

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

CRIMINAL WRIT PETITION NO.2207 OF 2018

Shri Ram Madhukar Choudhari .. Petitioner

Vs.

Superintendent of Prison,
Nashik Central Jail, Nashik & Anr. .. Respondents

Ms.Megha Bajoria for the petitioner.

Ms.Sharmila Kaushik APP for the State.

Mr.Prashant Nagawade, Jailor, Nashik Central Jail present.

**CORAM : A.K. MENON &
SMT.BHARATI H. DANGRE, JJ.
(VACATION COURT)**

DATED : 10TH MAY, 2018.

P.C. :

1. Ms.Bajoria, learned counsel seeks leave to delete reference to sub-Rule (5) of Rule 19 of the Mumbai (Furlough and Parole) Rules, 1959 throughout the petition. Leave granted. Amendment to be carried out forthwith. Re-verification dispensed with.
2. Considering the urgency expressed in the petition, we take up the petition for final disposal by consent of parties Advocates.
3. By this writ petition, the petitioner seeks to challenge proviso to Rule 19 of the Mumbai (Furlough and Parole) Rules, 1959 inasmuch as the

proviso prevents the Competent Authority under the said Rules from granting Parole for any purpose in the event Parole had been granted and availed of during the previous six months. In the instant case, the petitioner has been released on Parole thrice, last of which was from 1st March, 2018 to 30th March, 2018. It is the case of the petitioner that during all the instances when he was released on Parole, his release was uneventful and there was no complaint against him. He has also reported back on time. In effect, it is stated that liberty granted was not misused. It is submitted by Ms.Bajoria that the petitioner's daughter is to be married on Monday i.e. 14th May, 2018 and therefore, he seeks to be released on Emergency Parole for a period of two weeks to attend the marriage. She has invited our attention to the wedding invitation card, a copy of which is annexed to the petition. In support of the petition, learned counsel for the petitioner states that an attempt was made apply to the Competent Authority being the Superintendent of Prison to grant Parole for the aforesaid purpose but the application was not accepted.

4. We find that the subject Rules have since undergone further amendment effective from April 2018 as evident from the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018 copies of which along with the relevant notification is handed in by the learned Assistant Public Prosecutor. Rule 19 of the Original Rules of 1959 has been substituted with present Rule 19 which provides for Emergency Parole and

Regular Parole. In the instant case the petitioner has been convicted for the offences under Section 147, 148, 149 and 302 of the Indian Penal Code vide judgment and order dated 17th November, 1994 passed by the Additional Sessions Judge, Alibagh. He is sentenced for life imprisonment and is currently undergoing imprisonment at Nashik Central Jail, Nashik.

5. The petitioner had challenged the said judgment and order in Appeal No.10 of 1995 in this Court which appeal came to be rejected confirming the conviction. This order was then challenged in the Criminal Appeal No.1644 of 2007 in the Supreme Court which appeal came to be rejected confirming the judgment and order of the Sessions Court. He has since undergone three years of actual imprisonment. Considering the Rules as amended, the proviso to Rule 19 read as under :

“Provided that, a prisoner shall not be released on emergency or regular parole for the period of one year after the expiry of his last emergency or regular parole except in case of death of his nearest relatives mentioned above.

6. The petitioner had been released on regular Parole as recently as March 2018. The proviso would prevent the Competent Authority from granting regular parole. The provisions for emergency Parole are to be found in clause (1) of Rule 19. The same are reproduced below :

“19. When a prisoner may be released on emergency parole :-

1. Emergency Parole :

(A) All convicted prisoners except foreigner and death sentenced prisoners may be eligible for emergency parole for 14 days for death of parental grandfather or grandmother/ father/ mother/ spouse/ son / daughter/ brother / sister and marriage of son / daughter/ brother / sister provided that no extension can be granted to emergency parole. (Emphasis supplied)

(B) Emergency Parole may be granted by the Superintendent of Prison for the reason of death of parental grandfather or grandmother/father/mother/spouse/son/daughter/brother/sister and by concerned Dy. I.G. for the reason of marriage of son/daughter/brother/sister and the Authority approving emergency Parole shall decide whether to grant parole under police escort or with a condition to report daily to the local police station depending upon the crime committed by the prisoner and his conduct during his stay. The expenses of police escort will be borne by the prisoner himself prior to his release on parole.

7. The challenge in this petition as filed, is mounted on the basis that there is no provision for granting parole for the purpose of marriage. However, vide the provisions of Rule 19(1)(A) all convicted prisoners except foreigners and those on death sentence may be eligible for Parole of 14 days either on demise of family members or for marriage of family member with

the condition that no extension shall be granted. The Superintendent of Prison is also empowered to decide the conditions of such Parole, if granted. In the instant case the petitioner is convicted for life and hence in our view the petitioner would be eligible for consideration of Emergency Parole as a one time measure notwithstanding the proviso which will bind the Competent Authority. The Prisons Jail record dated 10th May, 2018 submitted today by the learned Assistant Public Prosecutor on instructions of Mr.Prashant Nagawade, Jailor, Central Jail, Nashik indicates fair and acceptable conduct on the part of the petitioner. No negative remarks are found which would prevent the petitioner from applying.

8. In the circumstances, considering the fact that the marriage is that of his own daughter, in exercise of our extra-ordinary jurisdiction under Article 226 of the Constitution of India, we deem it appropriate that the petitioner be granted Emergency Parole but only for five days. The petitioner shall comply with the conditions set out in Rule 24A of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018 to the extent of furnishing requisite personal bond as also deposit refundable sum of Rs.10,000/- in addition to the Escort charges and expenses for the period of five days and observe other conditions including execution of declaration in form provided in the aforesaid Rule 24A.

9. Subject to the compliance as above, the petitioner shall be released not later than 12 noon on 13th May, 2018 under police escort

till reaching the destination being the Petitioner's residence and thereafter under the control and supervision of local police at Taluka Panvel and thereafter be escorted back to Nashik Central Jail, Nashik so as to report back at Nashik Central Jail at or before 6 pm on 17th May, 2018.

10. In the meantime, the petitioner shall arrange for deposit of all costs and expenses required for the escort to and fro and any other costs involved. Learned counsel for the petitioner undertakes that the deposits required including the refundable deposit of Rs.10,000/- will be made promptly without any delay.

11. It is made clear that this order is passed in peculiar circumstances of this case and shall not be treated as a precedent.

12. Parties to act on an authenticated copy of this order. The Registry is also directed to forward a copy of this order to the Superintendent, Nashik Central Prison, Nashik for compliance.

13. With the aforesaid directions we dispose of this petition.

(SMT.BHARATI. H.DANGRE,J.)

(A.K. MENON,J.)