

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4785 OF 2018**

Anil Laxmichand Menda

..Petitioner

Vs.

The Divisional Commissioner & Ors

..Respondents

**Mr. Udaynath Tripathi a/w Mr. Ramesh Tripathi for the Petitioner
Mrs. P. P. Shinde APP for the Respondent State**

**CORAM :R. M. SAVANT, &
V.K.JADHAV, JJ
DATE : 22nd NOVEMBER, 2018**

P.C.

1 The order dated 6-10-2018 communicated by the Under Secretary, Home Department, Government of Maharashtra, to the Petitioner is taken exception by way of the above Petition. By the said order the Appeal filed by the Petitioner against the order dated 14-6-2018 passed by the Divisional Commissioner, Pune Division, Pune, came to be dismissed and resultantly the said order dated 14-6-2018 came to be confirmed.

2 The Petitioner has been convicted for the offences punishable under Sections 420, 465, 467, 468 and 471 of the IPC and is presently undergoing his sentence in the Kolhapur Central Prison, Kalamba. The Petitioner filed an application for emergency parole on the ground that his father who is 83 years of age is suffering from enlarged prostate and has been advised surgery by the doctor concerned. The Petitioner placed reliance on

the medical certificate in that regard. Both the First Authority i.e. the Divisional Commissioner, Pune Division, Pune and the Appellate Authority i.e. the State Government, have rejected the application interalia on the ground that the Petitioner's wife and other relatives are there to take care of the father of the Petitioner and secondly on the ground that the Petitioner has been convicted for the offences under Section 120(B), 420, 465, 467, 468 and 471 of the IPC and that the possibility of the Petitioner indulging in a further offence cannot be ruled out.

3 We are informed that the Petitioner is one amongst the 7 accused who have been convicted in the criminal case in question. We have perused the medical certificate dated 5-11-2018 produced by the Petitioner of one Astha Health Care. It has been mentioned in the said certificate to the following effect: Patient will require urgent surgery i.e. TURP (Trans Urethral Resection of Prostate). It is further mentioned that the patient is refusing surgery due to personal reason. It is required to be noted that out of the sentence of 5 years the Petitioner has already undergone nearly 2 years of imprisonment. The Petitioner has his roots in Mumbai wherein his father as also his wife, children and other relatives are residing. Though the Petitioner has filed the application for emergency parole, since the Notification dated 16-4-2018 issued by the State Government does not provide for emergency parole on the ground of illness of a relative, the Petitioner's application would have to

be treated as an application for regular parole. In our view, the interest of justice would be served if the impugned orders are set aside and the Petitioner is released on regular parole to attend to his ailing father. Hence the following directions:

(i) The impugned orders dated 14-6-2018 and 6-10-2018 are quashed and set aside. The application filed by the Petitioner for regular parole would stand allowed. The Petitioner is directed to be released on regular parole for a period of 30 days which would commence from the date of his release which would be on or before 25-11-2018, on furnishing two sureties, if not already furnished.

(ii) The Petitioner to report to the Mulund Police Station every alternate day during the currency of the regular parole. The Petitioner to report back to the Kolhapur Central Prison, Kalamba, at the end of the regular parole period.

4 The Petition is allowed to the aforesaid extent and is disposed of as such.

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

[V. K. JADHAV, J]

[R.M.SAVANT, J]