

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION*

WRIT PETITION NO. 556 OF 2018

Asha Sandip Sardar

... Petitioner.

V/s.

The State of Maharashtra and others

... Respondents.

Mr.Nagraj S.Shinde, for the petitioner.

Ms.M.M.Deshmukh – APP, for respondents.

***CORAM : S.C. Dharmadhikari and
Prakash D. Naik, JJ.***

28 March, 2018.

P.C. :-

We have heard the learned counsel appearing for the petitioner.

2. With his assistance we have perused the Petition and the annexures thereto. The request is by the wife of the prisoner / convict to produce her husband who is detained at Thane Central Prison and to grant leave to him to assist her in fertility treatment to be undergone by him to have a child and make arrangement for their livelihood. Thus, this is a request made to release the petitioner's husband as per reformatory approach to settle the conjugal visit for planning pregnancy of petitioner.

3. The petitioner is the wife of the detenu. He is detained in the prison for having committed an offence punishable under section 302 of Indian Penal Code and convicted therefor. He is undergoing imprisonment for life.

4. He has filed the Criminal Appeal in this Court and that is pending.

5. The wife says that she went to a doctor and sought medical advice particularly from a lady Doctor who is a consulting Gynaecologist and Obstetrician. That doctor was of the opinion that in the event there is a pregnancy plan the husband has to be with her. The wife says that she is 34 year old female and it is her right to parenthood / motherhood which would enable her to seek this relief.

6. On the earlier occasion, the counsel for the petitioner sought time to study the legal position. Today he produced a copy of the Division Bench judgment of the *Madurai Bench of Madras High Court in Habeas Corpus Petition No.1837 of 2017* decided on 11 January 2018. We have perused this judgment with his assistance. When we inquired with the petitioner's Advocate as to how the petitioner's husband can be released, he relies upon the Prisons (Bombay Furlough and Parole) Rules 1959. We have perused both

the Furlough and Parole Rules, pertinently rule 17 of this Rules says that there is nothing therein which confers a legal right on a prisoner to enlarge him or to claim release on furlough. The term 'furlough' would postulate that the prisoner who is sentenced to imprisonment for period exceeding one year but not exceeding five years, may be released on furlough for a period of two weeks at a time for every year of actual imprisonment undergone. It is conceded that these Rules will have no application to this case.

7. Then the request is to release the petitioner's husband on parole. Here even if parole can be granted on an application made by the prisoner on his own or by his relatives or friends or legal advisor, still, rule 19 of the Rules would not enable us to grant this relief. Rule 19 reads as under -

'When a prisoner may be released on parole -

A prisoner may be released on parole for such period not exceeding thirty days at a time, as the Competent Authority referred to in rule 18, in its discretion may order, in case of serious illness, or death of nearest relative such as mother, father, sister, brother, children, spouse of the prisoner or in case of natural calamity such as house collapse, floods, fire. No such parole or extension of parole shall be granted without obtaining a police report in all cases except in the case of death of his nearest relatives mentioned above.

Provided that a prisoner shall not be released on parole for one year after expiry of his last parole except in case of death of his nearest relatives mentioned above'.

8. A perusal of rule 19 would leave us in no manner of doubt that the relief of release on parole cannot be granted to meet the present eventuality. It cannot be granted so as to fulfill a conjugal obligation as is claimed by the petitioner. Pertinently, there is no challenge to any of these Rules. Secondly, the mandate of Article 21 of the Constitution of India, would not enable us to grant the relief unmindful of the legal position.

9. As a result of the above discussion, the Writ Petition fails. It is dismissed.

(Prakash D. Naik, J.)

(S.C.Dharmadhikari, J.)