

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4154 OF 2018**

Mayur Dattatraya Dangde

..Petitioner

Vs.

The State of Maharashtra & Ors

..Respondents

Ms Poonam P Bhosale for the Petitioner

Mr. V. B. KondeDeshmukh Addl PP for the Respondent State

CORAM :R. M. SAVANT, &

N. J. JAMADAR, JJ

DATE : 29th NOVEMBER, 2018

P.C.

1 The above Writ Petition has been filed challenging the order dated 13-7-2018 passed by the State Government by which order the Appeal filed by the Petitioner against the order dated 18-5-2018 passed by the Divisional Commissioner Nashik Division, Nashik, came to be dismissed. The said orders have arisen out of the application filed by the Petitioner for emergency parole on account of the illness of his father who is suffering from an heart ailment and as per the medical report of Dr. D. B. Umerji, Assoc. Prof of Medicine, B. J. Medical College, Pune, the father of the Petitioner is advised Coronary Artery Bypass Graft. The First Authority rejected the application in view of the fact that the release has not been recommended by the jail authorities. The Appellate Authority rejected the application principally on the ground that emergency parole is not grantable under the Notification dated 16-4-2018. As indicated above it is the said two orders which are taken exception to by way of the above Petition.

2 The principal contention of the Learned Counsel for the Petitioner Ms Bhosale is that the authorities have wrongly considered the Petitioner's application for emergency parole on the touchstone of the Notification dated 16-4-2018 as the Petitioner's application was filed on 16-1-2018 when the earlier Notification dated 26-8-2016 was in force. In terms of the said Notification and especially under Rule 19 thereof a prisoner can be released on emergency parole on account of serious illness of Father / Mother/ Spouse / Son /Daughter.

3 Per contra the Learned Addl PP Mr. KondeDeshmukh would submit that the Petitioner can apply for regular parole which is contemplated under the Notification dated 16-4-2018 and that the Petitioner's application for emergency parole has been rejected in view of the fact that such emergency parole is not contemplated by the said Notification dated 16-4-2018.

4 We have heard the Learned Counsel for the Petitioner Ms Bhosle and the Learned Addl PP Mr. KondeDeshmukh. As indicated hereinabove the Petitioner's application for emergency parole is dated 16-1-2018. The Petitioner's application was therefore required to be considered on the touchstone of the Notification dated 26-8-2016 which is applicable to the grant

of emergency parole on the said date. There can be no dispute about the fact that at the time when the Petitioner filed the application the Notification dated 26-8-2016 was in force. In our view, the authorities have erred in rejecting the application by applying the provisions of the Notification dated 16-4-2018 which as indicated above do not contemplate grant of emergency parole on the ground of illness. It is trite that a regulatory provision which takes away a right cannot be made applicable retrospectively and can apply only prospectively. By the said Notification dated 16-4-2018 the right to seek emergency parole on the ground of illness has been taken away, the same would obviously apply prospectively i.e. on or from 16-4-2018 and not retrospectively, that is to an application which has been filed anterior in point of time.

5 In our view therefore, it is not necessary to relegate the Petitioner to another round of application and orders to be passed thereon. The Petitioner was entitled to the grant of emergency parole in terms of the Notification dated 26-8-2016. The above Writ Petition is therefore required to be allowed by setting aside the impugned orders. The Petitioner would be entitled to emergency parole for a period of 7 days which would commence from the date of his release which would be on or before 1-12-2018. The Petitioner to report to the Chikhali Police Station, Taluka Haveli, District Pune every alternate day during the currency of the emergency parole. The

Petitioner to report back to the Nashik Central Prison, at the end of the said emergency parole period.

6 The Petition is allowed to the aforesaid extent and is accordingly disposed of.

7 The Learned Addl PP to communicate the instant order to the Jailer, Nashik Central Prison.

8 All parties to act upon a copy of this order duly authenticated by the Court Shirestedar.

[N. J. JAMADAR, J]

[R.M.SAVANT, J]