

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 5566 OF 2018

Muzzammil Hussain Shabbir Ahmed. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Mrs.A.M.Z.Ansari for the petitioner.
Ms.P.P.Shinde, APP for the respondent- State.

CORAM : A.S.OKA & SANDEEP K. SHINDE, JJ.

DATE : 13th December 2018.

P.C.:

Heard the learned counsel appearing for the petitioner and the learned APP for the respondent. The petitioner has been convicted for the offences punishable under 302, 364, 120(b) read with section 34 of the Indian Penal Code. The petitioner applied for emergency parole under rule 19(1)(A) of the Maharashtra Prison (Mumbai Furlough and Parole) Rules, 1959 (for short “the said Rules”). Writ petition was filed as the application was not being decided. Today, the learned APP placed on record a copy of the order dated 13th December 2018 passed by the Deputy Inspector General of Prisons, Central Zone, Aurangabad by which the application of the petitioner was rejected. The application was rejected only on the ground of adverse police report submitted by the Inspector of Police, Pawarwadi Police Station, Malegaon on 12th December 2018.

2. The stand of the respondent is that the rejection is in exercise of power under sub-rule (4) of Rule 4 of the said Rules. We have perused the said sub-rule (4) which states that prisoner's case cannot be

considered for release on furlough if it is not recommended in Police Commissionerate area by Assistant Police Commissioner or elsewhere by Deputy Superintendent of Police on the ground of public peace and tranquility. In this case, apart from the fact that the order refusing to grant emergency parole is not on the ground of breach of public peace and tranquility, the recommendation is not by the Assistant Commissioner of Police or by the Deputy Superintendent of Police but the recommendation is by the Inspector of Police. Hence, the order dated 13th December 2018 is unsustainable and is hereby set aside.

3. The learned counsel appearing for the petitioner has stated that the petitioner has already furnished surety. We accept the said statement. We direct the Deputy Inspector General of Prisons, Central Zone, Aurangabad to forthwith reconsider the application made by the petitioner and to take a decision thereon tomorrow during the course of the day. We make it clear that now the said Authority will not be entitled to call for a fresh police report.

4. As the surety is already furnished, in the event the said Authority grants emergency parole, the communication thereof be immediately issued to all concerned persons.

5. The Deputy Inspector General of Prisons, Central Zone to act upon telephone communication by the office of the learned PP.

6. Petition is disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)