

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

CRIMINAL WRIT PETITION NO.825 OF 2018

Sharad s/o.Shyamsundar Pawle,
Age 30 Years, Occ.Nil
Convict No.7796
R/o. At Khairka Post Bomnali,
Tq. Mukhed, District Nanded
At present in Central Prison,
Aurangabad, District Aurangabad **..PETITIONER**

VERSUS

1. The State of Maharashtra
2. The Divisional Commissioner,
Aurangabad.
3. The Superintendent of Central
Prison, Aurangabad **.. RESPONDENTS**

...

Mrs.B.B.Gunjal, Advocate for the petitioner
Mr.Y.G.Gujarathi, APP for the Respondent/
State

...

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

Reserved on : 23.07.2018
Pronounced on : 25.07.2018

JUDGMENT: (Per S.S.Shinde, J.):

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

2] This Petition is filed praying therein to quash and set aside the order dated 02.01.2018 passed by respondent no.2. It is further prayed to direct respondent no.3 to release the petitioner on parole.

3] It is the case of the petitioner that by the judgment and order dated 5th April, 2014, the petitioner was convicted by the Additional Sessions Judge, Kandhar, Link Court, Mukhed, for the offence punishable under Section 364 of the Indian Penal Code [for short 'I.P.Code'] and sentenced to suffer R.I. for 10 years and to pay fine of Rs.1000/- in default to suffer further R.I. for six month. He was further convicted for the offence punishable under Section 302 r/w. 34 of the I.P. Code and sentenced to suffer imprisonment for life and to pay fine of Rs.1000/- in default to suffer R.I. for six month. At present, the petitioner is undergoing life imprisonment at Aurangabad

Central Prison, Aurangabad. On 06.10.2017, due to serious illness of his mother, the petitioner filed an application for parole to the Competent Authority. After receipt of the said application, the police report was called from the concerned Police Station. The police has filed its report in favour of the petitioner. Thereafter, by impugned order dated 02.01.2018, respondent no.2 has rejected his application, mentioning therein that the petitioner has been convicted for the offence punishable under Sections 302 and 364 of the I.P. Code, and has been punished for kidnapping and for committing murder. As such, there was no recommendation from the Superintendent, Aurangabad Central Prison, Aurangabad. As per the Rule 3 [b] [13] of the Notification dated 26th August, 2016, a convict, who is sentenced for offence such kidnapping for ransom, such prisoner/convict is not entitled to be released on parole.

4] Learned counsel appearing for the petitioner submits that the impugned order is not keeping in view the provisions of the Notification dated 26th August, 2016 thereby amending the Rule 4 of the Maharashtra Prisons [Mumbai Furlough and Parole] [Amendment] Rules, 2016 [for short 'Rules of 2016'] under the Prisons Act 1994 [IX of 1894] inasmuch as in the said Rules, under Rule 3 [b] [13] it is provided that in case convict is convicted for the offence of kidnapping for ransom, his application to release him on parole cannot be considered. It is submitted that the petitioner is convicted for the offence punishable under Sections 302 and 364 of the I.P. Code. There is no any other ground mentioned in the impugned order for rejection of the application of the petitioner to release him on parole.

5] On the other hand, learned APP appearing for the respondent-State relying upon the reasons assigned in the impugned order submits that since the petitioner is convicted for the offence punishable under Section 364 of the I.P. Code, his application to release him on parole has been rightly turned down.

6] We have given careful consideration to the rival submissions of the learned counsel appearing for the parties. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, and in particular the aforesaid Notification dated 26th August, 2016. Admittedly, the petitioner is convicted for the offence punishable under Sections 302 and 364 of the I.P.Code. The provisions of the aforesaid Notification do not allow to consider the prayer for release on furlough / parole to the convict, who is sentenced for offences

such as dacoity, terrorist crimes, mutiny against state, kidnapping for ransom, smuggling of narcotic or psychotropic substances, rape or rape with murder. As already observed, in the present case the petitioner has been convicted for the offence punishable under Section 364 of the I.P. Code for kidnapping and not for kidnapping for ransom. Section 364-A provides for punishment of death or life imprisonment for the commission of offence of kidnapping for ransom. Section 364-A of the I.P. Code reads thus:

364-A. Kidnapping for ransom, etc. -
Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [any foreign State or intentional inter - governmental organisation or any other person] to

do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

7] Since the petitioner is not convicted for the offence of kidnapping for ransom, in our opinion, the application of the petitioner for release him on parole should not have been rejected on the ground that in view of the Rule 3 [b] [13] of the Rules of 2016, a convict, who is sentenced for offence of kidnapping for ransom; the petitioner is not entitled to be released on parole. There is no any other ground on which the petitioner's application has been rejected.

8] In that view of the matter, the impugned order dated 02.01.2018 passed by respondent no.2 is quashed and set aside. The application filed by the petitioner stands restored to its original file. We direct respondent no.2 to consider the said

application afresh on the same police report, which has already been received, as expeditious as possible, however, within two weeks from today. Needless to observe that again the respondent authorities shall not reject the prayer of the petitioner to release him on parole on the ground which has been assigned in the impugned order.

9] The Petition is allowed to the above extent. The Rule is made absolute.

10] The office of the Public Prosecutor to send copy of the order by fastest mode of communication to the concerned authorities.

11] The parties to act upon authenticated copy of this order.

[V.K.JADHAV]
JUDGE

[S.S.SHINDE]
JUDGE