of Police [Prisons].
4. Inspector General of Prison,
Maharashtra State, Pune.
5. Deputy Inspector General of Prisons,
Head Office, Maharashtra Region,
Nashik.
6. Superintendent,
Nashik Road Central Prison, Nashik.
7. District Superintendent of Police,
Sub-Division, Ambejogai
[Incharge-Majalgaon].

.. RESPONDENTS

...
Ms.Neha B.Kamble [Appointed], Advocate for the
petitioner
Mr.K.S.Patil, APP for the respondent/State
...

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

DATE : 04.07.2018

ORAL JUDGMENT: [Per S.S.Shinde, J.]

1] Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent of
the parties.

2] At the outset, learned APP appearing for
the respondent-State has tendered across the Bar
affidavit-in-reply filed on behalf of respondent
no.2. The same is taken on record.

3] This Petition under Article 226 of the
Constitution of India takes exception to the order
dated 18th October, 2017 passed by respondent no.2
i.e. the Divisional Commissioner, Nashik,
rejecting the prayer of the petitioner to release
him on parole.

4] Learned counsel appearing for the petitioner invites our attention to the impugned order and submits that the main ground on which the prayer of the petitioner to release him on parole has been turned down, is the registration of Crime against the petitioner at Majalgaon Police Station, District Beed, for the offence under Section 224 of the Indian Penal Code. She further submits that another ground to reject the prayer to release the petitioner on furlough is adverse police report. It is submitted that the petitioner herein filed Criminal Writ Petition No.904/2017 [Ashishrao Venkatrao Phad Vs. State of Maharashtra], taking exception to the registration of the FIR vide Crime No.0189/2016 registered with Majalgaon Police Station, District Beed on 16th September, 2016, for the offence punishable under Section 224 of the IPC. The said Writ Petition has been partly allowed, in terms of prayer clause-C, thereby quashing the FIR lodged against the petitioner for the offence under Section 224 of the IPC. Therefore, ground no.3 stated in the

impugned order to refuse prayer of furlough on the ground that Crime No.85/2016 is registered against the petitioner, cannot sustain. It is further submitted that another reason mentioned in the impugned order that the police report is adverse; is without any basis. There is no mention in the police report that why the petitioner cannot be released on furlough. It is submitted that in case the petitioner is given further opportunity; he is ready to produce recent/fresh medical certificate in respect of the ailment of his mother.

5] On the other hand, learned APP appearing for the respondent-State relying upon the reasons assigned in the impugned order submits that the application of the petitioner to release him on parole has rightly been turned down. He submits that one of the grounds to reject the prayer of the petitioner to release him on parole is that there is no sufficient medical report showing the serious ailment of his mother.

6] We have given careful consideration to

the submissions of the learned counsel appearing for the parties. Upon careful perusal of the impugned order, it appears that the prayer of the petitioner to release him on parole is turned down, on the ground that Crime No.189/2016 was registered against the petitioner for the offence under Section 224 of the Indian Penal Code. However, in view of the fact that the said FIR has been quashed in Criminal Writ Petition No.904/2017, which was filed by the petitioner. The said ground of rejection can not survive. Secondly, though it is written that the police report is adverse, it appears that there is reference to the fact that when the petitioner was earlier released on parole, he did not report back within time. The said ground is interconnected to ground no.3, since ground no.3 itself is not sustainable due to reasons recorded herein above, the ground of 'adverse police report' would not survive.

7] In the light of above, the impugned order dated 18th October, 2017, passed by respondent no.2 i.e. the Divisional Commissioner, Nashik Division, Nashik is quashed and set aside. Liberty is granted to the petitioner to file fresh application. In case such application is filed by the petitioner along with recent/fresh medical certificate/report about the ailment of his mother, the respondent authorities to consider the same, as expeditiously as possible, however, within four weeks from filing such application with medical certificate/report and communicate the said decision to the petitioner.

8] The Rule is made absolute on above terms. The Writ Petition is partly allowed and the same stands disposed of accordingly.

9] We appreciate the sincere efforts taken by the Advocate Ms. Neha B.Kamble [Appointed] in rendering able assistance during the course of hearing of this Petition. Fees of the learned

appointed counsel be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

[V.K.JADHAV]
JUDGE

[S.S.SHINDE]
JUDGE

DDC