

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4576 OF 2017

Faiyaz Ismail Petkar
C-8471, Nashik Road Central Prison, Nashik .. Petitioner
Vs.
The State of Maharashtra .. Respondent

Mrs.Nasreen S.K.Ayubi, for the Petitioner.
Mrs.G.P. Mulekar,, APP for State.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

25th JANUARY, 2018

ORAL JUDGMENT (PER SMT. V.K.TAHILRAMANI ACTING C.J.):

1. Heard both sides.
2. The petitioner preferred an application on 04/07/2016 for parole on the ground of illness of his father. The said application was rejected by order dated 03/05/2017. Being aggrieved thereby the petitioner preferred Appeal. The Appeal was dismissed by the order dated 17/07/2017, hence, this Petition.

3. The application of the petitioner for parole came to be rejected on the ground that police report is adverse and medical certificate states that illness of his father may be serious in future.

4. As far as Appellate order is concerned, it is rejected on the ground that in the year 2010 when the petitioner was released on parole, he did not report back to the prison in time. There was delay of 102 days in reporting back to the prison and in fact the petitioner was arrested and brought back by police to the prison. Second ground is that medical report relied upon by the petitioner which is dated 31/05/2016 is a year old and hence, when the Appeal was decided on 17/07/2017, it was not possible to know the seriousness of illness of the father of the petitioner.

5. As far as first ground of rejection in the Appellate order is concerned, it is seen that though in the year 2010, when the petitioner was released on parole, he did not report back in

prison in time and there was delay of 102 days, however, thereafter on 20/11/2013 & 27/04/2015, the petitioner was released on parole and he reported back on due date on his own to the prison. In addition, on 03/11/2014 and 20/04/2016, the petitioner was released on furlough and he reported back on due date on his own to the prison. Thus, it is seen that from the year 2013 every year, the petitioner has been released either on parole and furlough and on all occasions, the petitioner has reported back on his own on the due date to the prison. During the period from 2013 when the petitioner was released on parole or furlough, there is no record to show that the petitioner has come to the adverse notice of the police. Further, it is seen that conduct of the petitioner in the prison is also satisfactory. Thus, as far as police report is adverse or that the petitioner had earlier not reported back to the prison in time is concerned, in the facts and circumstances, we do not find them to be good grounds.

6. As far as second ground in both the orders is

concerned, the medical certificate shows that father of the petitioner who is as of today 77 years is suffering from urinary colic and he has past history of Lithotripsy. The Doctor has suggested to seek an expert's opinion and further management at higher centre. This certificate is dated 31/05/2016 which according to the authorities was one year old and hence, could not be relied upon.

7. Thus, as far as second ground in the Appellate order is concerned, no doubt the certificate is more than one year old, however it is seen that Authority themselves took over a year to decide the Appeal. The petitioner cannot be blamed for the same. It was not expected that the petitioner would periodically keep on tendering fresh medical certificates till his application for parole is decided. The medical certificate clearly shows that father of the petitioner is suffering from medical problem and it was required to seek further management at a higher centre. In this view of the matter, looking to the facts and circumstances of the case, we are inclined to grant parole to the petitioner. The

petitioner to be released on parole for 30 days on the usual terms and conditions as set out by the Competent Authority. Rule is made absolute in the above terms.

8. Office to communicate this order to the petitioner who is in Nashik Road Central Prison, Nashik.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)