

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 28 OF 2018

1. Nazir Pathyekhanvar

Prisoner No.10/17,

Presently serving sentence at

Central Jail, Colvale, Goa.

...Petitioner

V e r s u s

1. State of Goa,

Through the IG Prison,

Old Director of Education Building

Panaji-Goa.

2. Public Prosecutor

High Court Building,

AG's Office,

High Court,

Panaji, Goa.

...Respondents

Mr T. George John, Advocate, for the Petitioners.

Mr Pravin Faldessai, Addl. Public Prosecutor for the Respondents.

CORAM: N M Jamdar &
Nutan D Sardesai, JJ

DATED: 22 February 2018

ORAL JUDGMENT (per N.M. Jamdar J):

1. Rule. Rule made returnable forthwith. Respondents waive service.

2. The Petitioner is presently serving his sentence at Central Jail, Colvale. He was convicted in the Sessions Case No.35/2015. Petitioner is in custody since 9 May 2015. The Petitioner, after having completed two years and six months of the sentence, made an application for Parole on 29 November 2017. The Petitioner prayed that he may be granted Parole as his mother was sick and was looked after by a distant relative, the brother of her daughter-in-law. Petitioner stated that his mother was willing to accept him while on Parole, and one Shanul Hassan Alikatti, was ready to furnish surety for his release. The Inspector General of Prisons called for a police report. The Report was received on 12 December 2017. Based on the Report, which was in the negative, the Inspector General of Prisons rejected the application of the Petitioner by the impugned order dated 22 December 2017, observing that the reasons given by the Petitioner were not genuine.

3. We have heard Mr John, learned Counsel for the Petitioner and Mr Faldessai, learned Additional Public Prosecutor for the Respondent.

4. The Report of the Superintendent of Police dated 12 December 2017 is placed before us for perusal. We have gone through the Report. The Report, narrates the circumstances in

which the Petitioner was convicted and gives the details of his application. The Superintendent, in the Report has observed that the reasons given by the Petitioner are not genuine; that the Complainant and her family members are residing in the same Village; and the crime committed is heinous in nature and therefore Parole should not be granted. The Report is accepted by the Inspector General.

5. As far as the nature of crime is concerned, it is not in dispute that the Petitioner is entitled to present a Parole application. Therefore, this cannot be the only criteria for rejection. Second, nothing is placed on record that there are any complaints received from the Complainant and his family members that they will be threatened if the Petitioner is released on Parole.

6. The third, the main ground for rejection is totally vague. The Inspector General has observed that the reasons given by the Petitioner are "Not Genuine". Why they are not genuine is not elaborated. Whether the fact that the mother of the Petitioner is not well, is not genuine or that she is dependent on the distant relation is not genuine, is not explained. The Petitioner is entitled to know why his reasons are not held to be

genuine. Unfortunately, there does not appear to be any application of mind by the Authorities.

7. In these circumstances, the order impugned in this Petition will have to be set aside and the application of the Petitioner will have to be reconsidered by the Inspector General of Prisons in the light of what we have observed above.

8. The Writ Petition is allowed. The order dated 22 December 2017, is set aside. The Inspector General of Prisons will reconsider the application tendered by the Petitioner for release on Parole afresh in the light of the observations made above, within two weeks from today. The Registry to send the copy of this order to the Inspector General of Prisons forthwith.

9. Rule is made absolute in the above terms.

Nutan D. Sardesai, J.

N.M. Jamdar, J.