

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

CRIMINAL WRIT PETITION NO.1096 OF 2018

Narayan Kisan Dalvi [C-7125]
Age: Major,
R/o.Aurangabad Central Prison,
Aurangabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Home Department [Prison],
Mantralaya, Mumbai – 400 032.

2. Divisional Commissioner,
Aurangabad Division,
Dist. Aurangabad.

3. Deputy Inspector General of Prisons,
Central Division, Aurangabad.

4. Superintendent,
Aurangabad Central Prison,
Aurangabad.

.. RESPONDENTS

...

Ms. Neha B. Kamble [Appointed], Advocate for the
petitioner

Mr.A.B.Chate, APP for the respondent – State.

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**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

Reserved on : 05.12.2018

Pronounced on: 18.12.2018

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

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

 The relevant facts leading for filing the
Petition are as under:

2] The petitioner is convicted for the
offence punishable under Section 302 r/w. 34 of
the Indian Penal Code, and he is undergoing life
imprisonment at Aurangabad Central Prison,
Aurangabad. The petitioner applied for parole
leave, as his wife was suffering from acute
appendicitis. Respondent no.2 allowed the
application of the petitioner for parole of 45
days on 1st September, 2017. The petitioner was
released on parole from prison on 29th September,
2017. The 45 days parole was to expire on 13th
November, 2017. The Doctor advised the wife of the
petitioner to go for surgery, however, due to low

hemoglobin, the surgery was postponed till 25th November, 2017. The Medical Officer, Rural Hospital, Bhokardan, has issued a certificate on 9th October, 2017, certifying the illness of the petitioner's wife.

3] Thereafter, on 10th October, 2017, the petitioner filed application for extension of parole for 30 days. The said application was received by respondent no.2 on 16th October, 2017. On 6th November, 2017, respondent no.2 directed the Superintendent of Police, Jalna, to verify the application of the petitioner and submit the report within 10 days. The Police Inspector, Bhokardan Police Station, submitted report on 30th November, 2017, stating therein that, the wife of the petitioner is suffering from appendicitis and needs surgery. On 12th December, 2017, the Sub Divisional Police Officer, Bhokardan informed respondent nos.2 and 3 that, the request of the petitioner for extension of parole can be granted.

In spite of the positive report of the Sub Divisional Police Officer, the concerned Jail Authority has not taken decision on the application of the petitioner for extension of parole. Meanwhile, the petitioner stayed at home to take care of his wife, and voluntarily returned to the Prison and surrendered himself on 14th December, 2017, after 30 days. Thereafter, on 14th December, 2017, respondent no.4 issued a show cause notice to the petitioner for his unauthorized stay outside the prison. Thereafter, the petitioner has replied the said notice on 12th January, 2018. By order dated 17th January, 2018, respondent no.4 charged the petitioner for unauthorized stay for 30 days outside the prison with deduction of 150 days remission. On 24th January, 2018, respondent no.2 rejected the application of the petitioner for extension of parole, on the ground that the police authorities has not sent the report within 10 days. Thereafter, on 21st February, 2018, respondent no.3

rejected the application of the petitioner. Hence this Petition.

4] Learned counsel appearing for the petitioner submits that, the objective behind granting parole to a prisoner under the Maharashtra Prisons [Mumbai Furlough and Parole] [Amendment] Rules, 2018 [for short 'Rules of 2018'] has been prescribed 'to enable the prisoner to maintain continuity with his family life and deal with his family members'. It is submitted that, there was no intention of the petitioner to jump the parole, however, the order was not passed within a reasonable period, refusing to grant extension. It is submitted that, the petitioner has voluntarily returned to the jail on 14.12.2017 within 30 days, under the belief that his request for extension of parole period has been allowed. The concerned respondent Authority ought to have granted parole to the petitioner on humanitarian ground. It is submitted that, without considering

the provisions of Rules of 2018, and without considering the illness of the wife of the petitioner, the authorities have rejected the application of the petitioner in respect of parole. Therefore, learned counsel submits that, the Petition may be allowed.

5] Pursuant to the notices issued to the respondents, respondent nos.2, 3 and 4 have filed the affidavit-in-reply. In para 4 to 12 of the said affidavit in reply, it is stated thus:

4) I say and submit that, the petitioner had applied for parole leave on account of illness of his wife vide Application dated 27.06.2017 and after calling Police report, vide Order dated 01.09.2017 the petitioner was granted 45 days parole leave and accordingly the petitioner came to be released on parole leave on 29.09.2017.

5) I say and submit that, while on parole leave the petitioner applied for extension of the same vide Application dated 10.10.2017 by further period of 30 days, on the ground that the health of his wife had deteriorated further.

6) I say and submit that, the application for extension of leave was rejected by the Divisional Commissioner Aurangabad, vide Order dated 24.01.2018.

7) I say and submit that, the petitioner who as per the parole leave granted vide Order datd 01.09.2017 was required to surrender / report back to the prison on 14.11.2017, but the petitioner surrendered on his own accord on 14.12.2017 i.e. 30 days beyond the prescribed date of surrender after availing parole leave of 45 days.

8) I say and submit that, as the petitioner's application for extension of parole leave was rejected, the petitioner was bound to report by 14.11.2017, but reported late by 30 days on 14.12.2017 and therefore as per requirement of Maharashtra Manual 1979 (Chapter-37) a show cause notice was issued to the petitioner on 16.12.2017, calling explanation for surrendering late.

9) I say and submit that, the petitioner submitted reply to the said show-cause notice on 12.01.2018 and after considering his reply, the answering deponent /

respondent no.4 after recording reasons proposed imposition of penalty in the ratio of 1:5 i.e. (30 days x 5 + 150 days), considering the fact that the petitioner had on a earlier occasion reported late after availing leave granted to him.

10) I say and submit that, considering the fact that the punishment proposed was in excess of 30 days, the answering deponent / respondent no.4 forwarded the said proposal for sanction to the respondent no.3 who vide Order dated 21.02.2018 accorded sanction to proposed punishment of forfeiture of remission of 150 days.

11) I say and submit that, after sanction from respondent no.3 the same was forwarded for judicial approval to the Hon'ble District Judge, who vide Order dated 26.04.2018 approved the punishment of forfeiture remission of 150 days imposed on the petitioner.

12) I say and submit that, the petitioner having surrendered late on one occasion earlier; in light of the amended Rule 23 (A) (6), the petitioner reporting late for the second time and for a reason which was not found to be justified; the imposition of punishment of forfeiture of remission in

the ratio of 1:5 i.e. (30 days x 5 = 150 days) is justified and correct.

6] We have considered the pleadings and grounds taken in the Petition, and also the reply filed by the respondents. It is admitted position that, the petitioner had applied for release him on parole on account of illness of his wife, vide application dated 27th June, 2017. Vide order dated 1st September, 2017, the petitioner was granted 45 days parole, and accordingly, the petitioner came to be released on 29th September, 2017. Vide application dated 10th October, 2017, the petitioner applied for extension of parole for 30 days, on the ground that health of his wife has deteriorated, and she was advised by the Doctor to go for surgery, however, due to low hemoglobin, the surgery was postponed to 25th November, 2017. The petitioner has placed on record the medical certificate of Rural Hospital, Bhokardan, certifying the illness of the petitioner's wife.

Admittedly, the application filed by the petitioner for extension of parole to respondent no.2 was received by the office of respondent no.2 on 16th October, 2017. It appears that, after receipt of such application for extension of parole, respondent no.2 delayed further process of calling the police report, and by letter dated 6th November, 2017, the report was called by respondent no.2 from the Superintendent of Police, Jalna. Therefore, it is apparent that, the application filed by the petitioner on 10.10.2017, which was received by the office of respondent no.2 on 16th October, 2017, was not considered immediately, and even for calling report from the Superintendent of Police, Jalna, there was delay of 20 days in writing letter by respondent no.2 to Superintendent of Police, Jalna. It clearly appears that, respondent no.2, instead of calling report from the Superintendent of Police immediately after receipt of the application by the petitioner on 16.10.2017, waited till 6th

November, 2017, to call report from the concerned Superintendent of Police, Jalna. It further appears that, on 30th November, 2017, the Police Inspector, Bhokardan Police Station, forwarded the report to the higher authorities, thereby ascertaining that, the wife of the petitioner is suffering from appendicitis and needs surgery. It appears that, on 12.12.2017, the Sub Divisional Police Officer, Bhokardan informed respondent nos.2 and 3 that, the request of the petitioner for extension of parole can be accepted. In spite of such favourable report, on 15.12.2018, respondent no.4 issued show cause notice to the petitioner for his alleged unauthorized stay outside the prison. It further appears that, the petitioner, on 12th January, 2018, replied the said notice. On 17th January, 2018, respondent no.4 charged the petitioner for unauthorized stay for 30 days outside the prison and deducted 150 days remission. Ultimately, respondent no.2 rejected the application of the petitioner for extension of

parole on 24th January, 2018. The chronological events stated herein before would clearly demonstrate that, there was complete laxity on the part of respondent no.2 and other respondents, and as a result the petitioner's application for extension of parole was not considered within time, and it was delayed by the respondents. As it is evident from the facts of this case that, the police authorities sent favourable recommendation to extend the period of parole of the petitioner.

7] We have carefully perused the order passed by respondent no.2 on 24th January, 2018. Upon careful perusal of the said order, it is abundantly clear that, after receipt of the application of the petitioner for extension of parole, after 20 days letter was written by respondent no.2 to the Superintendent of Police, Jalna, calling the report from him. Thereafter, the Police Officer consumed considerable time. Though the report of the Police Officer was

favourable to consider the prayer of the petitioner to release him on parole; ultimately, the application of the petitioner was rejected for unsustainable reasons and grounds. Furthermore, the respondents applied ratio of 1:5 to deduct the remissions by assigning the reasons that, the petitioner is unauthorizedly stayed for 30 days outside the prison.

8] In the light of the discussion herein above, in the peculiar facts and circumstances of this case, at the most unauthorized stay of the petitioner can be considered for the period of actual 30 days, and the respondent authorities were not justified to deduct remission of 150 days by applying ratio of 1:5 for their laxity in not considering and taking decision on the application filed by the petitioner before expiry of period of parole granted to the petitioner.

9] For the reasons afore-stated, we partly allow the Petition. Accordingly, the respondents

are directed to take procedural steps and reduce the period of remission of 150 days to 30 days and take necessary entries in remission register maintained in respect of the petitioner.

10] Rule is made absolute on above terms. The Writ Petition stands disposed of accordingly.

11] Since, Ms. Neha Kamble, learned counsel is appointed to prosecute the cause of the petitioner, she would be entitled for the fees, as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

[K.K. SONAWANE, J.]

[S.S. SHINDE, J.]

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